343.01
Man

अवाप्ति स० 107443
ACC No ~~JD.1926~~....

वर्ग स
Class No . Book No ... .
लेखक
Author . ...
शीर्षक
Title .Manual of military law.
. . . .

निर्गम दिनाँक Date of Issue	उधारकर्ता की स Borrower's No	हस्ताक्षर Signature
.		.

343.01
Man

LIBRARY
LAL BAHADUR SHASTRI
National Academy of Administration
MUSSOORIE

Accession No 107443

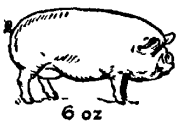
1 Books are issued for 15 days only but may have to be recalled earlier if urgently required
2 An over-due charge of 25 Paise per day per volume will be charged
3 Books may be renewed on request, at the discretion of the Librarian
4 Periodicals, Rare and Reference books may not be issued and may be consulted only in the Library.
5. Books lost, defaced or injured in any way shall have to be replaced or its double price shall be paid by the borrower.

Help to keep this book fresh, clean & moving

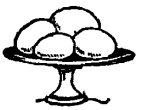
CHOCOLAT-MENIER

GOOD FOOD IS WORTH ALL THE EXTRA IT COSTS

THE USEFUL ENERGY
procured by



6 oz
FRESH PORK
(boneless)



4 NEW LAID
EGGS

A CUP OF
CHOCOLAT-MENIER



is equal to a huge portion
of one of the four dishes

SEE HOW MUCH YOU CAN SAVE



5 oz
RIBS OF BEEF
(boneless)



5 oz
LAMB
(boneless)

CHOCOLATE FOR EATING, DRINKING AND COOKING,
IN TABLETS, POWDER AND GRANULATED, CACAO MENIER,
MILK & NUT MILK CHOCOLATES. ASSORTED CHOCOLATES.

LONDON FACTORY (Estd 1863) — SOUTHWARK STREET, S.E.1

In Every Officer's EQUIPMENT...



THERE should be a ROLLS RAZOR. Not only because it is all-British. But because it is the finest safety razor. It takes the nuisance from the daily duty of shaving. Its one *hollow-ground* blade is automatically stropped and honed. Nothing to worry about—— *No blades to buy*——gives a quick, clean, comfortable shave.

ROLLS RAZOR

The ONE-BLADE SAFETY

ROLLS RAZOR (1927) LTD., CRICKLEWOOD, BROADWAY, LONDON, N.W.2.

Crown Copyright Reserved

MANUAL OF MILITARY LAW

1929

Issued by Command of the Army Council

THE WAR OFFICE,
January, 1929



LONDON
PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE
To be purchased directly from H M STATIONERY OFFICE at the following addresses
Adastral House, Kingsway, London, W C 2, 120, George Street, Edinburgh,
York Street, Manchester, 1, St Andrew's Crescent, Cardiff,
15, Donegall Square West, Belfast,
or through any Bookseller

1929

Price 3*s* 6*d* Net

57-206

MANUAL OF MILITARY LAW.

40
W O.
8936

NOTE BY EDITOR TO SEVENTH EDITION

This manual was first published in 1884, as a sequel to the passing of the Army Discipline and Regulation Act, 1879, and the Army Act, 1881 Five revised editions have since been issued the last (sixth) edition having been published in 1914, just before the commencement of the war The manual was originally compiled mainly in the Office of the Parliamentary Counsel, and subsequent editions have been prepared under the supervision of lawyers employed either in or in close connection with that office, being the office in which the Army Act was drafted, and the annual Army and Air Force Acts are drafted in each year The 6th edition and the present (7th) edition were prepared under the general editorship of the Hon Hugh Godley, K C (counsel to the Lord Chairman of Committees in the House of Lords, and formerly of the Office of the Parliamentary Counsel), in close collaboration with the appropriate departments of the War Office

The events of the war and of the period succeeding the war have necessitated very considerable modifications and additions, both in the introductory chapters and in the notes to the Army Act and to the Rules of Procedure, which Act and Rules have themselves undergone extensive amendment Several of the introductory chapters have been almost entirely rewritten , and in the general process of revision free use has been made of the *Manual of Air Force Law* published in 1921 under the authority of the Air Council

In connection with chapter XIV (relating to the law and usages of war on land) particular attention is drawn to the introductory note at the commencement of the chapter, from which it will be seen that the chapter cannot at present be regarded as having been brought completely up to date in the light of the experience of actual war

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 Under-Secretary of State,
The War Office,
London, S W 1

CONTENTS

PART I

CHAPTER		PAGE
I	—INTRODUCTORY	1
II	—HISTORY OF MILITARY LAW	6
III	—OFFENCES AND PUNISHMENTS	15
IV	—ARREST INVESTIGATION BY COMMANDING OFFICER SUMMARY POWER OF COMMANDING OFFICER SUMMARY AWARDS UNDER S 47, ARMY ACT PROVOST MARSHAL DISCIPLINE OF TROOPS WHEN ATTACHED TO OR ACTING WITH NAVAL OR AIR FORCES OR WHEN PASSENGERS ON BOARD HIS MAJESTY'S SHIPS	31
V	—COURTS-MARTIAL	43
VI	—EVIDENCE	69
VII	—OFFENCES PUNISHABLE BY ORDINARY LAW	103
VIII	—THE COURTS OF LAW IN RELATION TO OFFICERS AND COURTS-MARTIAL	135
IX	—HISTORY OF THE MILITARY FORCES OF THE CROWN	165
X	—ENLISTMENT	211
XI	—CONSTITUTION OF THE MILITARY FORCES OF THE CROWN	220
XII	—RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE	241
XIII	—EMPLOYMENT OF TROOPS IN AID OF THE CIVIL POWER	246
XIV	—THE LAWS AND USAGES OF WAR ON LAND	270

PART II

	PAGE
THE ARMY AND AIR FORCE (ANNUAL) ACT, 1928	415
THE ARMY ACT, with Notes	418
RULES OF PROCEDURE, 1926, with Notes	611
Appendix I (Forms of Charges)	699
Specimen Charges	715
Appendix II (Forms as to Courts-Martial, &c.)	736
Memoranda for the guidance of Courts-Martial	763
Appendix III (Forms of Commitment)	771
RULES FOR FIELD PUNISHMENT	787

1210 Wt 3253-8063/162 50M 1/29 Wy & S, Ltd Gp 64

PAGE

FORMS OF COURT MARTIAL WARRANTS 788
FORM OF APPLICATION FOR COURT-MARTIAL 794
COMMUNICATION TO AN ACCUSED PERSON UPON WHOM A SENTENCE OF DEATH HAS BEEN PASSED BY COURT-MARTIAL 795
INSTRUCTIONS REGARDING THE SUSPENSION AND REVIEW OF SENTENCES AWARDED BY COURTS-MARTIAL 795
DISCIPLINARY REGULATIONS AND ORDERS 809
ORDERS IN COUNCIL (DISCIPLINE ON BOARD SHIP) 818

PART III

MISCELLANEOUS ENACTMENTS AND REGULATIONS

The Railway Regulation Act, 1842 825
The Railway Regulation Act, 1844 826
The Regulation of the Forces Act, 1871 827
The Cheap Trains Act, 1883 828
The National Defence Act, 1888 830
The Railways Act, 1921 831
The Reserve Forces Act, 1882 832
The Reserve Forces Act, 1890 841
The Reserve Forces and Militia Act, 1898 841
The Reserve Forces Act, 1899 842
The Reserve Forces Act, 1900 842
The Reserve Forces Act, 1906 843
The Territorial and Reserve Forces Act, 1907 844
The Territorial Army and Militia Act, 1921 867
The Auxiliary Air Force and Air Force Reserve Act, 1924 868
The Officers' Commissions Act, 1862 869
The Local Government Act, 1888 870
The Regimental Debts Act, 1893 872
The Regimental Debts (Deposit of Wills) (Scotland) Act 1919 880
Regulations under the Act of 1893 881
Royal Warrant—Soldiers' Effects Fund 893
The Friendly Societies Act, 1896 895
The Official Secrets Act, 1911 895
The Official Secrets Act, 1920 900
The Emergency Powers Act, 1920 .. 906

LIST OF ABBREVIATED REFERENCES

A A	Army Act
A A A	Army (Annual) Act
A & A F (A) Act	Army and Air Force (Annual) Act
A B	Army Book
A C I	Army Council Instruction
A F	Army Form
A F A	Air Force Act
American Instructions	Instructions for the Government of the Armies of the United States in the Field, 1863
A O	Army Order
Archbold Crim Ev	Archbold's Pleading and Evidence in Criminal Cases
Ariga	La Guerre Russo-Japonaise au point de vue continentale et le droit International, by N Ariga, 1908
Bac Abr	Bacon's Abridgment of the Law, 5th edition, 1798
Barn & Adol	Barnewall and Adolphus' Reports, King's Bench, 5 vols, 1830–34
Barn & Ald	Barnewall and Alderson's Reports, King's Bench, 5 vols, 1817–22
Barn & Cr	Barnewall and Cresswell's Reports, King's Bench, 10 vols, 1822–30
Best and Smith	Best and Smith's Reports
Bl H	Blackstone, H, Reports
Bos & P	Bosanquet and Puller's Reports
Brenet	La France et l'Allemagne devant le Droit International, 1870–71, by A Brenet 1902
Bro P C	Brown's Cases in Parliament
Broderip & Bingham	Broderip and Bingham's Reports
Buchanan	Buchanan's Reports (Scotch).

Burr	Burrow's Reports, 5th Edition, 5 vols , 1812
Calvo	Le Droit International, by C Calvo, 5th edition, 1896
Campbell	Campbell's Reports
Can Crim Cases	Canadian Criminal Cases
Car & Marsh	Carrington & Marshman's Reports
C & K	Carrington & Kirwan's Reports
C & P.	Carrington & Payne's Reports, 9 vols , 1823–41
Christian's Blackstone	Blackstone's Commentaries on the Laws of England, edited by Edward Christian, 4 vols , 1803
Clode, Mil Forces	Clode's Military Forces of the Crown, 2 vols , 1869
C O .	Commanding Officer
Cobbett, Parl Hist	Cobbett's Parliamentary History
Coke Inst	Coke's Institutes of the Laws of England, 4 vols , 1832 and 1817
Comm Journ	Journal of the House of Commons
Com Dig	Comyn's Digest of the Laws of England, 5th edition, 7 vols , 1822
Cox Crim Ca	Cox's Criminal Cases
Cr App Rep	Criminal Appeal Reports
Dowl & R	Dowling and Ryland's Reports
East	East's Reports, 16 vols , 1801–14
F & F	Foster and Finlason's Reports
French Manual	Manuel de Droit International à l'usage des officiers de l'armée de terre, 3rd edition, 1893
Garner	International Law and the World War, by J W Garner, 1920 (2 vols)
Geneva Conference Actes	Convention de Genève Actes de la Conférence de Révision Genève, 1906.
Geneva Convention	Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field
Grose, Mil Antiquities	Military Antiquities and History of Ancient Armour, by Capt F. Grose, 1801
Guelle .. .	Précis des lois de la Guerre, by J Guelle, vol 1, 1884
Hague Conference, 1899	Blue Book Correspondence respecting the Peace Conference held at The Hague in 1899. C 9534

Hague Conference, 1907 Actes	Deuxième Conférence International de la Paix Actes et documents The Hague, 1907
Hague Rules	Annex to the Convention concerning the Laws and Customs of War on Land, 1907, entitled " Regulations respecting the laws and customs of war on land "
Hale, Hist Com Law	Hale's History of the Common Law, 4th edition
Hallam, Const Hist	Constitutional History of England, by A H Hallam 3 vols , 7th edition, 1854
Hawkins	Hawkins' Pleas of the Crown, 2 vols, 6th edition, 1777
H L	House of Lords Reports
Holtzendorff	Handbuch des Volkerrechts, edited by Dr F von Holtzendorff, vol IV , 1889
Hough, M ' Prec	Precedents in Military Law, by W Hough Lieut -Col E I C S , 1855
I R	Law Reports, Ireland
J A G	Judge-Advocate-General
J P	Justice of the Peace Reports
Jur	The Jurist Reports
Jur (N S)	The Jurist Reports (new series)
K R	King's Regulations for the Army and the Army Reserve (1928 edition)
Kriegsbrauch	Kriegsbrauch in Landkriege (Kriegsgeschichtliche Einzelschriften), edited by the German Great General Staff (Military Historical Section) Berlin, 1902
Lingard	History of England, by John Lingard
L J (M C)	Law Journal Reports (Magistrates' Cases)
L J (N S)	Law Journal (new series)
L J (Q B)	Law Journal Reports (Queen's Bench)
Loening	Professor Loening's Articles in the "Revue Droit International," 1872 and 1873
Longuet	Le droit actuel de la guerre terrestre, by Captain F Longuet, 1901
L R , [ ] A C	Law Reports, Appeal Cases since 1890
L R [ ] Ch	Law Reports, Chancery Division since 1890
L R , Ch Div	Law Reports, Chancery Division
L R , C C R	Law Reports, Crown Cases Reserved
L R , C P D	Law Reports, Common Pleas Division
L R , Ex ..	Law Reports, Exchequer.

L R , H L	Law Reports, English and Irish Appeals (House of Lords)
L R , [ ] K B	Law Reports, King's Bench Division, since 1901
L R , P C	Law Reports, Privy Council Appeals
L R , [ ] P	Law Reports, Probate Division, since 1890
L R , P D	Law Reports, Probate Division, 1875–90,
L R , P & D	Law Reports, Probate and Divorce, 1865–75
L R , Q B	Law Reports, Queen's Bench
L R , Q B D	Law Reports, Queen's Bench Division (before 1890).
L R [ ] Q B	Law Reports, Queen's Bench Division (since 1890)
Lewin, C C	Lewin's Crown Cases
Lords' Journ	Journals of the House of Lords
Lord Raymond	Lord Raymond's Reports, 2 vols 4th edition, 1792
L T	*Law Times* Reports
Man & Gr	Manning and Granger's Reports
M & S	Maule and Selwyn's Reports, 6 vols 1814–29
M & W	Meeson and Welsby's Reports, 16 vols 1837–49
McArthur	McArthur on Courts-Martial
Mod Rep	Modern Reports, 12 vols 5th edition, 1793
Moo C C	Moody's Crown Cases Reserved
Moore's Digest	A Digest of International Law, by J B Moore, Washington, 1906
N C O	Non-commissioned officer
Neutrality Convention	Convention respecting the Rights and Duties of Neutral Powers and Persons, 1907
Official Account of Franco-German War	The Franco-German War, 1870–71, translated by Major F C H Clarke, London, 1874–84
O in C ..	Order in Council
Opening of Hostilities Convention	Convention Relative to the Opening of Hostilities, 1907
Oppenheim .	International Law, by L Oppenheim, vol I , 1905 , vol II , 1906
Phipson ..	Phipson's Law of Evidence
P.W.	Royal Warrant for the Pay, &c , of the Army, 1926

Rowe .	Rowe's Reports
R P	Rules of Procedure, 1926
S A O	Special Army Order
S C	Court of Session (Scotland) Reports
Shower's Rep	Shower's Reports, 2 vols 2nd edition 1794
Simmons	Simmons on Courts-Martial
Skin	Skinner's Reports
Smith, Lead Ca	Smith's Leading Cases, 11th edition
S R Regs ..	Regulations for Officers of the Supplementary Reserve of Officers and for the Supplementary Reserve, 1926
Steph Comm	Stephen's Commentaries on the Laws of England, 4 vols 14th edition, 1903
Steph Dig Crim Law	Digest of the Criminal Law, by Sir James Fitzjames Stephen, K C S I 6th edition, 1904
Steph Dig Ev	Digest of the Law of Evidence, by Sir James Fitzjames Stephen, K C S I 6th edition, 1904
Stubbs, Constit Hist	Constitutional History of England, by William Stubbs, M A , Regius Professor of Modern History, Oxford 4th–6th editions, 1896–7
Takahashi	International Law applied to the Russo-Japanese War, by S Takahashi (English edition), London, 1908
Taunt	Taunton's Reports (Common Pleas, 1807–19), 8 vols
T A .	Territorial Army
T A & M Act	Territorial Army and Militia Act, 1921
T A Regs	Regulations for the Territorial Army, 1929.
Thring	Chapter XIV , entitled " The Customs of War," by the late Lord Thring in the Manual of Military Law (1899 edition)
Times	*The Times* Newspaper
T L R	*Times* Law Reports
T R ..	Term Reports (Durnford and East), 4 vols , 1794–1809
T R.F Act	The Territorial and Reserve Forces Act, 1907
Von Widdern	Krieg an den ruckwartigen Verbindungen der deutschen Heere, 1870–71, by Colonel Cardinal von Widdern

Washburne	An abstract from the official correspondence of E B Washburne, United States Minister to France, entitled "America's Aid to Germany," St Louis, 1905 (It is therein stated that the official edition of the correspondence published by the Government Printing Office, 1878, has been out of print since 1884)
W R ..	Weekly Reporter (Irish)
Well Desp	Wellington Despatches, 1838
Wills	Wills' Theory and Practice of the Law of Evidence
Wilson's Rep	Wilson's Reports.

PART I

CHAPTER I

INTRODUCTORY

Object of the Manual

1 The object of this manual is to assist officers of the Army in acquiring information in respect of those branches of law with which they may have occasion to deal in the execution of their duties

Legal position of officers and soldiers

2 By the law of England a man who joins the Army, whether as an officer or as a soldier, does not cease to be a citizen[1] With a few exceptions[2], his position under the ordinary law of the land remains unaffected If he commits an offence against the criminal law, he can be tried and punished for it as if he were a civilian Similarly, in respect of civil[3] rights, duties, and liabilities, although a few privileges are granted to him, and a few restrictions imposed upon him, for the purpose of enabling him the better to fulfil his army engagement[2], the ordinary law in general applies to him

Military law its nature

3 Whilst, however, remaining subject (with these qualifications) to the ordinary law of England, he has become subject also to an entirely distinct code known as "military law," which governs the members of the Army and regulates the conduct of officers and soldiers as such at all times and at all places, in peace and in war, at home and abroad Military law is contained in the Army Act,[4] the Acts relating to the Reserve and Auxiliary Forces, and certain other Acts applied to the Army,[5] supplemented by the Rules of Procedure,[4] by the King's Regulations for the Army and the Army Reserve, by other regulations, *e g*, those for the Militia (Supplementary Reserve) and Territorial Army, by Royal Warrant, *e g*, those relating to pay, promotion, &c, and by Army Orders and Army Council Instructions

The Army Act is an Act of Parliament dealing with discipline, courts-martial, enlistment, and other cognate subjects, and has in itself no permanent operation, for it continues in force so long only

---

[1] "It is, therefore, highly important that the mistake should be corrected which supposes that an Englishman by taking upon him the additional character of a soldier puts off any of the rights or duties of an Englishman," *per* Sir J Mansfield, C J, in *Burdett* v *Abbott* (1812) 4 Taunt, 401 See also *Heddon* v *Evans* (1919) 35 T L R 642

[2] See Ch XII

[3] The reader must bear in mind two senses in which lawyers use the word "civil" As a rule, being little concerned with the military code of law, they use the word habitually in contradistinction to "criminal," speaking and writing of "civil law," "civil courts," and "civil proceedings" as opposed to "criminal law," "criminal courts" and proceedings therein On the other hand, when occasion arises, they use the term "civil" in its wider sense in opposition to "military" (or "naval" or "air force") The context should, however, always show in which sense the word is used in any particular passage

[4] See Part II of Manual

[5] See Part III of Manual

Ch I

as Parliament from time to time decides [1] It is part of the "statute law"[2] of England, and, with the considerable difference that so much of it as relates to discipline is administered by army tribunals and not by civil judges, it is construed in the same manner and carried into effect under the same conditions as to evidence and otherwise, as the ordinary criminal law of England [3]

Its purpose

The object of this special code of law is twofold —(i) to provide for the maintenance of discipline among the troops and other persons forming part of, or following, the forces, for which purpose acts and omissions which in civil life may be mere breaches of contract—*e g*, desertion or disobedience to orders—must if committed by soldiers, even in time of peace, be made punishable offences, whilst in war every act or omission which impairs a man's fighting efficiency must be dealt with severely, and (ii) to provide for administrative matters, such as terms of service, enlistment, discharge and billeting The term "military law" may, therefore, be used properly as including provisions of both the above classes, but in practice it is more often used with reference to the disciplinary provisions alone

Description of law of riot and insurrection

4. There is not in England, as in many foreign countries, a special law defining the relations between the military and civil power in cases of riot and insurrection Troops when called out to assist the civil power in these cases are under military law as soldiers, but they are also as citizens subject to the ordinary civil law of England to the same extent as if they were not soldiers Their military character is superimposed on their civil character, and does not obliterate it [4] The rioters or insurgents are wholly under the ordinary civil law, and are in no respect subject to military law, or to the "customs of war" Troops employed against armed rioters are, it is true, rendered by the Army Act[5] subject to military law as if they were on active service, and the rioters were an enemy, but this enactment relates only to the government of the troops The rioters are an enemy only while actually resisting, and when force ceases to be used the rioters, whether prisoners or otherwise, must be tried or otherwise dealt with according to civil law The law, then, of riot and insurrection is not necessarily part of the military education of an officer, except in so far as some knowledge of it is necessary as a guide for his own conduct, when required by his military obligations to assist the civil power [6]

Laws and usages of war on land

5. There is one other code of law with which an officer should have some acquaintance, *viz*, that known as the "Laws and Usages of War on Land"[7] These consist of certain rules, depending in part on the recognised practice of civilized nations, and in part on express written agreement between them,

---

[1] The Army Act is annually brought into operation by the Army and Air Force (Annual) Act, which must become law by 30th April By this system of annual Acts Parliament retains control over the land forces of the Crown See Ch II, para 33.

[2] The "statute law" is the law expressly enacted in Acts of Parliament, and is contrasted with the "common law" which is that part of our law not "created or declared by express enactment, but developed by the courts from principles founded in the 'custom of the realm' or deemed to be so" (Sir F Pollock, in Encyclopædia of English Law, Vol III, p 141)

[3] See A A, 127, and 128, R.P 73 (B)

[4] See Ch XII, para 1

[5] A A 189 (1) and 190 (20)

[6] See Ch XIII.

[7] See Ch XIV

to which officers are bound to conform in administering any territory which their troops may occupy, in their methods of conducting warfare, and in any necessary intercourse between combatant forces Ch. I

6. The scheme of arrangement adopted for this book is as follows — Arrangement of book

The present introductory chapter is followed by thirteen other chapters, which together form Part I

Chapter II is a historical chapter giving a brief outline of the development in England of a standing army and of the code of military law necessary for its government Chapter II

The third, fourth and fifth chapters are occupied with an explanation of the disciplinary provisions of the Army Act, and of the procedure by which these provisions are enforced, and deal with offences, arrest, the duties and powers of commanding officers, provost marshals, and courts-martial Chapters III, IV, V

As has already been said, courts-martial in admitting and rejecting evidence follow the same rules as are in force in civil courts, and therefore in chapter VI a summary is given of the law of evidence as administered in ordinary criminal trials in England The succeeding chapter gives a summary of such parts of the English criminal law as are likely to concern members of the forces Its inclusion is necessary because most offences against the criminal law, when committed by persons subject to military law, may be dealt with by courts-martial even at home and in time of peace, whilst all of them can be so dealt with when committed on active service anywhere outside the United Kingdom, or when committed in time of peace outside His Majesty's dominions, or in parts of such dominions abroad where no competent civil court is near Chapters VI, VII

Courts-martial and individual officers are, in respect of acts which are illegal or in excess of their jurisdiction, subject to the control of the superior civil courts, and chapter VIII is designed to indicate to officers the limits of the jurisdiction which they are entitled to exercise either as members of courts-martial or individually, and the circumstances and mode in which their acts in either capacity may be called in question Chapter VIII

Enlistment, billeting, and impressment of carriages, &c, are dealt with in the ninth, tenth and eleventh chapters, and occasion is taken to give there a sketch of the history and constitution of the forces, with a view to assisting officers desirous of studying the subject Chapters IX, X, XI

Chapter XII deals briefly with the points in regard to which a member of the land forces of the Crown stands in a different position from a civilian, so far as the ordinary law of the country is concerned Chapter XII

The scope and object of the thirteenth and fourteenth chapters, intituled "Employment of Troops in Aid of the Civil Power" and "The Laws and Usages of War on Land" have been already stated at sufficient length Chapters XIII, XIV

Part II contains the Army Act and Rules of Procedure, both of which are fully and carefully annotated They are followed by the Rules for Field Punishment, forms and memoranda relating to courts-martial, and by various orders relating to discipline Part II (Army Act and Rules, &c)

Ch. I

Part III (Miscellaneous Enactments, &c.)

Part III contains extracts from the statutes relating to the reserve forces and Territorial Army, and certain other miscellaneous Acts, regulations and orders to which an officer may require to refer

Martial law Meaning of term

7 It is necessary in conclusion to say a few words as to the term "martial law," the careless use of which has frequently led to confusion In the proper sense of the term, "martial law" means the suspension of ordinary law and the government of a country (or parts of it) by military tribunals of its own army It must be carefully distinguished from "military law," the code which regulates the conduct of soldiers as such but does not apply to civilians, and from the law (also spoken of as "martial law") which a commander in occupation of a foreign country imposes upon the inhabitants thereof In many foreign countries the Constitution recognises the right of the Executive, when riot or war is apprehended, to declare by proclamation a "state of siege," under which the ordinary law is suspended and the country is subordinated to military authority, in other words, "martial law" in the proper sense of the term is "proclaimed" In such a case the civil courts cannot afterwards, at the suit of an aggrieved person, enter upon an enquiry as to whether the circumstances were in fact such as to justify the issue of the proclamation and acts done in obedience to it

The English Constitution, however, has made no permanent provision for such emergencies, and martial law in this proper sense of the term can only be established lawfully by, or by regulations made under, an Act of Parliament expressly authorising the step [1] It is therefore frequently said that "no such thing as martial law exists under our system of government" This statement is perfectly true, but at the same time it may mislead, for there is yet another sense in which modern writers sometimes use the term "martial law" In time of invasion or rebellion, or in expectation thereof, exceptional powers are often assumed by the Crown, acting usually (though by no means necessarily) through its military forces, for the suppression of hostilities or the maintenance of good order within its territories (whether the United Kingdom or British possessions), and the expression "martial law" is sometimes employed as a name for this common-law right of the Crown and its servants to repel force by force in the case of invasion, insurrection or riot, and to take such exceptional measures as may be necessary for the purpose of restoring peace and order [2] The intention to exercise such exceptional powers and to take such exceptional measures is generally announced by the issue of a "proclamation of martial law", but on the one hand such a proclamation is not necessary, as the right to exercise these powers depends on the actual circumstances and not on the proclamation,

---

[1] See the provisions made as to Ireland by 39 Geo III c 11 (I), 43 Geo III c 117, and 3 & 4 Will IV c 4, 10 & 11, Geo V c 31, and see also the Defence of the Realm Acts passed during the Great War, and the regulations thereunder

So too in a self governing British dominion a special statute of the local legislature would be necessary, but in a British possession under the direct *legislative* authority of the Crown a Royal Proclamation would be as effective as an Act of Parliament in the United Kingdom

[2] As to this use of the term "martial law," see Dicey's "Law of the Constitution," and Holland's "Handbook of the Laws and Customs of War"

and on the other hand the proclamation of itself in no degree suspends the ordinary law, or substitutes any other kind of law in its stead, but operates only by way of warning that the Government is about to resort, in a given district, to such forcible measures as may be necessary to repel invasion or suppress insurrection, as the case may be To obviate any question as to the legality of the measures taken for this purpose (whether or not they have been preceded by a proclamation of martial law) it has been usual subsequently to pass an Imperial or local Act of Indemnity for the protection of those engaged, so far as the steps taken by them have been reasonably necessary for the purpose, and carried out in good faith,[1] and for the confirmation of the sentences passed by military courts [2]

[1] Indemnity Acts were passed in Cape Colony and Natal in 1900–1902, and in the United Kingdom in 1920 (10 & 11 Geo V c 48)

If no Indemnity Act was passed in such a case, the ordinary courts could, at the suit of an aggrieved person, enquire and decide whether the circumstances justified the servants of the Crown in their actions

[2] Courts which dispense "martial law" (*e g* to inhabitants of occupied territory and prisoners of war) are spoken of as 'military courts," as distinct from statutory 'courts martial"

CHAPTER II

HISTORY OF MILITARY LAW

Military law in early times consisted of Articles of War issued when war broke out

1. In the early periods of our history military law existed only in time of actual war When war broke out troops were raised as occasion required, and ordinances for their government, or, as they were afterwards called, Articles of War, were issued by the Crown, with the advice of the Constable, or of the Peers, and other experienced persons, or were enacted by the Commander-in-Chief in pursuance of an authority for that purpose given in his commission from the Crown[1] These Ordinances or Articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate on the conclusion of peace Military law, in time of peace, did not come into existence till the passing of the first Mutiny Act in 1689

Government of troops in time of war by Articles of War

2. The system of governing troops on active service by Articles of War issued under the prerogative power of the Crown, whether by the King himself or by the Commander-in-Chief or other officers holding commissions from the Crown, continued from the time of the Conquest till long after the passing of annual Mutiny Acts,[2] and did not actually cease till the prerogative power of issuing such Articles was superseded, in 1803, by a corresponding statutory power [3]

Account of early Articles of War

3. Numerous copies of these Articles are in existence, made on the occasions of the various wars, both foreign and domestic, in which England was from time to time involved The earliest complete code seems to have been the "Statutes, Ordinances, and Customs" of Richard II, issued by him to his army in the ninth year of his reign (1385), and probably on the occasion of the war with France [4] These are followed by the statutes of Henry V, made by him during his conquest of France [5] Domestic dissensions gave occasion for the orders for the English army promulgated by Henry VII, before the battle of Stoke,[6] and in the Great Rebellion the King and the Parliamentary leaders alike governed their troops by Articles of War On the side of the Crown, Articles or Ordinances of War, as they were then called, were established by the Earl of Northumberland in 1639, for the regulation of the army of Charles I, whilst in 1642, Lord Essex, the leader of the Parliamentary forces, under authority given by an ordinance of the Lords and Commons, put forth Articles of War almost in the same language as the Royal Articles of War [7] Articles of War were also issued by Charles II in 1666, when the first Dutch war was declared, and in 1672, upon the outbreak of the second Dutch war, and by James II in 1685, on the occasion of Monmouth's rebellion [8]

Severity of early Articles

4. The earlier Articles were of excessive severity, inflicting death or loss of limb for almost every crime Gradually, however, they

---

[1] Grose, Mil Antiquities, ii p 58 See commission in Rymer's Fœdera
[2] See *Barwis* v *Keppel* (1766) 2 Wilson's Rep 314
[3] See Mutiny Act of 1803 (43 Geo III c 20)
[4] See copy printed in Grose, Mil, Antiquities, ii p 64 *et seq*
[5] Grose, Mil Antiquities, ii p 69 [6] Grose, Mil Antiquities, ii p 70
[7] See these Articles set out in Clode, Mil Forces, i App vi and viii
[8] Clode, Mil and Martial Law, pp 9–19 As to Articles of War by Will III see Clode Mil Forces, i p 503, and by Anne, 2 & 3 Anne, c 20

took a form not unlike that which they bore in more modern times, and the Ordinances or Articles of War issued by Charles II in 1672 formed the groundwork of the Articles of War issued in 1878, which were consolidated with the Mutiny Act in the Army Discipline and Regulation Act of 1879, now replaced by the Army Act [1]

Illegal attempts to enforce military law in time of peace

5. Attempts were made from time to time, especially during the despotic reigns of the Tudors, to enforce military law under the prerogative of the Crown in time of peace, but no countenance was afforded to such attempts by the law of England, and commissions for the execution of military law in time of peace issued by Charles I in 1625 and the following years gave rise to the declaration in 1628, contained in the Petition of Right (3 Cha I, c 1), that such an exercise of the prerogative was contrary to law The law having been thus declared, the question of the legality of the Articles of War issued in 1639 came under the notice of the Council Board in July, 1640, and the lawyers and judges were all of opinion that military law could not be executed in England "but when an enemy is really near to an army of the King's"[2] So, again, it was stated in Parliament by Mr Secretary Coventry that the Articles of 1672 were only to be executed abroad[3], and the operation of the Articles of 1685 was limited to the duration of Monmouth's rebellion [4] In short, the only direct assistance in the enforcement of military discipline given by the law before the passing of the first Mutiny Act was afforded by certain statutes enforceable before civil and not before military tribunals, which made desertion punishable as a felony [5]

Court of Chivalry—the origin of military courts

6 The origin of later military courts is to be found in the Court of Chivalry, the ordinary judges of which were the Constable, or Lord High Constable (who was originally the King's General), and the Marshal, or Earl Marshal, whose duty it was to marshal the army, and to ascertain whether the persons liable to serve the King in his wars fulfilled their services [6]

Constitution of Court of Chivalry

7 The Court of Chivalry formed part of the *Curia Regis*, or Supreme Court established in England by William the Conqueror The *Curia Regis* was a Court in a double sense, first, in the sense of being composed of the great officers of State, and secondly, in the sense of being a judicial body, as each of the great officers had judicial authority over the officers and persons belonging to or having dealings with his department In this division of jurisdiction the Constable or *Comes Stabuli*, or Master of the Horse (to

---

[1] A comparison of the ancient with the more modern Articles of War will show how slight were the changes made in military law during a series of years It is easy to trace in the Articles of Richard II the germ of the Articles of 1878, and having regard to the changes in custom and manners, the difference in the character of the regulations is less than might have been expected

[2] Clode, Mil Forces, 1 p 23, and App vii [3] Cobbett Parl Hist, iv 619

[4] Clode, Mil Forces, 1 p 79, and App xxiv

[5] 18 Henry VI c 19 (1439), made it a felony for a soldier to leave his captain and the King's service without licence 7 Henry VII c 1 (1490), repeated by 3 Henry VIII c 5 (1511) provided that if a soldier immediately retained by the King departed out of the King's service without licence of his captain, it should be deemed to be felony *The Case of Soldiers*, Coke's Reports, part vi, p 27 (43 Eliz), decided that the first Act was obsolete, but that the second and third were perpetual See 2 & 3 Edw VI c 2 (revived by 4 & 5 Phil & Mar c 3), which imposed punishments on soldiers furnished at the cost of others, for making away with their horses, and made their departure from service without licence punishable as felony, and provided also for the punishment of officers improperly discharging soldiers

[6] See an account of the duties of the Constable and Marshal, in Stubbs Const Hist 1 p 338, notes 1 & 2 See also Grose, Mil Antiquities, i ch 7

C'1 II

use the modern designation) was Commander-in-Chief of the army, and had allotted to him the army, and all persons and matters connected therewith, while he and the Marshal together constituted the Court of Chivalry which exercised both civil and criminal jurisdiction [1]

Civil jurisdiction of Court of Chivalry

8 Its civil jurisdiction was that of a court of honour, and consisted in redressing injuries of honour, and correcting encroachments in matters of coat armour, precedency, and other distinction of families It also exercised jurisdiction in respect of contracts connected with war out of the realm, and in this respect gradually infringed on the jurisdiction of the ordinary courts, until such infringements were restrained, and the powers of the court were defined, by two Acts passed in the reign of Richard II The first of these (8 Rich II c 5, 1384) enacted, " that all pleas and suits touching the common law of the land, and which ought to be examined and discussed by the common law, shall not hereafter be by any means drawn or holden before the Constable and Marshal, but that the court of the said Constable and Marshal shall have that which belongeth to the said court, " while the second (13 Rich II stat I, c 2, 1389) declared the jurisdiction of the court to consist in the ' cognizance of contracts touching deeds of arms, and of war out of the realm, and also of things that touch arms or war within the realm which cannot be determined nor discussed by the common law, with other usages and customs to the same matters pertaining "

Criminal jurisdiction of Court of Chivalry

9 The criminal jurisdiction of the Court, except in time of war, was confined to the punishment of murder and other civil crimes committed by Englishmen in foreign lands [2] In time of war, however, its jurisdiction was extended, and the Court, which was more usually called the Court of the Constable, acquired somewhat of the character of a permanent court-martial, as it followed the march of the army, and punished summarily, and in accordance with the Articles of War for the time being in force, all offences committed by the troops

Administration of military law by Court of Chivalry

10 Such being the jurisdiction of the Court, it is obvious that it must from time to time have been necessary, as, for instance, in case of simultaneous military operations in different quarters, to provide for its exercise at different places at the same time, and consequently by different persons, and accordingly we occasionally find several Constables and Marshals holding office and exercising jurisdiction at the same time It is not quite clear whether the several Constables and Marshals from time to time appointed exercised judicial functions in the administration of military law merely by virtue of their offices, or by virtue of special commissions from the Crown Probably the power to administer such law

[1] See as to the jurisdiction of the Court of Chivalry, Coke, Inst 1, 74*b*, 4 Inst 127, Bac Abr 5th edn, II p 141, Hale, Hist Com Law, p 40, Com Dig III p 331, Christian's Blackstone, IV p 267

[2] The Court seems to have infringed on the jurisdiction of the ordinary criminal courts as well as on that of the ordinary civil courts, and such infringement was restrained by statute in 1389 (1 Henry IV c 14)

was chiefly conferred by commissions,[1] and the administration of military law was thus less affected than would otherwise have been the case by the extinction of the office of High Constable, as a permanent office, in the 13th year of the reign of Henry VIII (1521)

Extinction of office of High Constable

11 In that year the office, which had, in accordance with the general tendency of the great offices of State in early times, become hereditary in the family of the Bohuns, Earls of Hereford and Essex, was forfeited to the Crown on the attainder and execution of Edward, Duke of Buckingham, the then High Constable, and since that time a High Constable has never been appointed permanently, but only on occasions of coronations and like ceremonies [2] The office of Earl Marshal, on the other hand, long continued to be held only by grant from the Crown, and did not become hereditary till the 25th year of the reign of Henry VIII, when it was granted to Thomas Howard, Duke of Norfolk, and his heirs male, in which line it still continues

Administration of military law by virtue of commissions

12 This change seriously affected the ordinary jurisdiction of the Court of Chivalry,[3] but does not seem to have materially affected the administration of military law, which was subsequently provided for (as had probably been the case before the extinction of the office of High Constable), by commissions from the Crown, or by clauses inserted in the commissions of the Commanders-in-Chief authorising them to enact ordinances for the government of the army under their command, and to sit in judgment themselves, or appoint deputies for that purpose [4] These deputies consisted of officers, and out of their sittings there gradually arose a new form of military tribunal, under the denomination of a Court or Council of War, which sat at stated times under an officer of a certain rank, who was styled the president

Councils of War

Courts Martial

13 The transition from a Council of War to Courts-Martial in their present form was a matter more of name than of substance The exact time at which courts-martial under that name began to be held is not ascertained, but they are mentioned with the distinction of general and regimental courts-martial in the " Regulations for the Musters, 5 May, 1663," and in the Articles of War issued on the outbreak of the Dutch War in 1673 by Prince Rupert, as Commander-in-Chief, under the authority of a commission

[1] Hale says (Hist Com Law, p 40), " The Military Court held before the Constable and Marshal antiently, as the *Judices Ordinarii* in this case, or otherwise before the King's Commissioners of that jurisdiction as *Judices delegati* " See also Bac Abr , ii p 152, and as to the appointment of Constables and Marshals, Grose, Mil Antiquities, i pp 191 and 192 Rymer's Fœdera, annis 1399, 1400, and elsewhere

[2] Coke, Inst 1, 74*b* , 4 Inst 127 Grose, Mil Antiquities, i p 190

[3] See Coke, Inst 1, by Hargrave and Butler, 74*b*, note (1) The Earl Marshal undoubtedly exercised the civil jurisdiction of the Court of Chivalry for a long time after the extinguishment of the permanent office of the Constable See as to the jurisdiction of the Earl Marshal's Court, a letter to Sir John Somers, Attorney-General, from Robert Plot, LL D , Hearne's Curious Discourses, ii, p 250 See also the case of *Oldis* v *Domville*, Shower's Cases in Parliament, p 58 The last commission to the High Constable to act as a criminal judge was issued by Charles I in 1631, upon an appeal of treason brought by Donald, Lord Rae, against David Ramsay, Esq , for treasonable words and purposes In this Court the accused was entitled to wager of battle, but on further reflection the King withdrew his commission and the duel was never fought See Thomson, Mil Forces of Great Britain and Ireland, pp 38, 39 The Court of Chivalry has never been abolished by law In consequence of an appeal of death in 1818, the wager of battle was shortly after abolished by law *Ashford* v *Thornton*, (1818), 1 Barn & Ald 405

[4] Grose, Mil Antiquities, ii p. 60 *et seq*

Ch II from Charles II [1] There was this difference between the earlier courts-martial and the military courts-martial of the present day, that in the earlier courts the general or governor of the garrison who convened the court ordinarily sat as president, and that the power of the court was plenary, and their sentences were carried into execution without the confirmation required under the present law

Military code in time of peace rendered necessary by establishment of standing army

14 Before the establishment of a standing army no necessity existed for a military code in time of peace, but when, after the Restoration in 1660, such a force was established, the necessity of special powers for the maintenance of discipline began to be felt. The growth of the army was, however, always regarded with jealousy, and Parliament was therefore unwilling to confer such powers on the Crown until it became absolutely necessary to do so The small number of men forming the garrisons maintained before the Rebellion, and the armies of Charles II and James II, were tolerated rather than sanctioned by Parliament, and were therefore governed without such powers, and rather as the retainers of a great man than as an army For though in 1662 Charles II issued Articles for the government of his guards and garrisons, offences involving the penalty of death were expressly reserved for trial by the known laws of the land, or by special commission under the Great Seal by the advice of the judges and lawyers Again, the Articles issued by James II in 1686, which provided for the punishment of offences by courts-martial, expressly prohibited the infliction of any punishment amounting to loss of life or limb in time of peace Discipline, therefore, was naturally lax, and when on the accession of William and Mary the maintenance of the army was sanctioned by Parliament, the loose discipline and general disaffection prevalent among the troops led to special powers being granted for their coercion

Occasion of passing of first Mutiny Act

15 On the 1st March, 1689, in a debate in the House of Commons on a message from William and Mary, suggesting the suspension of the Habeas Corpus Act, the necessity was urged of a measure for the regulation of the army,[2] and on the 13th leave was given to bring in a Bill to punish mutineers and deserters from the army for a limited time, and a committee was appointed to prepare it [3] Almost at the same time 800 men enlisted by James II, who had been ordered by William to embark for Holland, mutinied at Ipswich, and marched northward, declaring that James was their king, and that they would live and die by him, and this danger, which was reported to both Houses on the 15th March[4] doubtless facilitated the passing of the Bill, which was introduced into the House of Commons on the 18th, and having passed through all its stages by the 28th, was passed by the House of Lords on the same day, and received the Royal Assent on the 3rd April [5]

Objects and scope of first Mutiny Act

16. This Bill, which is known as the first Mutiny Act (1 Will & Mary, c 5), was prefaced by a preamble declaring the necessity for and the objects of the Act in terms which were repeated

[1] The "Regulations for the Musters" are reproduced in App XXIV of Walton's "History of the British Standing Army, 1660 to 1700" The Articles of 1673 are printed in the report (1866) of the Royal Commission on Recruiting the Army, Parl Papers, 1867, Art. 59, p 241
[2] Cobbett Parl Hist v pp 154, 155 [3] 10 Comm Journ 47
[4] Cobbett Parl Hist, v pp 129–182
[5] 10 Comm Journ, 49, 52, 53, 64, 67, 69, 15 Lords' Journ. 164, 165

without substantial alteration in each subsequent Mutiny Act until the year 1878, and have now been transferred to the preamble of the annual Act bringing the Army Act into force[1] Mutiny and desertion when committed by persons in their Majesties' service in the army were made punishable by death or such other punishment as by a court-martial should be inflicted Power was given to their Majesties or the general of their army to grant commissions for summoning courts-martial for punishing such offences, and it was further provided that the Act should not exempt any officer or soldier from the ordinary process of law The duration of the Act was limited to seven months, from the 12th April, 1689, to the 10th November in the same year

Second Mutiny Act

17. On the 19th October, 1689, Parliament reassembled, and a second Mutiny Act (1 Will. & Mary, sess 2, c 4) was passed during the session, which received the Royal Assent on the 23rd December, and was ordered to come into force on the 20th, so that an interval of more than a month occurred between the lapse of the first and the coming into force of the second Act [2]

Succession of Mutiny Acts till 1878

18. Successive Mutiny Acts, with the exception of certain short intervals, were subsequently passed annually from the year 1690 to the year 1878 [3]

Periods in Mutiny Act worthy of observation

19. To indicate in detail the changes which took place in the various Mutiny Acts, from the first in 1689 to the termination of the series in 1879, on the passing of the Army Discipline and Regulation Act, would be out of place in the present work, but it may be useful to point out the various periods, so to speak, in military legislation, and the principal changes which took place from time to time, until military law assumed the form which it bears in the Army Act

From 1689 to 1712

20. The first period lasted till 1712 During this period the Mutiny Acts did not extend to the dominions of the Crown abroad[4] and the principal offences punishable under them were mutiny and desertion, but no difficulty was felt from the narrow extent of the statutory provisions, inasmuch as the nation was at war during almost the whole period, and the main body of the army was in consequence on active service, and was governed by Articles of War issued by the Crown in pursuance of the prerogative

Lapse of Mutiny Act from 1698 to 1702 in time of peace

21. From 1698 to 1702 the nation was at peace, and the Mutiny Act was allowed to drop The greater part of the army was disbanded at the same time, and though the King was allowed by

[1] This preamble emphatically states (1) That the raising or keeping a standing army within the United Kingdom *in time of peace*, unless it be with the consent of Parliament, is against law (2) That no man can be fore judged of life or limb, or subjected in peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of the realm See the text of the Army and Air Force (Annual) Act, *infra*, pp 415–417

[2] Copies of the Mutiny Acts to the end of the reign of Anne will be found in the record edition of the Statutes A copy of the first Mutiny Act will also be found in Clode, Military and Martial Law, App A, p 182, Clode, Mil Forces, i p 499, also in Grose, Mil Antiquities, ii p 73

[3] The Mutiny Act of 1690 expired on the 20th December, 1691, and the next Act passed on the 14th March, 1692, but it was ordered to be in force from the 10th of that month The Act of 1694 expired on the 1st March, 1695, but was continued in force from the 10th April, 1695, to the 10th April, 1696, by an Act, passed on the 22nd April, and having therefore a retrospective operation Again, there was a lapse from the 10th April, 1698, to the 20th February, 1702 Grose, Mil Antiquities, i p 64, and the record edition of the Statutes See also table in Clode, Mil Forces, i pp 389–391

[4] The Act was extended to Ireland in 1702 (13 & 14 Will III c 2), and to Scotland in 1707 7 Anne, c 4)

Ch II

Statute (10 Will III, c 1) to maintain 7,000 troops in England and 12,000 in Ireland, no special powers were conferred upon him for their government

Renewal of Act in 1702

22 On the renewal of hostilities in 1702, the Mutiny Act was revived, and extended to Ireland, and in the next year clauses were added for the better enforcement of discipline abroad, which provided that certain offences committed abroad should be triable in England as treason or felony These clauses, however, were accompanied by a proviso saving the power of the Crown to make Articles of War and constitute courts-martial and inflict penalties by sentence or judgment of the same beyond the seas in time of war, and by a clause empowering the Crown to grant commissions for holding courts-martial within the realm, by which persons committing crimes out of the realm against the Articles of War, and not tried by courts-martial before their return, might be tried and punished according to the Articles of War [1]

Power to make Articles of War binding on the army in time of peace when out of the kingdom, conferred by Mutiny Act of 1712

23. On the conclusion of the Peace of Utrecht in 1712, the Mutiny Act was again allowed to expire, and was replaced by an Act "for better regulating the forces to be maintained in Her Majesty's service," by which mutiny, desertion, and certain other offences were made punishable by such punishments as a court-martial should adjudge, not extending to life or limb, power being at the same time given to inflict by sentence of court-martial corporal punishment not extending to life or limb, on soldiers for immoralities, misbehaviour, or neglect of duty The operation of this Act was restricted to Great Britain and Ireland, but at the same time the difficulty was felt of maintaining discipline amongst the troops in the colonies and elsewhere out of the kingdom, as the prerogative power of governing such troops by Articles of War had been suspended by the conclusion of peace A statutory power was therefore given to the Crown to make Articles of War and constitute courts-martial in any of Her Majesty's dominions beyond the seas, or elsewhere beyond the seas, "in such manner as might have been done by Her Majesty's authority beyond the seas in time of war" [2]

Power extended by Mutiny Act of 1715

24. On the breaking out of the rebellion in 1715, difficulties arose in maintaining discipline among the troops serving in the kingdom For though troops serving elsewhere in the dominions of the Crown might be dealt with under statutory Articles of War, which could impose death for the most serious military offences, the troops in the kingdom were under a different law The then existing Mutiny Act,[3] by imposing a punishment for the most serious military offences, had superseded the prerogative power of making Articles of War in respect of those offences, though committed by troops engaged in war by reason of the rebellion, but as the punishment under the Act was not to extend to life or limb, it was insufficient to maintain discipline Accordingly an Act was passed in 1715,[4] reimposing the punishment of death for mutiny, desertion, and the offence now known as fraudulent enlistment, in Great Britain and Ireland, and conferring on the Crown statutory power to make "Articles for the better govern-

[1] 13 & 14 Will III c 2, 1 Anne stat 2, c 20 (c 16 in Ruffhead)
[2] 12 Anne c. 13, in the record edition of the Statutes (c 12 in Ruffhead)
[3] 1 Geo I stat 2, c 3
[4] 1 Geo I stat 2, c 9

ment of His Majesty's forces, and inflicting penalties to be proceeded upon to sentence or judgment in courts-martial to be constituted pursuant to this Act"

Mutiny Act of 1718

25. Subsequently[1] the two powers of making Articles of War for the troops in the kingdom and for those in the other dominions of the Crown were combined, and in the Act of 1718[2] received the form which was retained until 1803 The Act of 1718 conferred on the Crown a power to make Articles of War and constitute courts-martial with power to try offences under such articles, and inflict penalties by judgment of the same, "as well within the kingdoms of Great Britain and Ireland, as in any of His Majesty's dominions beyond the seas" The Articles of War made under the Act of 1712 and subsequent Acts not being limited to the time of war, applied to the troops also in time of peace

Extension of Mutiny Act to H M 's dominions abroad

26 At about the same time the provisions of the Mutiny Act, which enacted death or corporal punishment for mutiny, desertion, and other specified offences, and which had previously been restricted to offences committed in Great Britain or Ireland, were extended to some of those offences if committed in His Majesty's dominions abroad, and to others wherever committed[3], and the Act and statutory power were subsequently re-enacted annually in this form, without material alteration, until 1802 [4]

Power to govern by Act and statutory Articles in Kingdom and colonies in time of peace co-extensive with power to govern by prerogative Articles in foreign countries in time of war

27. By these successive changes the Crown gradually acquired a complete statutory power for the government of the army in time of peace, whether at home or in the colonies, by means of the Mutiny Act and the Articles of War made thereunder, co-extensive with the prerogative power of governing troops serving in foreign countries in time of war by means of Articles of War made under the prerogative, and as further dominions abroad were gradually acquired, the Act and statutory Articles were from time to time extended, so as to provide for the enforcement of discipline among the garrisons maintained in such dominions [5] The Act and statutory Articles were not, however, extended to foreign countries, as it was still assumed that the army never could be in a foreign country except in time of war, and troops engaged in active service in such countries were governed as before by the prerogative Articles

Case of *Barwis* v *Keppel*

28. That this was so is clear from the case in 1761 of *Barwis* v *Keppel*,[6] in which the Court of King's Bench decided that neither the Mutiny Act nor the Articles of War made thereunder applied to the army when engaged in war abroad It seems probable, however, that the Articles issued under the prerogative which governed the army when so engaged were the same in form as the statutory Articles which governed the army at other times, and

---

[1] 1 Geo I stat 2, c 34, 3 Geo I c 2

[2] 4 Geo I c 4

[3] Compare 1 Geo I stat 2, c 34, 3 Geo I c 2, 4 Geo I c 4, 9 Geo I c 4

[4] In 1781 (21 Geo III c 8) the provisions of the Act enacting punishments for certain offences were extended to the specified offences wherever committed, but the power to constitute courts martial was still restricted to the Kingdom and the dominions of the Crown abroad

[5] The Act and Articles were extended to the Channel Islands in 1756-7 (30 Geo II c 6), and to the Isle of Man in 1766 (6 Geo III c 8), and in 1767 (7 Geo III c 10) special provisions were made as to the constitution of courts-martial in the garrisons of Goree and Senegal, and detachments therefrom Ireland was excluded from the operation of the Act, but not of the Articles, in 1781 (21 Geo III c 8), a separate Mutiny Act for that country being passed in that year by the Irish Parliament (21 & 22 Geo III c 43 (1)), but it was again included after the Union

[6] (1766) 2 Wilson's Rep, 314

Ch II — hence arose the question, decided in the negative in the case referred to, as to whether the Mutiny Act and statutory Articles extended to the army when engaged in war in foreign countries

Extension of Mutiny Act and statutory Articles to foreign countries in 1803

29. In 1803, by 43 Geo III, c 20, the great change was made of extending the Mutiny Act and the statutory Articles of War to the army whether within or without the dominions of the Crown This alteration also was made on the occasion of a peace—the Peace of Amiens—and was made, as appears from the preamble to the Act, in order to provide for the government of the troops engaged in the war then concluded who had not yet been brought home, and who could no longer be governed by prerogative Articles, the power of making such Articles having been suspended on the conclusion of peace

Prerogative Articles finally superseded

30 On the resumption of hostilities, the Act and statutory Articles might have been again restricted in their operation to the dominions of the Crown, and the troops engaged in foreign war might have been left to be governed as before by prerogative Articles This course, however, was not adopted, but the Act and statutory Articles were applied in 1813 towards the close of the Peninsular war to the troops without as well as to those within the dominions of the Crown[1], and the prerogative power of making Articles of War in time of war was thus finally superseded by a statutory power The law as then settled has been continued ever since, and the army, both in peace and war, was governed by the Mutiny Act and statutory Articles until the year 1879

Army Discipline and Regulation Act, 1879

31 This brings us to the Army Discipline and Regulation Act, 1879 The inconvenience of having a military code contained partly in an Act of Parliament and partly in Articles of War made under and deriving validity from that Act had long been felt, and led at length to the consolidation of the provisions of the Mutiny Act and Articles of War in one statute

Army Act, 1881

32 Two years later the Army Discipline and Regulation Act, 1879, was repealed, and re-enacted with some amendment in the Army Act of 1881

Thus was accomplished, after the lapse of more than a century, a wish expressed by Mr Justice Blackstone, in his Commentaries, "That it might be thought worthy the wisdom of Parliament to ascertain the limits of military subjection, and to enact express Articles for the government of the army"[2]

Annual Acts

33 The Army Act has of itself no force, but requires to be brought into operation annually by another Act of Parliament, (now called "the Army and Air Force (Annual) Act"),[3] thus securing the constitutional principle of the control of Parliament over the discipline without which a standing army and air force cannot be maintained [4] These annual Acts afford opportunities of amending the Army Act, of which considerable use is made Unless otherwise provided, such amendments come into force in any place as from the day from which the Army Act is continued in that place [5]

---

[1] 53 Geo III c 17, s 146

[2] Christian's Blackstone, 1 p 415

[3] The title of this Act was formerly simply the Army (Annual) Act, but has been changed since in 1917, the Royal Air Force was constituted, and made subject to the provisions of the Air Force Act, which corresponds for that Force to the Army Act and is continued in operation annually by the same Act as continues the Army Act in force

[4] See A A 2

[5] See A A, 1901 s 14

CHAPTER III

OFFENCES AND PUNISHMENTS

(1) OFFENCES

Classification of offences.

Classification of military offences

1. Part I of the Army Act classifies under various heads the military offences for which persons subject to military law are, in their military capacity, punishable by court-martial For the most part the military offences are laid down by the Army Act in the same, or nearly the same language as that of the former Mutiny Acts and Articles of War

The offences punishable by court-martial are, with one exception,[1] contained in ss 4 to 41 of the Army Act

Principles of classification

2. The principle adopted in the Act is to group together military offences of a similar character in a manner intended to impress the soldier with their relative military importance In this chapter the various groups of offences are dealt with in order, some of these offences, because of their special importance or frequent occurrence, receive more detailed notice than others but all are explained, so far as is necessary, in the notes to the Act

ss 4—6 *Offences in respect of Military Service*

Offences in relation to the enemy

3 Ss 4 and 5 deal with offences committed in relation to the enemy These offences fall into two categories, *viz*, those in respect of which a sentence of death may be awarded, and those in respect of which penal servitude is the maximum sentence Cowardice in face of the enemy and assisting the enemy with arms are examples of offences which fall within the former category, while the offence of spreading reports calculated to create unnecessary alarm or despondency falls within the latter [2]

Offences punishable more severely on active service than at other times

4 The offences mentioned in s 6 (1) are punishable with death and those in s. 6 (2) with penal servitude if committed on active service, if not committed on active service, the maximum sentence which can be awarded is, to an officer one of cashiering and to a soldier one of two years' imprisonment with or without hard labour

The miscellaneous offences mentioned in s 6 (3) fall under the same category with regard to the sentence which may be awarded as offences under s 6 (1) or 6 (2) when not committed on active service

It is to be observed that offences by sentinels under s 6 (1) (*k*) or s 6 (2) (*e*) can only be committed by a soldier All the remaining offences under ss 4–6 may be committed by any person subject to military law [3]

ss 7–11. *Mutiny and Insubordination*

Mutiny

5 The term "mutiny" implies collective insubordination, or a combination of two or more persons to resist or to induce others

---

[1] A A 155
[2] See specimen charges Nos 1–4 p 715
[3] See specimen charges Nos 5–15 pp 716–7

Ch III

to resist lawful military authority A man cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specific offences laid down in s 7 If he has not brought himself within the terms of that section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination, and the provisions of s 8 or s 9 will usually afford ample powers for the purpose Thus, where there is an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under s 7 for causing or conspiring to cause, or joining in the mutiny, as the case may be If no mutiny or conspiracy exists, a man can only be tried under s 7 if the charge is one of endeavouring to persuade some person in His Majesty's military, naval or air forces to join in an intended mutiny, or of failing to inform his commanding officer of an intended mutiny [1] The offence of endeavouring to seduce any person in the military, naval or air forces from allegiance to His Majesty is an offence under s 7 (2) when committed by a person subject to military law

Framing charge of mutiny

6. In framing a charge therefore under s 7, the specific act or acts which constitute the offence must always be alleged, and the offence is so grave that a charge for it should only be brought on very clear evidence Cases of insubordination, even on the part of two or more, should, unless there appears to be a combined design on their part to resist authority, be charged under s 8 or s 9, or, if these sections are inapplicable, under s 40 as an act to the prejudice of good order and military discipline Provocation by a superior, or the existence of grievances, is no justification for mutiny or insubordination, though such circumstances would be allowed due weight in considering the question of punishment

Sedition

7 Sedition, in s 7 of the Act, is the same offence as in the ordinary criminal law, and consists in doing any act or publishing any words tending to bring into hatred or contempt, or to excite disaffection against, the Sovereign, or the government and constitution of the United Kingdom, or either House of Parliament, or the administration of justice, it is also seditious to incite His Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of the law, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent and disaffection among His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects A person is not guilty of sedition who acts in good faith, merely intending to point out errors or defects in the government or constitution or the administration of justice, or to promote alteration of the law by legal means, or to point out, with a view to their removal, matters which have a tendency to produce feelings of hatred between different classes of His Majesty's subjects It is not, however, intended to imply that an officer or soldier is at liberty to enter on any such course of action or discussion, but simply to point out the legal meaning of the term "sedition"

A person subject to military law who is convicted of any of the offences mentioned in s 7 may be sentenced to death or such less punishment as the Act provides

---

[1] See specimen charges Nos 16–18 pp 717 8

Violence and disobedience.

8. The offences of violence to superiors and of disobedience to lawful commands under s 8 and s 9 respectively vary much in degree of gravity according to the circumstances in which they are committed, all these offences in their gravest forms are punishable with penal servitude

The necessary elements of the offences of striking or using or offering violence or of using threatening or insubordinate language to a superior officer are explained in the notes to s 8 of the Act [1]

Special findings in case of violence or insubordination

9 An accused person charged with striking may be found guilty of using or offering violence, if charged with using violence may be found guilty of offering violence, or, if charged with using threatening language may be found guilty of using insubordinate language

Various degrees of disobedience

10 Disobedience may be of a trivial character, or may be an offence of the most serious description, amounting, if two or more persons join in it, to mutiny Accordingly the object of s 9 is to enable charges to be framed in such manner as to discriminate between different degrees of the offence [2]

The essential ingredients of the first and graver offence under the section are that the disobedience should show a wilful defiance of authority, and should be disobedience of a lawful command given personally and given in the execution of his office by a superior officer, in fact, it would ordinarily be such an offence as would be mutiny if two or more persons joined in it In order to convict a man it must be shown (1) that a lawful command was given by a superior officer[3], (2) that it was given personally by such officer, (3) that it was given by such officer in the execution of his office[3], (4) that the man disobeyed it, not from any misunderstanding or slowness, but so as to show a wilful defiance of his superior officer's authority For example, a man who does not fall in for escort duty when ordered to do so by a non-commissioned officer, may have failed clearly to understand the order or may be slow in executing it, in such circumstances there would be no wilful defiance of authority On the other hand, the refusal may be deliberate and obstinate, so as to show in the clearest manner an intention to defy and resist authority

The second and less grave offence under s 9 consists of disobedience to any lawful command given by a superior officer, which is not accompanied by the essential elements of the graver offence

Essential ingredients of offence of disobedience

11 To constitute any offence under s 9 it is essential that the disobedience should be wilful and deliberate, as distinguished from disobedience arising from forgetfulness or misapprehension (which might, however, be punished under s 40) 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 constitute disobedience fully as much as a positive refusal to obey, though mere omission or hesitation can seldom constitute

---

[1] See specimen charges Nos 19–21, p 718

[2] See specimen charges Nos 22 and 23, p 719

[3] As to the meaning of "superior officer" and "in the execution of his office" see notes 3 and 4 to A A, 8

Ch III

the graver offence referred to in the preceding paragraph, but if the command is of a prospective nature, a man, before he can be guilty of disobedience, must have had an opportunity to obey the command even if he has said "I will not do it" For example, if the command is to turn out for parade in half an hour, then, until the expiration of that time, no offence of disobedience to a lawful command can be committed If the soldier on receiving the command makes a reply implying an intention to refuse, and is put in the guard detention room before the end of the half hour, he may be charged under s 8 with using insubordinate language, or under s 40 with conduct to the prejudice of good order and military discipline in respect of the improper language, but not with the offence of disobedience to a lawful command

Lawful command

12. "Lawful command" means not only a command which is not contrary to the ordinary civil law, but one which is justified by military law, in other words, a lawful military command to do or not to do, or to desist from doing, a particular act A superior officer has a right at any time to give a command, for the purpose of the maintenance of good order, or the suppression of a disturbance, or the execution of any military duty or regulation, or for any purpose connected with the amusements and welfare of a regiment or other generally accepted details of military life But a superior officer has no right to take advantage of his military rank to give a command which does not relate to military duty or usages, or which has for its sole object the attainment of some private end Such a command, though it may not be unlawful, is not such a lawful command as will make disobedience of it an offence under the Act In other words, the command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay or prevent a military proceeding

Duty of obedience

13. If the command were obviously illegal, the inferior would be justified in questioning, or even in refusing to execute it, as, for instance, if he were ordered to fire on a peaceable and unoffending bystander But so long as the orders of the superior are not obviously and decidedly in opposition to the law of the land, the duty of the soldier is to obey and (if he thinks fit) to make a formal complaint afterwards

Religious scruples

14 Religious scruples, however *bona fide*, afford no justification for neglect or refusal to obey orders An officer cannot (for example) plead conscientious scruples as justifying a refusal to go into the trenches on a Sunday, or to pay marks of respect enjoined by superior authority to a form of religion different from his own

Other acts of violence, resisting escort, &c

15. S 10 of the Army Act makes provision in paras (1) and (2) for the punishment of acts of violence or insubordination where the offender is engaged in a quarrel, fray, &c, or is in custody These offences as well as that of resisting an escort under para (3) may be committed by any person subject to military law, but only officers should be charged under para (1) The offence of breaking out of barracks, camp, or quarters, which can be committed by a soldier only, also falls under this section [1]

[1] See specimen charges Nos 24-27, p 719

16 Under s 11 neglect to obey any general or garrison or written orders is constituted as an offence triable by court-martial [1] This section does not apply to neglect to obey verbal orders

Neglect to obey general orders

ss 12-15 *Desertion, Fraudulent Enlistment and Absence without Leave* [2]

17. The criterion between desertion and absence without leave is intention The offence of desertion or attempting to desert His Majesty's service implies an intention on the part of the offender either not to return to His Majesty's service at all, or to escape some particular important service as mentioned in para 20, and a soldier must not be charged with desertion or attempted desertion unless it appears that some such intention existed Further, even assuming that he is charged with desertion, the court that tries him should not find him guilty of desertion, unless fully satisfied on the evidence that he has been guilty of desertion as above defined On the other hand, absence without leave may be described as such short absence, unaccompanied by disguise, concealment, or other suspicious circumstances, as occurs when a soldier does not return to his corps or duty at the proper time, but the circumstances are such as to show that he did not intend to quit the service or to evade the performance of some service so important as to render the offence desertion

Desertion and absence without leave

18. It is obvious that the evidence of intention to quit the service altogether may be so strong as to be irresistible, as, for instance, if a soldier is found in plain clothes on board a steamer starting for America, or is found crossing a river to the enemy, while, on the other hand, the evidence is frequently such as to leave it extremely doubtful what the real intention of the man was Mere length of absence is, by itself, inconclusive as a test, for a soldier who has been entrapped into bad company through drink or other causes may be absent some time without any thought of becoming a deserter, but in the example above given of a soldier found on board a steamer starting for America, there could be no doubt of the intention, though he might only have been absent a few hours

Evidence of intention no criterion

19 Nor can desertion invariably be judged by distance, for a soldier may absent himself without leave and depart to a very considerable distance, and yet the evidence of an intention to return may be clear, whereas he may scarcely quit the camp or barrack yard, and the evidence of intention not to return (by the assumption of a disguise, for example, and other circumstances) may be complete

Distance by itself not a criterion

20 A man who absents himself in a deliberate or clandestine manner, with the view of shirking some important service, though he may intend to return when the evasion of the service is accomplished, is liable to be convicted of desertion just as if an intention never to return had been proved against him Thus, if a man, on the eve of the embarkation of his regiment for service abroad, or when called out to aid the civil power, conceals himself in

Evasion of important service

[1] See specimen charges Nos 28 and 29 p 720
[2] See specimen charges Nos 30-35, 37, 38, pp 720-1.

Ch. III

barracks, the court may be quite justified in presuming an intention to escape the important service on which he was ordered and in convicting him of desertion [1]

Desertion when on furlough

21. A man may be a deserter though his absence was in the first instance legal (*e g*, authorised by leave or furlough), the criterion being the same in all cases, namely, the intention of not returning It is clearly shown by the King's Regulations, and by the explanation on the furlough form itself, that a soldier on furlough is still under orders, and that, if without leave he quits the place to which he has permission to go, or if he disguises or conceals himself so that orders cannot reach him, or goes on board a ship about to sail for a distant port, he is liable to be tried and convicted of desertion though on furlough at the time A soldier stationed, for example, at Ipswich, who obtains a pass to Bristol, and during his leave is found at Liverpool in civilian costume on board a ship about to sail for New York, may be tried for desertion

Attempted desertion

22. If a soldier commits an act which is apparently a prelude to, or an attempt at, desertion, although no actual absence can be proved, *e g*, if he is caught in the act of slipping past a sentry, or climbing over a barrack wall in plain clothes, he may be charged with an attempt to desert

Surrender by soldier

23 The fact that a soldier surrenders is not proof by itself that he intended to return, even though he is in uniform at the time of surrender It may not be possible to prove where the man has been during his absence, but evidence that the military patrols had searched carefully in the neighbourhood of the barracks without finding him, would show that he must have gone to a distance or concealed himself From this and other circumstances the court may infer that he surrendered because he could not effect his contemplated escape

General provisions as to desertion

24. A soldier charged with desertion may be found guilty of attempting to desert or of being absent without leave, and, on the other hand, a soldier charged with an attempt to desert may be found guilty of actual desertion or of being absent without leave [2] In any case of doubt as to whether one or the other offence has been committed, the court should find the accused guilty of the less offence A soldier guilty of desertion forfeits, if serving on his original engagement, the whole of his prior service, and, if serving on a re-engagement, all prior service rendered during the period of re-engagement, and is liable to serve for the term of his original enlistment, or re-engagement as the case may be, reckoned from the date of his conviction, or of the order dispensing with his trial [3]

Persuading, &c, to desert

25. In addition to the offences of desertion and attempted desertion, the offence of persuading, attempting to procure, &c, any person subject to military law to desert is punishable under s 12 If these offences are committed on active service the penalty of death may be awarded, if not on active service, imprisonment may be awarded for the first offence and penal servitude for the

---

[1] See specimen charge No 33, p 720

[2] See A A 56 (3) (4)

[3] A A 79 and 84 As to court of inquiry in case of absence without leave for twenty one days, see A A 72, and as to procedure in case of confession of desertion or fraudulent enlistment, see A A 73.

second or any subsequent offence S 14 makes it an offence to assist a person subject to military law to desert, or to neglect to take steps to prevent desertion or attempted desertion [1]

Desertion and fraudulent enlistment

26. As a general rule a soldier quitting his corps and enlisting in another should not be charged with desertion but with fraudulent enlistment [2] under s 13, for the very act of enlisting in another corps (unless in an exceptional case) shows that he did not intend to leave His Majesty's service On the other hand, if he does so for the purpose of avoiding a particular service—*e g* , service abroad—or if during his absence he conducts himself so as to show that when he quitted the service he did not intend to return to it but changed his mind, he might properly be tried for desertion But, as already observed, it will suffice, except in very special cases, to prefer a charge of fraudulent enlistment alone

Fraudulent enlistment

27. Under s 13 the offence of fraudulent enlistment applies to two classes of case, *viz* , (1) the enlistment by a person belonging to the regular forces, or Territorial Army when embodied, into the regular forces or into any force raised in India or a colony , and (2), the enlistment of a person belonging to the regular forces into the Territorial Army, the reserve forces or the Royal Air Force , or his entry into the Royal Navy

The punishment for a first offence is imprisonment or less punishment , for a second or subsequent offence penal servitude may be awarded

Absence from parade, quitting the ranks, &c.

28. In addition to the offence of absence without leave, other offences of a similar character are dealt with in s 15, *e g* , failing to appear at an appointed place of parade These are, so far as is necessary, referred to in the notes to the Act where are also explained certain technical requirements as to the proper proof of the offences [3]

ss 16–18 *Disgraceful Conduct*

Scandalous behaviour by officer

29 Scandalous behaviour on the part of an officer is an offence under s 16 and the only punishment that can be awarded is that of cashiering [4] The circumstances in which a charge under this section can properly be preferred are explained in the notes to the Act

Military and civil offences of stealing, &c

30 Ss 17 and 18 (4) deal with the military offences of stealing, embezzlement and fraudulent misapplication and (in the case of s 18 (4)) with receiving stolen property

Ordinary thefts from civilians may be dealt with by the civil courts or they may be tried by court-martial under s 41 as civil offences , but to steal, embezzle or fraudulently misapply public or regimental money or goods or property belonging to a person subject to military law or to various military institutions has, in accordance with long established practice, been singled out for punishment as a military offence

Stealing, &c , under s 17

31. The military offences under s 17 of stealing, embezzlement and fraudulent misapplication, or of being concerned in or conniv-

[1] See specimen charge No 36, p 721
[2] See specimen charges Nos 34 and 35, p 721
[3] See specimen charges Nos 37–40 pp 721–2
[4] See specimen charges Nos 41 and 42, p 722.

Ch. III

ing at such stealing, &c , can only be committed by persons subject to military law who are charged with or concerned in the care of public or regimental money or goods, and the offences must be in respect of such money or goods The maximum sentence is penal servitude

Stealing, &c , under s 18 (4)

32 The military offences of stealing, embezzlement, and fraudulent misapplication under s 18 (4) can be committed by any person subject to military law, but the offences must be in respect of public money or goods or the property of a person subject to military law or of a regimental institution, mess or band, or of the Navy, Army and Air Force Institutes The maximum sentence is imprisonment

Elements of offence of *stealing* under ss 17 and 18 (4)

33 The elements necessary to constitute an offence of *stealing* under either of these sections are the same as in the case of the civil offence of stealing, that is to say, the property stolen must have been taken and carried away by the offender without the consent of the owner, fraudulently and without a claim of right made in good faith, with intent, at the time of such taking, permanently to deprive the owner thereof But a person may be guilty of stealing notwithstanding that he has lawful possession of the thing stolen, if, being a bailee or part owner thereof, he fraudulently converts it to his own use or to the use of any person other than the owner [1]

Elements of offence of embezzlement under ss 17 and 18 (4)

34 The ordinary civil offence of embezzlement is committed by a person employed in the capacity of clerk or servant who fraudulently misappropriates property delivered to or received or taken into possession by him for or in the name or on the account of his master or employer The military offence of *embezzlement* under ss 17 and 18 (4) is of wider application, because, although the other elements of the offence are the same as in the civil offence of embezzlement, any person to whom ss 17 and 18 (4) apply may be found guilty of embezzling the specific form of property mentioned therein though he is neither a clerk nor servant It should be remembered that the offence of embezzlement can only be committed in respect of property which the offender has received "for" but not "from" the person to whom it belongs [2]

Elements of offence of fraudulent misapplication under ss 17 and 18 (4)

35 The offence of *fraudulent misapplication* under ss 17 and 18 (4) includes all cases where property, which is properly in the possession of the offender, is fraudulently misapplied by him either to his own use or to that of any other person Stealing therefore, other than stealing as a bailee (see para 33) would not be a fraudulent misapplication [3]

Receiving under s 18 (4)

36. The offence of *receiving* under s 18 (4) is committed by a person subject to military law who receives any of the property mentioned in the paragraph knowing it to have been stolen [4]

Stealing from a comrade

37. Stealing from a person subject to military law who is a comrade is regarded as peculiarly disgraceful, seeing that in the daily routine of barrack life, soldiers must constantly leave exposed their arms, accoutrements, or kits as well as private property,

---

[1] See specimen charges Nos , 46, 53 55, pp 723–5
[2] See specimen charges Nos 43 and 56, pp 722 and 725.
[3] See specimen charges Nos 44, 45 and 47, p 723, and No 108, p 734
[4] See specimen charge No 55, p 725

such as money, watches, pipes, &c, trusting to the honour of their comrades When missing articles are private property, and are found in the possession of another, there is a strong presumption that they were stolen, especially if the accused absented himself, and is discovered to have pawned or sold them But it must be recollected that an intention to steal is essential, and that the mere taking of an article without that intent is not criminal So that if a soldier openly takes an article belonging to another, and returns it, or, though he absented himself, did not secrete the article or make any attempt to sell or pawn it, then the presumption is against his being guilty of stealing It will often be desirable to obtain evidence as to any custom of borrowing which may have prevailed in a particular room, or as between the accused and the owner of the article or other comrades, and as to any other circumstance tending to show whether the accused might reasonably have supposed that his taking the article would not be objected to The restoration of an article does not, of course, by itself prove that the article was not stolen, but evidence of the above nature will often go far to show whether an article was in fact stolen or not Again, the accused may show that he obtained the articles in a *bona fide* transaction, or that he found them apparently without an owner, and without any name or mark on them by which the owner could be found The fact of lost articles being found in the valise, or in the bed of a soldier, is not by itself proof that he stole the articles They might have been put there unknown to him, perhaps intentionally by the real thief A soldier should not in such a case be tried for stealing unless there are other circumstances from which it might be inferred that the articles were in his valise or bed with his knowledge [1] The improper possession by one soldier of a comrade's necessaries where there is no evidence of theft, is a different question it is not an offence against the comrade, but is an offence against military rules, and may, irrespectively of any fraudulent intent, be punished under s 40

Supervision of persons in position of trust

38. A subordinate is frequently tempted to commit the offence of stealing, embezzlement or fraudulent misapplication if he finds that his transactions are not regularly supervised, and that minor irregularities pass unnoticed All officers, therefore, who have to do with the supervision of institutes or the accounts of pay serjeants or other non-commissioned officers, should be most careful to see that the forms and regulations of the service are strictly and invariably observed Nothing can be more unjust and inexcusable than for an officer, through indolence or carelessness in doing his own duty, to expose a soldier to temptation which may prove his ruin

Special powers of court in relation to offences of stealing, &c

39 An accused person charged with stealing may be found guilty of embezzlement or fraudulent misapplication, if charged with embezzlement, he may be found guilty of stealing or fraudulent misapplication [2]

Other offences of a fraudulent nature

40. Offences of a fraudulent nature which are not particularly specified in any of the earlier provisions of the Act are dealt with in s 18 (5) This paragraph applies to such forms of fraud as the

[1] See Ch VI, paras 21-27
[2] A A 56 (1) (2)

Ch. III — adulteration of beer belonging to a mess or the obtaining of money or property by false pretences with intent to defraud [1]

Other disgraceful offences

41. It will be noticed that other disgraceful offences besides those relating to dishonest peculation fall under s 18 Malingering, feigning or producing disease or infirmity, wilful maiming with intent to render unfit for service, wilful misconduct or disobedience producing or aggravating disease or infirmity or delaying its cure, and disgraceful conduct of a cruel, indecent or unnatural kind are all constituted as offences under the section [2] The maximum sentence for each of these offences is two years' imprisonment, with or without hard labour

s 19 *Drunkenness*

Drunkenness

42. S 19 of the Army Act creates only one offence, *viz*, drunkenness, and in all cases, whether the act was committed on duty or not on duty, the charge should be "drunkenness" [3] If the offence was committed when 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

Drunkenness includes intoxication from the effects of opium or any similar drug as well as from liquor Under the Army Act, an officer should be tried for the specific offence of drunkenness, whether on duty or not on duty, as the case may require, instead of being charged, as formerly, in the case of drunkenness not on duty, with conduct unbecoming the character of an officer and a gentleman

Drunkenness by N C Os

43. A non-commissioned officer may be tried by a court-martial for even a single act of drunkenness, whether committed on duty or not on duty The commanding officer has, however, complete discretion whether to send the offender for trial or not, as the obligation of dealing summarily with a private soldier charged with drunkenness otherwise than under aggravating circumstances, does not extend to the case of a non-commissioned officer [4]

Drunkenness by private soldier

44 A private soldier can also be tried by court-martial under s 19 for any act of drunkenness, whether on duty or not on duty, but the practical effect of this section is materially affected by s 46, which declares that the commanding officer shall deal summarily with the case of a soldier charged with drunkenness, unless he has been guilty of drunkenness on not less than four occasions in the preceding 12 months, or unless the offence was committed on active service or on duty, or after the offender was warned for duty, or when the offender was by reason of drunkenness found unfit for duty Although, therefore, under s 19, courts-martial have complete jurisdiction to try and punish cases of drunkenness which are directed to be dealt with summarily under s 46, and this jurisdiction is not limited by s 46, yet a commanding officer will be guilty of a grave breach of duty and of the provisions of the Act, if he disregards the directions in s 46 with respect to dealing summarily with such a case of drunkenness charged against a private soldier [5]

---

[1] See specimen charges Nos 57–59, p 725
[2] See specimen charges Nos 48–52 and 60, pp 723–5
[3] See specimen charge No 61, p 726
[4] A A 46 193 (1) And see K R 559
[5] See K R 574–580 The directions in A A 46 do not affect the right of the soldier to elect to be tried by a district court martial (A A 46 (8))

Drunkenness on duty

45. From a military point of view, drunkenness on duty is considered in reference to the soldier being fit or not fit for duty There cannot be any distinction between various degrees of drunkenness when on duty Soldiers therefore are carefully inspected before being put on duty, so as to ascertain their fitness If the superior, knowing a man to be drunk, out of good nature allowed him to proceed with the duty, or if, through carelessness, he passed a man as sober when he was not sober, then, as a rule, in awarding punishment, the man should not be treated as having been drunk on duty

A soldier on the line of march is on duty from the beginning to the end of the march, and if drunk in his billet or halting place may be dealt with as having been drunk on duty [1]

Soldier unexpectedly called on duty

46. In ordinary routine circumstances, a soldier unexpectedly called on to perform some duty for which he has not been warned— as (for example) if summoned from a canteen or from some public sports—and found to be unfit for duty, should in practice be dealt with as for ordinary drunkenness

Evidence as to circumstances of drunkenness

47. In the offence of drunkenness the attendant circumstances affect the amount of punishment, and evidence should be given in all cases as to the circumstances Evidence should also be given as to whether the drunken man was riotous or not, so that punishment may be apportioned accordingly Nothing can justify a soldier striking or offering violence to a superior, and great care is therefore enjoined to be taken to avoid bringing drunken soldiers in contact with their superiors Mere abusive and violent language used by a drunken man, as the result of being taken into custody, should not be used as a ground for framing a charge of using threatening or insubordinate language to a superior officer [2] If a court-martial be required at all, discipline will generally be upheld by merely bringing the man to trial either for drunkenness (if he is liable to be tried) or for an offence under s 40, treating the language as in the nature of riotous conduct only, and to that extent aggravating the offence An offence of drunkenness committed when the offender is not on duty or has not been warned for duty is as a rule sufficiently dealt with by the imposition of a fine [3]

Drunkenness considered in relation to other offences

48. Drunkenness often has to be considered by courts-martial not as an offence itself, but in relation to greater offences, which it accompanies It is a principle of English law that drunkenness is no excuse for crime [4] But where intention is of the essence of the offence, drunkenness may justify a court-martial in awarding a less punishment than the offence would otherwise have deserved, or reduce the offence to one of a less serious character Thus, if an ordinarily steady respectful man commits himself when drunk by the use of insubordinate language, it may be clear that he did not really intend to be insubordinate, and though the offence cannot be passed over, yet a more lenient punishment will meet the justice of the case than if the same man had used the same

---

[1] See K R 576

[2] Where, however, a soldier under the influence of drink strikes a superior officer or is guilty of any other offence, it is the duty of the convening officer to consider carefully according to the circumstances, whether it is necessary to charge the more serious offence

[3] K R 577

[4] See generally Ch VII, para 6 *et seq*

Ch III —

language deliberately when sober So, too, acts, which if done deliberately would show a wilful defiance of authority, may, if the man was drunk, be regarded as amounting only to the less offence of simple disobedience So, too, if it should appear that a man absenting himself in circumstances which might ordinarily show an intention of not returning, was drunk, the court would be justified in treating the absence as a mere drunken frolic, and finding the man, though charged with desertion, guilty of absence without leave So again, a man so drunk as to be incapable of attending parade should be charged with drunkenness rather than with an offence under s 15 (2) of the Act

ss 20–22 Offences in relation to Persons in Custody

Offences in relation to persons in custody

49 Under s 20 a guard commander who releases, wilfully or otherwise, a person committed to his charge, or the commander or any member of an escort who wilfully, or without reasonable excuse, allows a person in his custody to escape, is liable to be sentenced to penal servitude if he acted wilfully, or to imprisonment if the offence was not wilful S 21 deals with various offences in connection with irregular arrest or confinement, whilst s 22 makes it an offence for a person in arrest or confinement or prison or otherwise in lawful custody to escape or attempt to escape [1] All the offences under these sections can be committed by any person subject to military law

ss 23–24 Offences in relation to Property

Offences in relation to property

50 Corrupt dealings in respect of supplies to the forces render any person subject to military law liable, under s 23, to imprisonment S 24 is concerned with deficiencies in, improper dealings with, and injury to, various forms of military or public property issued to a soldier for his use or entrusted to his care for military purposes It is also an offence under this section for a soldier to make away with by pawning, selling, destruction or otherwise any military or air-force decoration granted to him, wilfully to injure the property of an officer or comrade, of a regimental mess or band, or of a regimental institution or any public property, or to ill-treat a horse or other animal used in the public service [2] It will be noted that an officer cannot be charged under s 24

ss 25–27 Offences in relation to False Documents and Statements

Falsifying official documents

51. The offences comprised in s 25 and especially those in the first two paragraphs of that section, dealing as they do with the falsification of official documents of a military nature, require particular notice

Para (1) of s 25 deals with false or fraudulent statements or omissions with intent to defraud, knowingly made by a person in a return, pay-list &c, or other document where the document is either made or signed by the person in question or there is a duty cast upon him of ascertaining its accuracy [3] If, for example,

[1] See specimen charges Nos 62–67 pp 726–7
[2] See specimen charges No 38 p 721, and Nos 68 and 69, p 727
[3] See specimen charges Nos 70–73, pp 727–8

a quartermaster-serjeant makes false entries as to payments made by him in a book which it is his duty to keep in his official capacity, he may be charged with knowingly making false statements under this paragraph or, if there is evidence to show that the effect of the false entries would be to defraud some person, he may be charged with knowingly making fraudulent statements Similarly if he omits to make in the book entries of payments made by him, he may, if the evidence justifies such a course, be charged with knowingly making such omissions with intent to defraud

Suppression, &c, of documents.

52. Para (2) of s 25 deals with the suppression, defacement, alteration or destruction of any document by a person who has a duty to preserve or produce it, where the suppression, &c, is carried out with an intent to defraud or injure some person [1]

False accusations.

53. The making of false accusations or false statements of a particular character are the offences mentioned in s 27 The first two paragraphs are applicable to officers and soldiers, the last two to soldiers only (including non-commissioned officers) To suppress knowingly and wilfully any material facts in connection with complaints for the redress of wrongs under ss 42 and 43 of the Army Act is an offence under para (2) [2]

ss 28–29 Offences in relation to Courts-martial

Offences by witnesses

54. S 28 contains important provisions as to the failure of persons subject to military law to attend courts-martial as witnesses after being duly summoned or ordered to attend, and as to their refusal to be sworn as witnesses or to produce documents in their possession or to answer questions to which a court-martial may legally require an answer None of these offences is triable by the court before which the offence was committed Similar offences by civilian witnesses are dealt with under s 126

Contempt of court

55 Contempt of a court-martial by the use of insulting or threatening language or by the interruption or disturbance of the proceedings of such court is an offence under s 28 (5) if committed by a person subject to military law This offence may either be tried before another court-martial, or the court before which the offence is committed may order the offender to be imprisoned, with or without hard labour or, if a soldier, to undergo detention for a period not exceeding twenty-one days Such order does not require confirmation and may be carried into effect at once S 126 (3) deals with contempt of court by persons not subject to military law

False evidence

56. S 29 deals with the wilful giving of false evidence by persons subject to military law when examined on oath or solemn declaration before a court-martial or any court or officer authorised under the Army Act to administer an oath[3], upon conviction a sentence of imprisonment, with or without hard labour, may be awarded As in the analogous civil offence of perjury, a person charged under this section is not liable to be convicted solely upon the evidence of one witness as to the falsity of any statement alleged to be false

---

[1] See specimen charges Nos 74 and 75, p 728
[2] See specimen charges Nos 76 and 77, pp 728–9
[3] See specimen charge No 78, p 729

Ch III *ss* 30-31 *Offences in relation to Billeting and Impressment of Carriages, &c*

Billeting, &c

57. These sections do not require any special comment in this Chapter Para (2) of s 30 applies to officers only

ss 32–34 *Offences in relation to Enlistment*

False answers, &c , on enlistment

58 The offence of fraudulent enlistment which falls under s 13 is dealt with in para 27 above The provisions of ss 32 and 33 are applicable to persons who have ' become subject to military law '

The former section makes it an offence for such person after he has been discharged with disgrace from the Army or Royal Air Force or dismissed with disgrace from the Royal Navy to enlist in the regular forces without declaring the circumstances of his discharge or dismissal S 33 applies to any wilfully false answer to a question in an attestation paper [1] S 34 (general offences in relation to enlistment) does not require any detailed consideration

ss 35–40 *Miscellaneous Military Offences*

Miscellaneous offences

59. Ss 35–39 do not call for special notice but it will be observed that only an officer or non-commissioned officer can commit the offence of striking or ill-treating a soldier and the other offences mentioned in s 37

Conduct to the prejudice of order and discipline

60 The offence of conduct, &c , to the prejudice of good order and military discipline is fully dealt with in the notes to s 40 where examples are given of offences commonly charged under this section [2] A person subject to military law is not to be charged under s 40 for an offence which is a specific offence under any other provision of the Act, and is not a civil offence , although the conviction of a person so charged is not necessarily invalidated Before, then, an offender is charged under this section, the convening officer must satisfy himself not only that the act, conduct, disorder, or neglect is to the prejudice of good order and military discipline, but also that it is not any one of the offences specifically punishable under the Act If he fails to do so he will be responsible for contravening the Act, notwithstanding that the conviction is not invalidated Attempts to commit military offences specified in the Army Act are not, with one or two exceptions, specifically made offences, and therefore can be tried under this section

s 41 *Offences punishable by ordinary Law*

Civil offences

61 These offences are dealt with in Chapter VII

(ii) PUNISHMENTS

Scale of punishments

62. Having laid down the offences, the Act provides (s 44) a scale of punishments which can be awarded by courts-martial to officers and soldiers respectively With two exceptions, each particular offence under the Act has a *maximum* punishment assigned to it and by s 44 provision is made enabling the court to award a less punishment If, for example, the maximum

[1] See specimen charges Nos 79 83 pp 729–30
[2] See also specimen charges Nos 85 94, pp 730

punishment assigned to an offence is penal servitude, either imprisonment or a punishment lower in the scale for officers or soldiers (as the case may be) can be awarded in its place A maximum punishment is not intended to be imposed unless the offence committed is the worst of its class, or is committed by a habitual offender, or in circumstances which require an example to be made, and of course will not always be imposed even in such cases

The two exceptions mentioned above are the offence of behaving in a scandalous manner under s 16 where the only punishment is cashiering, and the civil offence of murder under s 41 (2) in which case death is the only punishment

All punishments that can be awarded by courts-martial under the Army Act are included in s 44 with the exception of certain sentences which are applicable to warrant officers only (s 182), and a sentence of dismissal from His Majesty's service in the case of a non-commissioned officer or private of the volunteers or Territorial Army (s 181 (6))

Combined punishments

63. Under s 44, two or more punishments included in the scale of punishments applicable to officers and soldiers respectively may and, in one case, must, be awarded in combination Thus an officer or non-commissioned officer sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand , or a soldier sentenced to penal servitude or imprisonment may also be sentenced to be discharged with ignominy from His Majesty's service Provisos (2), (3), (4), (6), (11) and (12) to s 44 which deal with combined punishments must be referred to for their terms Reference should also be made in this connection to ss 182 and 183 dealing respectively with the punishment of a warrant officer and of a non-commissioned officer

The case referred to above where combined punishments must be given is that of an officer who, before he is sentenced to penal servitude or imprisonment, must be sentenced to be cashiered[1] A non-commissioned officer sentenced to penal servitude, field punishment, imprisonment or detention is deemed to be reduced to the ranks even if a sentence of reduction is not specifically awarded by the court [2]

Detention

64 The introduction, in 1906, of the punishment of detention into the scale of punishments applicable to soldiers (including non-commissioned officers) was effected with the object of saving soldiers convicted of offences against discipline under the Army Act and not discharged with ignominy, from being subjected to the stigma attaching to imprisonment A court-martial ought not, therefore, to sentence to imprisonment a soldier convicted of a purely military offence, and if the court imposes imprisonment in contravention of this principle, the confirming officer should, except in very special circumstances, commute the sentence to a sentence of detention If the sentence is imprisonment combined with discharge with ignominy, the confirming officer, when commuting to detention, must also remit the discharge with ignominy, as such discharge cannot accompany a sentence of detention [3]

---

[1] A A 44 (proviso (2))
[2] A A 183 (4)
[3] See generally R R 652.

Ch III

Field punishment.

65 The Army Act does not allow the infliction of corporal punishment, but provides (s 44, proviso (5)) that a court-martial may award for any offence committed by a soldier on active service such field punishment, other than flogging, or attachment to a fixed object, as may be directed by rules made by a Secretary of State The rules made in pursuance of the above enactment must be referred to for further details on this subject [1]

ARTICLES OF WAR

Articles of War

66. In conclusion must be noticed the power of His Majesty, under s 69, to make Articles of War for the better government of officers and soldiers Such Articles may be made applicable to officers and soldiers at home or abroad, and must be judicially noticed by all judges, and in all courts The penalty of death or penal servitude cannot be imposed by an Article of War, except for an offence expressly made liable to such punishment by the Act itself, nor can an Article of War render any offence punishable under the Act liable to be punished in a manner which does not accord with the provisions of the Act The enumeration of offences in the Act is so complete, that the necessity for the exercise of the power of making Articles of War for the purpose of creating offences would appear unlikely to arise

[1] The rules are printed on p 787

CHAPTER IV

ARREST INVESTIGATION BY COMMANDING OFFICER SUMMARY POWER OF COMMANDING OFFICER SUMMARY AWARDS UNDER S 47, ARMY ACT PROVOST MARSHAL DISCIPLINE OF TROOPS WHEN ATTACHED TO OR ACTING WITH NAVAL OR AIR FORCES OR WHEN PASSENGERS ON BOARD HIS MAJESTY'S SHIPS

(1) *Arrest*

Military custody of person charged with offence

1. Whenever any person subject to military law is charged with an offence, he may be taken into military custody, which means putting the offender under open arrest, or close arrest, or in confinement [1]

Arrest of officer

2. An officer is put under arrest either directly by the officer who orders it, or (more generally) by the adjutant or a field officer of a unit when the arrest is ordered by the commanding officer of that unit, and by a staff officer 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 method as more formal being preferable, except where the offence is committed in the presence of the commanding or superior officer On being put under arrest, an officer is deprived of his sword

Arrest may be close or open

3. The arrest may be either close or open, according to the direction of the officer who ordered it An officer under close arrest is placed under the charge of an "escort" consisting of another officer of the same rank, if possible The King's Regulations direct that an officer under close arrest shall not leave his quarters or tent except to take exercise under supervision, but an officer under open arrest may be permitted to take exercise at stated periods within certain limits, which are usually the precincts of the barracks or camp of his unit, he must not, however, appear out of uniform, or at mess, or at any place of amusement or public resort (such as a billiard room), nor must he wear sash, sword, belt, or spurs [2] 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 may, if the circumstances of the case require it, be placed under the charge of a guard, piquet, patrol, or sentry, or, if abroad, in the custody of a provost marshal [3] An officer under arrest may be ordered or permitted to attend as witness before a court-martial, or before a civil court

Arrest usually preceded by investigation.

4. 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 It is the duty of the commanding

---

[1] A A 45 (1), (2) K R, 533-540
[2] K R 538
[3] K R 538 (c) See also para 40 of this chapter

Ch IV

officer to report each case of arrest without unnecessary delay to the proper superior military authority [1]

Arrest of senior by order of junior officer in certain circumstances

5. It is expressly laid down by s 45 (3) of the Army Act, that a junior officer may order the arrest of a senior (even of a different corps or branch of the service), if engaged in any quarrel, fray, or disorder In the case of any glaring impropriety, such as drunkenness on parade, it may become the duty of a junior to take such an extreme measure

Case of Lt Col H in 1819

6. This was clearly shown by the order on a court-martial for the trial of Brevet Lieut-Col H at Plymouth, in 1819 Lieut-Col H appeared at a regimental parade in a state of intoxication, and was put under arrest by Captain E , one of his junior officers He was tried " for being drunk on duty when under arms inspecting " the guards and piquet of the Regiment of Foot," and sentenced to be cashiered , the court observing that the occurrence of a commanding officer being put under arrest while in the actual command of a regimental parade was unprecedented in their experience , and that the circumstances detailed in evidence were not of that imperious urgency as to have called for the immediate adoption of so very strong a measure The Prince Regent, however, in confirming the finding and sentence, took occasion to signify that he could not allow the observations of the court to go forth to the army without explaining " that the court are in " error when they suppose that circumstances may not occur " even upon a parade to justify a junior officer in taking upon " himself the strong responsibility of placing his commander in " arrest , such a measure must rest alone upon the responsibility of " the officer who adopts it, and there are cases wherein the disci- " pline and welfare of the service require that it should be assumed " In the present instance the sentence of the court appears to " afford a full justification of Captain E's conduct in the placing of " Lieut-Col H in arrest, though it would have been more regular " if that officer had continued to rest upon his own responsibility, " without calling a meeting of his brother officers to support it by " their opinions "

Officer has no right to claim court martial

7 Except in the circumstances mentioned in s 47 (3) of the Army Act, an officer has no right to claim trial by court-martial [2]

Release of officer

8. 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 is not to be ordered without the sanction of the highest authority to whom the case may have been referred [3] An officer released, unless such release is specifically without prejudice to re-arrest, will not again be arrested on the same charge, unless some new and special circumstances have arisen

No privilege of Parliament from arrest

9. Peers and Members of the House of Commons are not privileged from arrest , but the fact and cause of the arrest should always be communicated to the Lord Chancellor, or to the Speaker, as the case may be

---

[1] K R 534 (*b*) 538 (*a*) See for summary of the provisions of the Act and rules for preventing unnecessary detention in arrest, A A 45, and note 1 thereto

[2] K R 538 (*f*)

[3] K R 538 (*e*)

Arrest of warrant and non-commissioned officers

10 The rules which govern the close and open arrest of officers apply also to warrant officers Non-commissioned officers will, as a rule, when charged with a serious offence, 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 [1]

Confinement of private soldiers.

11. A private soldier taken into military custody on a charge of having committed an offence is placed either under close arrest or open arrest Close arrest in the case of a private soldier means confinement under charge of a guard, piquet, patrol, sentry or provost marshal He will not be placed under close arrest unless confinement is necessary for his safe custody or for the maintenance of discipline For minor offences, such as absence from roll call, overstaying a pass, and other slight irregularities in quarters, soldiers are placed under open arrest A private soldier under open arrest will not quit barracks (except on duty or with special permission) until his case has been disposed of, but he will attend parades and may be ordered to perform all duties [2]

In permanent barracks soldiers under close arrest will usually be detained in a guard detention room [3] They are never to be kept in irons, except when it is necessary for safe custody or to prevent violence When troops are in billets or on the line of march, or accommodation for the confinement of offenders is otherwise not available, a soldier in military custody may be committed, by order of his commanding officer, for a period not exceeding seven days, to any civil prison or lock-up [4]

While awaiting trial by court-martial or the promulgation of the finding and sentence of the court-martial which tried him, a soldier may be confined in a detention barrack, branch detention barrack, or barrack detention room When so confined he should be kept apart from soldiers undergoing sentence [5] When a soldier elects to be tried by district court-martial under s 46 (8) of the Army Act, his commanding officer may, if he thinks the circumstances of the case warrant it, release him pending trial [6] A soldier when confined can only be released by a competent authority, *e g*, if confined in a regimental guard room he can only be released by the authority of the commanding officer of the regiment, and if in a garrison guard room by the authority of the officer commanding the garrison

Performance of duties while under close arrest

12. 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, &c, 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, or in a detention barrack for exercise or instruction If, however, by error, he is ordered to perform any duty, he is not thereby absolved from liability to be proceeded against for the offence for which he

---

[1] See para 3 above K R 534, 538, 539 (*a*)
[2] K R 534, 539, 540 (*c*) As to the duties of N C Os in relation to the confinement of private soldiers, see K R 534 (*g*)
[3] K R 539 (*b*) As to soldiers in a state of drunkenness, see *ib* 535
[4] K R 539 (*f*) For form of order, see Form Q in App III to R P
[5] K R 718 and see Form R in App III to R P
[6] K R 552 (*a*)

Ch IV

is under arrest [1] On board ship he may be employed on fatigue duties, although he should not be placed on guard [2]

Breaking arrest

13 The offence of escaping or attempting to escape from arrest or confinement renders an officer liable to be cashiered, and a soldier liable to imprisonment [3] An offender confined to quarters, and quitting them for any purpose whatever, however short the time of his absence, is strictly speaking guilty of breaking his arrest The gravity of the offence will depend mainly on whether the circumstances do or do not disclose deliberation, and intentional defiance of authority

Improper release and allowing escape

14 The offences of releasing without proper authority a person in custody, and of allowing a person in custody to escape, vary in gravity according to whether the offender acts wilfully or not, in the former case he is liable to penal servitude [4]

Receiving accused persons into custody

15 An officer or non-commissioned officer commanding a guard, or a provost marshal, cannot refuse to receive or keep any person committed to his custody by an officer or non-commissioned officer, but the committing officer or non-commissioned officer must, at the time of committal, or within 24 hours after, deliver to the officer or other person into whose custody the offender is committed a written account (generally termed the "charge"), signed by himself, of the offence with which the person committed is charged The commander of a guard will, upon the request of a person received into custody, inform him of the rank and name of the person preferring charges against him or ordering his arrest, and give to him a copy of the charge report as soon as he himself receives it [5]

Account of offence

16 The charge should contain, without any unnecessary detail, all the material points of the offence If a charge states that the accused was drunk, or absented himself, and a witness subsequently adds before an investigating officer that the accused struck a non-commissioned officer, or used threatening language, the presumption is that the conduct of the accused was not at the time thought sufficiently serious to amount to an offence, and to be entered in the charge As a rule, the investigating officer would treat the fresh evidence merely as showing the nature and degree of the offence originally deposed to, but in some cases he may consider it advisable to make this new evidence the substance of a specific charge

Omission to deliver charge.

17 The omission of the committing officer to deliver the charge will not justify the commander of the guard or provost marshal in refusing to receive a person into custody, much less in releasing such person The proper course for a guard commander, in the event of such omission, is to take steps for procuring the charge, or to report to the officer to whom his guard report is furnished that no charge has been delivered If the charge or evidence sufficient to justify the retention in custody of the person is not forthcoming within 48 hours after committal, the latter officer will order his release [6]

---

[1] K R 540
[2] Voyage Regs, 88
[3] A A 22 As to escape, see notes 2 and 3 to that section
[4] A A 20
[5] A A 45 (4), and K R 536
[6] K R 536

Duty of commander of guard to report name and offence of accused

18. It is the duty of the commander of the guard (immediately on the relief of the guard) to report in writing, to the officer to whom he is ordered to report, the name and offence of the accused, and the name and rank of the committing officer, and he should include the charge in his report or, if it has not been delivered, should state that fact If he fails to make this report within 24 hours after the accused was committed, or where he is relieved from his guard within that period, then immediately on being so relieved, he himself commits an offence The report will, as a rule, be made to his commanding officer [1]

(ii) *Investigation by Commanding Officer*

Investigation by commanding officer

19 The object of the report referred to in para 18 is to enable the commanding officer of the accused, without delay, to institute an investigation of the case There is some difference in the procedure in the case of an officer and in that of a soldier

In case of officer

20. The case of an officer may be referred to a court of inquiry, and need not, unless the officer requires it, be formally investigated before his commanding officer[2], but the commanding officer, in the case of an officer as well as of a soldier, is by s 46 of the Army Act made responsible for dismissing the charge, if it ought not to be proceeded with, and, if it ought to be proceeded with, for taking the proper steps under that section

In case of soldier

21. A case of a warrant officer, non-commissioned officer or private soldier should, in the first instance, be investigated by the company, &c, commander Where the accused is a private, this officer, if he decides that the case is a minor offence or a case of drunkenness, or of absence without leave, with which he can deal under the powers delegated to him under s 46 (9) of the Army Act and the King's Regulations,[3] will either dispose of the case himself or leave it to his commanding officer to deal with The case of a non-commissioned officer must always be left to be dealt with by the commanding officer, except where the company, &c, commander has power to admonish or reprimand (but not severely reprimand) a non-commissioned officer not above the rank of corporal [4] A case left to be dealt with by a commanding officer must be investigated by the commanding officer himself He can dismiss the charge, remand the case for trial by court-martial, refer it to superior military authority, or, in the case of a private soldier, award punishment summarily, subject to the right of the soldier, in any case where the award or finding involves forfeiture of pay, and in any other case where the commanding officer proposes to deal with the offence otherwise than by awarding a minor punishment, to elect to be tried by a district court-martial, and subject to the limitations imposed on the discretion of commanding officers by the King's Regulations [5] A warrant officer cannot be summarily punished except as provided for in s 47 of the Army Act(see (iv) below) A non-commissioned

[1] A A 21 (3), and K R 536 See for summary of the provisions of the Act, and rules for preventing unnecessary prolongation of confinement, A.A 45 and note
[2] R P 8 and note
[3] K R 542, 565
[4] K R 542 and 565
[5] A A, 46, R P 4, 7, K R, 542-553, paras 24 and 26, below.

Ch IV officer, though not legally exempt, is not allowed by the King's Regulations to be summarily punished except as specially laid down therein A person subject to military law as a soldier but not belonging to His Majesty's forces cannot be summarily punished [1]

Duty of officer conducting investigation

22. The duty of investigation requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused The investigation usually takes place in the morning, and must be conducted in the presence of the accused,[2] but, in the case of drunkenness, an offender should never be brought up till he is sober [3]

Examination of witnesses

23 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 for which he has been placed under arrest are examined In every case where the commanding officer has power to deal with the case summarily, the accused has a right to demand that the witnesses against him be sworn, and he will also have full liberty of cross-examination [4]

Decision of commanding officer

24. The commanding officer, after hearing what is urged against the accused, will, if he is of opinion that no military offence at all, or no offence requiring notice, has been made out, at once dismiss the charge [5] 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, including the evidence of the accused himself and that of his wife [6] The commanding officer will then consider whether to dismiss the case or to deal summarily with it himself, or to adjourn it for the purpose of having the evidence reduced to writing, with a view to having the case tried by court-martial or, when the accused is an officer below the rank of field officer or is a warrant officer, disposed of under s 47 of the Army Act [7] First and less serious offences of the class which he has authority under the King's Regulations to dispose of summarily, without reference to superior authority, should, as a rule, be so dealt with, subject to the soldier's right to elect before the award to be tried by a district court-martial If the offence does not belong to the above class, and the commanding officer desires to dispose of it summarily, he must refer to superior authority by letter stating briefly the circumstances, and accompanied by the conduct sheets of the accused A charge for any offence, of whatever class, may, if the commanding officer thinks fit, be referred to superior authority, with an application for a district court-martial [8]

Caution as to expressing opinion

25. 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

---

[1] A A 182 (1), 184 (2), K R, 558, 559, and as to summary punishments, see below, ra 31, *et seq*
[2] R P 3 (A)
[3] See K R 535 (*c*), which suggests the lapse of 24 hours before he is brought up
[4] A A 46 (6), R P 3 (A), (B) and note, *q v* also as to the evidence of the accused himself, and of his wife
[5] R P 4 (A)
[6] R P 3 (A) and note
[7] R P 4 (B)
[8] R P 4, K R, 547-550

prejudice him at a subsequent trial [1] It frequently happens 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

Right of soldier to claim court martial

26. If the commanding officer proposes to deal with the case summarily, otherwise than by awarding a minor punishment, he must ask the soldier whether he desires to be dealt with summarily, or to be tried by a district court-martial, and the soldier may, if he chooses, thereupon elect to be tried by a district court-martial Save as aforesaid, a soldier has no right to claim a court-martial, except that, where the commanding officer has omitted to put the proper question to him, the soldier has a subsequent opportunity of making the claim [2]

As stated above, a commanding officer has power to award minor punishments without restriction, but should it happen, for example, in a case of absence without leave in excess of six hours, that a commanding officer proposes to deal with the offence by awarding a minor punishment, it will result that the decision constitutes a finding of "guilty" in respect of the offence with resultant forfeiture of pay Consequently in such case, before final disposal, the soldier must be afforded an opportunity of electing trial by district court-martial The principle does not apply in the case of deprivation by a commanding officer of acting or lance rank, since, although the deprivation might result in a reduction in the rate of pay, the loss would not amount to a forfeiture of pay within the meaning of s 138 of the Army Act

Adjournment for taking a summary of evidence

27. Where a commanding officer adjourns the case for the purpose of having the evidence reduced to writing, the evidence given by any witnesses before him must be taken down in writing in the presence of the accused,[3] the accused must be allowed to cross-examine within reasonable limits, especially if there is any variance between the evidence as taken down and that given on the prior investigation 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 This is most important, for any statement made by him *at the taking of the summary* will be inadmissible at his trial unless he has first been duly cautioned Any statement or evidence of the accused will be taken down, but he will not be cross-examined upon it [4]

Mode of taking summary.

28. The evidence and statement, if any (called the summary of evidence), must be taken down in the presence of the commanding officer himself, or of some officer deputed by him [5] If the commanding officer so directs, or if the accused so demands, the evidence will be taken on oath [6] Great care is necessary in the performance of this duty, the words used by the witness

---

[1] K R, 542 (*a*)
[2] A A 46 (8), R P 7; see also K R 566 and para 21 above
[3] The accused and his wife, even if they have given evidence before the commanding officer, cannot be compelled to repeat their evidence
[4] R P 4 (E)
[5] R P 4 (C)
[6] A A 70 (6), and R P 4 (F)

Ch IV

or accused should as nearly as possible be taken down, and the summary should be free from any expression of opinion or conjectures, and from matter not bearing on the case The difference not infrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial may often be traced to the hasty or careless preparation of the summary, rather than to any prevarication or desire to mislead on the part of the witnesses

Remand of accused for trial by court-martial.

29 When the summary of evidence has been taken, the commanding officer must consider it and determine whether or not to remand the accused for trial by court-martial It may be that on reading the evidence the commanding officer will come to the conclusion that the case is one which ought to be disposed of summarily In such a case, unless the accused has himself elected to be tried by district court-martial, the commanding officer will either rehear the case and dispose of it summarily, or, if he is not competent to do so without leave from superior military authority, will refer it to the proper authority In any other case he will remand the accused for trial by court-martial,[1] and send to superior authority an application for a district or general court-martial[2] accompanied by the summary of evidence, the charges on which he proposes the accused person should be tried, and other documents, and in his letter of application he will state his reasons for desiring the particular description of court for which he applies If a court-martial is ordered or applied for, the accused can 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

At home stations, in all cases of fraud and indecency, the charge and summary of evidence must be submitted to the Judge-Advocate-General before trial is ordered [3]

Use of summary of evidence

30 The summary of evidence, like the depositions before justices, may be used for certain limited purposes at the trial,[4] and also for the purpose of giving the accused notice of the charge he will have to meet, and the convening officer and president of the court notice of the case to be tried Either the summary itself or a true copy must be laid before the court-martial before whom the accused is tried

(iii) *Summary power of Commanding Officer*

Power of commanding officer to deal with non-commissioned officer or soldier

31. The power of the commanding officer to punish summarily a soldier is twofold first, the power under s 46 (2) (*a*)–(*d*), Army Act, to award detention, deduction from ordinary pay, and in the case of drunkenness a fine not exceeding two pounds, and, in case of offences committed on active service, field punishment and forfeiture of pay for not more than 28 days[5], and, secondly,

---

[1] R P 5 (A)
[2] R P 5 (B)
[3] K R 630
[4] R P 17 (E) and note 6
[5] A A 46 138, K R 580 (*a*), 579

the power under s 46 (2) (*e*), Army Act, and the King's Regulations to award the minor punishments of confinement to barracks, extra guards or piquets, or admonition, subject and according to the provisions of para 560 (*b*), King's Regulations, to which reference must be made The detention must in no case exceed twenty-eight days [1] Under the terms of the Army Act (s 46 (2) (*d*)) a non-commissioned officer cannot be awarded field punishment or forfeiture of pay by his commanding officer, and under the King's Regulations he is not to be subjected to summary or minor punishments by his commanding officer, save the summary punishment of deduction from pay under s 138 (4) of the Army Act (subject to the right to claim trial by court-martial), and the minor punishments of severe reprimand, reprimand or admonition A non-commissioned officer may be ordered to revert from an acting or lance rank to his permanent grade,[2] or may be removed from an appointment and reverted to his permanent grade, but this power of removal, if the non-commissioned officer's permanent rank is higher than that of corporal, is not to be exercised without reference to superior authority [3] A commanding officer has no power to punish an officer or warrant officer.

Drunkenness.

32. Drunkenness and absence without leave are the two offences which require to be most frequently dealt with by the commanding officer, indeed, the case of drunkenness of a soldier, apart from exceptional cases, as described in Chapter III, *must* be so dealt with [4] This obligation does not apply to a non-commissioned officer charged with drunkenness [5]

Absence without leave

33. In dealing summarily with cases of absence without leave, the commanding officer will have regard to the place of the soldier's surrender or apprehension and all the circumstances of the case If the period of absence does not amount to six hours or upwards no pay is forfeited, except when the absence prevents the absentee from fulfilling some military duty which was thereby thrown on some other person, in which case the absentee will forfeit a day's pay no matter how short his absence might be If the period of absence amounts to six hours, reckoned consecutively, but not to twenty-four hours, one day's pay is forfeited If the period of absence exceeds twenty-four hours, the number of days' pay forfeited would be the period in hours divided by twenty-four, any fraction over being counted as an additional day [6]

Forfeiture of pay

34. Under s 138 of the Army Act a soldier may be ordered to forfeit all pay for every day of absence either on desertion, or without leave or as a prisoner of war, also for every day of penal servitude, imprisonment, detention, or field punishment, under sentence, or in custody under any charge resulting in conviction by a court-martial or civil court, or under a charge of absence without leave resulting in an award of detention or field punishment by his commanding officer, also for every day in hospital on account of sickness, certified to have been caused by

[1] A A 46 (2) (*a*), R P 6, and note
[2] K R, 559
[3] A A 183 proviso (*c*) K R, 273
[4] See Ch III, para 44
[5] A A 183 (1)
[6] A A 140 (2) and note 4 to s 138, P W 880, 881, K R 566, 567 As to notifying in regimental orders the names of men absent without leave, see K R 58

Ch IV

an offence committed by him The Pay Warrant orders the forfeiture of pay to be made in the above cases with the following exceptions —(*a*) a soldier does not forfeit pay while under sentence of field punishment[1], (*b*) pay is forfeited for the period of arrest before conviction only if the soldier is in custody under close arrest (including hospital), or is confined in a civil prison or police cell, (*c*) a soldier is allowed pay while a prisoner of war unless a court of inquiry finds that he was taken prisoner through his own fault or misconduct [2] In the case of absence without leave, as the pay is forfeited automatically, the officer dealing with the case should make no award, but only inform the soldier of the number of days' pay forfeited [3]

The commanding officer may, where a soldier is not tried by court-martial, order stoppage of his pay to make compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, equipment, regimental necessaries, and so forth, or by his injuring any buildings or property[4], and may likewise order the stoppage of the amount of any fine awarded by himself [5]

Right of soldier to demand district court-martial

35. There is no appeal from the award of the commanding officer, but, as has been already mentioned, the soldier may, in certain cases, instead of submitting to the jurisdiction of his commanding officer, elect to be tried by a district court-martial [6]

No trial after punishment by commanding officer

36. When once an offender has been punished or the charge otherwise disposed of by his commanding officer he cannot be tried by a court-martial for the same offence, and similarly he cannot be punished by his commanding officer or subjected by him to any stoppage of pay for any offence of which he has been acquitted or convicted by a court-martial or by a competent civil court [7] When a commanding officer has once awarded punishment for an offence, he cannot afterwards increase it [8] It is considered that his award is complete when the man has left his presence

Delegation of power by commanding officer

37. A commanding officer may (subject to certain limitations) delegate to company, &c, commanders the power of awarding fines for drunkenness and certain minor punishments for any offences which he himself may deal with [9]

Commanding officer of detachment

38 The commanding officer of a detachment, if of field rank, has, unless restricted by superior authority, the same power of awarding summary punishment as the commanding officer of a corps [10]

[1] A A 138, note 9
[2] P W 879 (*c*), 885, and K R 743
[3] K R, 566 (*a*)
[4] A A 138 (4)
[5] A A 138 (7)
[6] A A 46 (8), para 26, above
[7] A A 46 (7)
[8] R P 6 (B) As to the power to cancel an award, or reduce the punishment, see R P 10
[9] A A 46 (9), K R, 542 (*d*) 565
[10] K R, 526, 563, and see 564

(iv) *Summary awards under s 47, Army Act* [1]

Summary awards in the case of certain officers, and of warrant officers

39. Officers below the rank of field officer, and warrant officers, may be summarily dealt with by the authorities specified in s 47 of the Army Act

Such officers may be subjected to one or more of the following punishments—forfeiture of seniority of rank, forfeiture of service for promotion (in the case of those whose promotion depends upon length of service)[2] and severe reprimand or reprimand

Warrant officers may be subjected to one or more of the following punishments—forfeiture of seniority of rank, severe reprimand or reprimand, or a deduction authorised by the Army Act to be made from ordinary pay

In proceedings under this section the specified authority may dismiss the charge with or without hearing the evidence, if he thinks that it ought to be proceeded with and decides not to send it for trial by court-martial, he will hear the evidence given orally unless the accused consents in writing to the mere reading of the summary or abstract of evidence

The accused has a right to elect trial by court-martial if the specified authority proposes to award a sentence other than severe reprimand or reprimand, he has also a right to demand that the evidence be taken on oath

Dismissal of a charge under this section is a bar to trial by court-martial [3]

Certain offences should not be dealt with under this section of the Army Act The only offences which should be so dealt with are those specified in K R 546

(v) *Provost Marshal*

Provost marshal

40. In the case of offences committed abroad, whether on active service or not, arrests will often be made by the provost marshal or his assistants, who may be appointed by a general officer commanding a body of forces abroad A provost marshal cannot, as was formerly the case, inflict any punishment on his own authority [4] He can only arrest and detain for trial persons subject to military law committing offences, and carry into execution punishments to be inflicted in pursuance of a court-martial A provost marshal and his assistants have also as respects a soldier in his or their custody undergoing field punishment, the same powers as the governor of a military prison [5]

Section 74 of the Army Act permits of the appointment of a provost marshal and assistant provost marshals by general officers commanding bodies of forces serving abroad The provost

---

[1] See also R P 9

[2] See K R 555

[3] R P 36 (A) (i)

[4] The provost marshal was, until 1829, appointed by the general, and exercised his powers without any statutory authority, and the appointment could only be justified legally as being made under the Sovereign's prerogative to govern the army in time of war in places out of his dominions There must have been considerable doubt as to the existence of the power, and consequently as to the legality of the provost marshal's acts, and a correspondence took place between the Duke of Wellington and the Government on the subject during the Peninsular War (See Clode, Mil Forces, II p 662) In 1829 the Article of War respecting the provost marshal was inserted, and gave legal recognition and—if it was within the powers of the Articles—legal sanction to the appointment and powers of the provost marshal (See Clode, Military and Martial Law, pp 181–3) The above powers were curtailed in 1879 by the Act of that year

[5] A A 74 As to garrison and regimental provost serjeants, see K R 729, 731, 732

marshal will always be a commissioned officer his assistants may be either officers or non-commissioned officers At home, a provost marshal (who is also commandant of the Corps of Military Police) and assistant provost marshals are appointed by the King During manœuvres officers are detailed to act as assistant provost marshals with divisions in order that they may acquire a knowledge of their duties On mobilization, a provost marshal and such assistant provost marshals as may be necessary are appointed

(vi) *Discipline of troops when attached to or acting with H M 's naval or air forces, or when passengers on board H M 's ships*

Discipline of officers and soldiers attached to the air force

41. Officers and soldiers temporarily attached to the air force under regulations made by the Army Council and Air Council pursuant to s 179A of the Army Act and s 179A of the Air Force Act are, with certain modifications, made subject to the Air Force Act whilst so attached [1] Conversely, officers and airmen of the regular air force temporarily attached to a military force, are, with certain modifications, subject to the Army Act whilst so attached [2] The regulations relating to attachments are set out at pp 810–813

Relations between military and naval and air forces acting together

42. When bodies of the navy and army are acting together or attached, or when bodies of the army and air force are acting together, under conditions prescribed by regulations made by the Admiralty and Army Council or by the Army Council and Air Council respectively, the officers and petty officers of the naval contingent, or the officers and non-commissioned officers of the air force, as the case may be, have the same powers of command and discipline (other than powers of punishment) over military officers and men as they would have if they, themselves, were military officers and non-commissioned officers of ranks corresponding to their own Conversely, military officers and non-commissioned officers have similar powers over air-force personnel, and military officers and non-commissioned officers not below the rank of serjeant have similar powers over naval personnel [3] The purpose of the regulations is the mutual exercise of the powers of command and discipline without subjection to the law of the force with which the naval, military or air forces may be acting, but, on active service only, air-force personnel acting with the military forces may be made subject to military law as though they were attached to the army, and, similarly, military personnel acting with the air force may be made subject to air force law as though they were attached to the last-named force [4]

The " prescribed conditions " at present in force are set out at pp 809–810, and 813–817

Discipline on board H M 's ships

43 The discipline of troops embarked as passengers on board any of His Majesty's ships is regulated by Orders in Council made under the Naval Discipline Act [5]

[1] A F A 175 (1A) and 176 (1A)
[2] A A 175 (1A) and 176 (1A)
[3] Naval Discipline Act, 90A , A A 184A , A F A 184A
[4] See proviso to A A and A F A 184A (1A)
[5] See A A 186, and the Orders in Council printed at pp 818–824

CHAPTER V

COURTS-MARTIAL

(1) *Descriptions of Courts-Martial and how convened*

Description of courts-martial

1 A person subject to military law[1] who is to be tried by court-martial may be brought before a district court-martial or a general court-martial

In certain circumstances trial may be by field general court-martial [2]

Distinction between district and general courts martial

2. 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 A district court-martial cannot try officers,[3] or persons subject to military law as officers [4]

Order convening the court

3. Every 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 Army Act to convene it

Convening of district court martial

4. 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 [5]

Convening of general court-martial

5. A general court-martial can be convened by His Majesty or by an officer authorised by His Majesty to convene such courts, or by an officer holding a warrant to convene such courts from some officer authorised to delegate the power of convening them [6]

Warrants to convene at home

6. At home, warrants giving officers power to convene general courts-martial are usually issued by the King to the general officers commanding-in-chief a command, to the general officers commanding the London and Northern Ireland districts and to the general officers commanding in Guernsey and Jersey

Warrants to convene abroad

7. A warrant giving power to convene and to confirm the findings and sentences of general courts-martial is usually issued, in India, to the commander-in-chief in India, and, elsewhere out of the United Kingdom, to the general officer commanding, either in the colonies or on active service Governors of colonies have in certain cases been granted such warrants [7]

Form of warrant

8. Any such warrant, and also any warrant of delegation given by the officer so authorised, may contain any reservations or special provisions, and may be addressed to an officer by name or by the designation of his office, and may give authority to a person performing the duties of an office named or to the successors in command of an officer, and may be wholly or partly revoked by a fresh warrant [8]

---

[1] A A 175, 176 See also Introductory Observations to A A Part V
[2] As to field general courts martial, see below, para 111
[3] A A 48 (6)
[4] A A 175
[5] A A 48 (2), 123
[6] A.A 48 (1), 122
[7] See notes to A A 122
[8] A A 122 (3) (4), 123 (3) (4) For forms of warrants see pp 788–793

Ch V

Convening court-martial for trial of marine

9 A general court-martial for the trial of an officer or man in the Royal Marines can only be convened by an officer duly authorised by a warrant from the Admiralty, except in certain cases where such officer or man is serving beyond the seas A district court-martial for the trial of a man in the Royal Marines can be convened by an officer who has authority to convene a district court-martial for the trial of a soldier of any other portion of the regular forces [1]

(ii) *Jurisdiction*

Jurisdiction of district court-martial

10. A district court-martial cannot try an officer or a person subject to military law as an officer [2] It can try a warrant officer, but its powers of punishing him are limited [3] It has complete jurisdiction to try any military offence (except such as can only be committed by an officer), and, subject to certain restrictions in the case of treason, murder, manslaughter, treason-felony and rape, any offence which, if committed in England, is punishable by the law of England, *i e*, a civil offence [4]

A district court-martial cannot award a sentence higher than two years' imprisonment, with or without hard labour[5], it cannot therefore try a case of murder, where the only punishment which can be awarded is death [6]

Jurisdiction of general court martial

11 A general court-martial can try any person who is subject to military law whether as an officer or as a soldier It has complete jurisdiction to try any military or civil offence though the same restrictions are placed by s 41 of the Army Act upon its powers to try cases of treason, murder, manslaughter, treason-felony and rape as are imposed upon a district court-martial

A general court-martial can award the punishments of death and penal servitude as well as such punishments as a district court martial can award

Trial of persons no longer subject to military law

12. A court-martial has jurisdiction to try and punish a person who, since the time at which an offence is alleged to have been committed by him, has ceased to be subject to military law, but, except in the case of mutiny, desertion or fraudulent enlistment he can only be tried within three months after he has ceased to be so subject, the three months in question will not be deemed to have expired if the trial has commenced within that period [7]

Reservists, &c

Reservists and members of the Territorial Army can, in the case of certain offences, be tried within two months after their apprehension [8]

No power to try persons already convicted, acquitted, &c

13 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[9] or by a competent civil court,[10] or where the charge against him has been dismissed or the offence dealt with summarily by his commanding officer[11] or where a charge against an officer

---

[1] A A 179 (1) (2)
[2] A A 48 (6)
[3] A A 182
[4] A A 41
[5] A A 48 (6)
[6] A A 41 (2)
[7] A A 158 (1)
[8] Reserve Forces Act, 1882 s 26 T R F Act 1907, s 25 (2) Sc I A Regs 111–122
[9] A A 157, R P 36 (A) (i)
[10] A A 162 (6), R P 36 (A) (i)
[11] A A 16 (7), R P 36 (A) (i)

below field rank or a warrant officer has been dismissed or the offence dealt with summarily by the authority authorised for the purpose under s 47 of the Army Act [1]

This prohibition does not apply where there has been no valid trial resulting in an acquittal or conviction, or, in the case of a conviction by court-martial, where the finding and sentence have not been confirmed [2]

Pardon or condonation by competent military authority, if held to be proved, will operate to prevent a person from being tried by court-martial [3]

Time limit for trial

14. An offence, other than mutiny, desertion or fraudulent enlistment, cannot be tried by court-martial if three years have elapsed since the date of its commission [4] but, as stated in para 12, a partial exception from this is made in the case of reservists and members of the Territorial Army

In certain cases a soldier cannot be tried even for desertion (other than desertion on active service) or for fraudulent enlistment, if three years have elapsed from the date of the commission of the offence [5]

In trying a civil offence a court-martial is bound in relation to the commencement of its proceedings by any time-limit prescribed by law in respect of that offence which is less than three years [6]

Place of trial

15 An offence, wherever committed, may be tried and punished at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial and in which the alleged offender may be for the time being, and the trial will take place as if the offender were under the command of such officer [7]

Trial on board ship

Offences committed on board ship can be tried on board before reaching the port of disembarkation, as if committed on land at the place where the offender embarked [8]

Removal of offender for trial

Offenders are not to be sent home from stations abroad with charges pending against them, except in cases of necessity But for the sake of convenience a person charged may be removed for trial from the place where he is serving, so long as he is not prejudiced in his defence by the change [9]

(iii) *Composition*

Composition of district courts-martial.

16. A district court-martial must be composed of at least three officers, each of whom must have held a commission for not less than two years [10] and must be subject to military law [11]

The members of the court must, so far as is practicable, belong to different corps, and can only belong to the same regiment of

---

[1] A A 47 (5) R P 36 (A) (i)
[2] R P 66 (B), A A 53 (4), 54 (6)
[3] R P 36 (A) (ii)
[4] A A 161, R P 36 (A) (iii)
[5] A A 161
[6] R P 36 (A) (iii)
[7] A A 159, 160
[8] A A 188 As to discipline of troops on board H M 's ships, see Ch IV, para 43
[9] K R 633 636
[10] A A 48 (4) see also R P 18 and notes, for number of members to be detailed in ordinary or complicated cases and as to waiting members, see K R 643
[11] See, however, A A 48 (10) under which Air Force officers may in some circumstances serve as members of courts martial

Ch V

cavalry, or brigade of artillery, or battalion of infantry if, in the opinion of the convening officer (which must be inserted in the convening order), other officers are not available [1]

The president (who must be named in the convening order)[2] should not be below the rank of field officer, but a captain may preside if a field officer is not available, or a subaltern may preside if neither field officer nor captain is available and if the accused is not a warrant officer [3] The opinion of the convening officer as to the non-availability of a field officer or captain must be inserted in the convening order

The members of the court (other than the president) may be mentioned by name in the convening order, or their rank and the unit to which they belong may alone be stated [4]

Where, as will normally be the case, a district court-martial is composed of three officers, not more than one member should be a subaltern [5]

Composition of general courts-martial

17 The provisions as to the composition of a district court-martial referred to in the preceding paragraph apply also to a general court-martial except that (i) the legal minimum of members required to serve on a general court-martial is five instead of three[6], (ii) the members must have held a commission for three instead of two years[6], (iii) the president should always be a general officer or colonel (if available)[7], (iv) a subaltern cannot in any circumstances act as president [8]

In addition, four of the members must be of a rank not below that of captain[9], an officer below that rank cannot be a member of the court for the trial of a field officer[10], and no officer junior in rank to an accused officer can serve as a member if officers of equal or superior rank are available [11]

For the trial of a commanding officer of a unit, as many members as possible must hold or have held commands equivalent to that held by the accused [12]

Trial of members of reserve or auxiliary forces

18. In the case of the trial by court-martial of an offender belonging to the reserve or auxiliary forces, one member of the court must, if practicable, belong to the same branch of those forces as that to which the accused belongs [13]

Disqualifications of officers

19. Officers who are eligible through the length of their commissioned service to act as members of courts-martial[14] 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 the officer who investigated the

[1] R P 20 (A) and note
[2] A A 48 (9), K R 641
[3] A A 48 (9), 182 (4), I R 635
K R 644
K R 643
[4] A A 48 (3)
[5] A A 48 (9), K R 642
[6] A A 48 (9)
[7] A A 48 (3), R P 21 (A)
[8] A A 48 (7), R P 21 (B)
[9] R P 21(B)
[10] K R 642 (b)
[11] R P 20 (B) and note See Ch XI, para 65
[12] See paras 16 and 17 above

charges before trial or took down the summary of evidence, (v) the company, &c, 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, (viii) an officer who has a personal interest in the case [1]

(iv) *Duties of convening officer*

Consideration of proposed charges and evidence

20. An application for a court-martial should usually be disposed of at once, but if the convening officer detects matter showing culpable neglect or improper conduct on the part of the superiors of the accused, he may delay assembling a court for the purpose of making enquiry

Before acceding to an application for a 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 Army Act and is properly framed in accordance with the Rules of Procedure and King's Regulations He must also be satisfied that evidence sufficient to justify trial is disclosed in the summary or abstract of evidence which accompanied the commanding officer's application, 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 [2] 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 [3]

When an accused person is to be arraigned on a serious charge, other charges in respect of minor offences may be dropped [4]

If the convening officer considers that a case should be disposed of summarily instead of by court-martial, and it can legally be so disposed of, he should take steps to effect this

At home stations, in all cases of fraud and indecency the charge and summary of evidence are to be submitted to the Judge-Advocate-General before trial is ordered [5]

Decision to try by court martial

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

[1] A A 50 (2) (3), and notes, R P 19 (B) and notes
[2] R P 17 (A), K R 631
[3] K R 551
[4] K R 632
[5] K R 630

Ch V

Type of court martial to be convened

22. In forming his decision as to whether the case shall 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

The powers of district courts-martial are sufficient to deal with all ordinary offences committed by non-commissioned officers and soldiers In the case of aggravated offences, however, a general court-martial may properly be convened [1]

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

Order for trial by court-martial

23. 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[2], if there are separate charge-sheets the convening officer may direct that upon conviction upon any one of them the accused need not be tried upon the others [3]

Every 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 [4]

(v) *Preparation of Defence by accused*

Full information to be given to accused

24. As soon as practicable after an accused has been remanded for trial by court-martial, and at least twenty-four hours before he is brought up for trial, an officer must give to him a copy of the summary, or (if he is an 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 [5]

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 [6]

As soon as practicable, and at least twenty-four hours before the accused 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 [7]

---

[1] K R 634
[2] R P 62 (A)
[3] R P 62 (D)
[4] See note 1 to R P 11, R P 17, Illustration of charge sheet in R P App I on p 714
[5] R P 14 (B)
[6] R P 14 (A)
[7] R P 15 (A) (B) As to summons to witnesses see R P 78, and form on p 761 As to expenses of witnesses, see Allowance Regulations, 322–4, 372

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 [1]

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 [2], he is not bound to give the prosecutor a list of his own witnesses [3]

Securing legal aid for defence and prosecution

25. 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 [4]

Qualifications, duties, &c, of counsel and defending officer

26 The qualifications of counsel (*i e*, barristers-at-law, advocates, solicitors, law agents, &c,) are set out in the Rules of Procedure, as are also their functions, rights and duties [5]

A defending officer has the same functions, rights and duties as counsel The 'friend' of the accused can only act in an advisory capacity [6]

Assignment of defending officer for accused

27. In order to ensure that an accused person is represented at his trial if he so desires, it is the duty of the officer seferred to in para 24 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 [7]

(vi) *Assembly of Court*

Assembly of court

28. When a court-martial assembles at the time and place named in the convening order the members will take their seats according to their army rank [8] 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 officer appointed as president [9] to whom they will have been forwarded previously by the convening officer [10]

Inquiry as to composition of court

29. The court will examine the convening order for the purpose of ascertaining whether the president and members who have taken their seats, the judge-advocate (if any), and any waiting members present who may have been detailed are those mentioned

---

1 R P 16
2 R P 15 (C)
3 R P 77
4 R P 89 (A) (B)
5 R P 88-93
6 R P 87
7 R P 14 (B), 97 (B)
8 R P 58
9 R P 22 (A)
10 R P 17 (E)

Ch V

in the order If the members present (other than the president) are not actually named in the order they must be of the actual ranks and belong to the actual units stated therein

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 the court has been convened in accordance with the Army Act and Rules of Procedure [1]

Inquiry as to legal minimum of members

30 The court will next ascertain whether the legal minimum of members required by the Army Act for a district or general court-martial (as the case may be) has been detailed and is present [2] If such legal minimum is not present, the court must adjourn, but if the legal minimum of officers was detailed in the convening order, waiting members, if there are any, and if eligible and qualified, may 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 to serve in place of the absentee members, 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 [3]

Inquiry as to eligibility and qualifications of members

31. The court will then satisfy themselves that the president is of the required rank [4] and that all the members are eligible and not disqualified under the Army Act and Rules of Procedure The eligibility of an officer depends on his status as an officer, that is, on his being subject to military law or otherwise qualified to serve under the provisions of the Army Act and having held a commission for the required period Disqualification is a personal question, and depends on his being, or having been, a party to the case The grounds of ineligibility and disqualification are set out in paras 16–19 above

If the trial is by general court-martial the court must be satisfied that the members are of the required rank [5]

Judge-advocate

32. Where a judge-advocate has been appointed the court should ascertain if he has been duly appointed and is not disqualified [6] In the United Kingdom the Judge-Advocate-General appoints the judge-advocate, elsewhere the convening officer makes the appointment A judge-advocate must be appointed for every general court-martial [7]

Powers of adjournment of court

33. The court have wide discretionary powers of adjournment if not satisfied on any of the above matters,[8] and circumstances may arise which render an adjournment compulsory—*e g*, if the president is ineligible or disqualified,[9] or the court is finally reduced below the legal minimum Any adjournment and the reason therefor must be reported to the convening officer [10]

[1] R P 22
[2] A A 48 (3) (4), and see paras 16 and 17 above
[3] R P 18
[4] A A 48 (9), 182 (4) and see paras 16 and 17 above, R P 22 (A) (iv)
[5] A A 48 (3) (7), R P 21, see also para 17 above, R P 22 (A) (v)
[6] A A 50 (3), R P 22 (B), 101 (B)
[7] R P 101 and note 1 thereto
[8] R P 22 (C)
[9] A A 51 (3)
[10] R P 22 (C)

Amenability to jurisdiction

34. Having ascertained the validity of their constitution the court will next consider whether the accused is amenable to their jurisdiction [1] The subject of the jurisdiction of district and general courts-martial is dealt with in paras 10–15 above

Inquiry as to validity of charges

35 Finally the court must be satisfied that each charge discloses an offence under the Army Act and is properly framed in accordance with the Rules of Procedure, and is so explicit as to enable the accused readily to understand what he has to answer [2]

If not satisfied on the above matters, the court should report their opinion to the convening authority and may adjourn for the purpose [3]

(vii) *Opening of the Court*

Appearance of accused, prosecutor counsel, &c

36 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 private soldier, 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

Opening of court

37 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 [4]

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 [5]

Objections by accused to members of court

38. 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 [6] 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 Army Act and Rules of Procedure contain elaborate provisions as to the mode of enquiring into and disposing of objections by or on behalf of the accused A successful objection to the president will necessitate the adjournment of the court and a reference to the convening officer in order that a new president may be appointed or a new court convened If, upon a successful objection to 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 [7]

[1] R P 23
[2] R P 23
[3] R P 23
[4] A A 53 (5), R P 63
[5] *R* v *Lewes Prison (Governor)* L R [1917], 2 K B 254
[6] R P 25 (A)
[7] A A 51, R P 25, 18

Ch V

Where, upon a successful objection to 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 [1]

Swearing of court, judge advocate, &c

39. As soon as the court is finally constituted, the president, members and judge-advocate (if any) will be sworn, all present in court standing Officers attending under instruction, shorthand writer and interpreter (if any) will also be sworn at this stage though a shorthand writer or interpreter may be sworn at any time during the trial [2] The accused has a right of objection to a shorthand writer or interpreter[3] but not to the judge-advocate[4] 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 [5]

Oaths and declarations

40. The form of oath and the manner of taking it by all persons required to be sworn, and the persons who are to administer it are prescribed in the Army Act and Rules of Procedure Provision is also made whereby instead of taking the prescribed form of oath a person may make a solemn declaration , or the oath may be taken in the Scottish fashion or in such form and with such ceremonies as the person to be sworn declares to be binding on his conscience [6]

Absence of members during trial

41. 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 [7]

(viii) *Arraignment of accused*

Reading of charges

42 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 [8] The judge-advocate (if any) or, in his absence, 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 [9]

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 [10]

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 [11]

---

[1] R P 18 (B)
[2] A A 52 (1) (2) , R P 26, 27, 72
[3] R P 72 (C)
[4] R P 25 (B)
[5] R P 71
[6] A A 52, 190 (28), R P 26–30 and App II (3), pp 762–3
[7] R P 68
[8] R P 31
[9] R P 62 (E)
[10] R P 35 (A) (C).
[11] R P 62 (A)

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,[1] to be tried separately from that person, and the court may grant separate trial if the nature of the charge permits [2]

Objection to charge.

43 Before pleading to any charge, the accused may object to the charge as not disclosing an offence under the Army Act or as not being in accordance with the Rules of Procedure 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 [3]

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 [4]

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 [5]

Plea to the jurisdiction

44. 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 be overruled, the court will proceed with the trial, if it be allowed, the court must record their decision and the reason 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 [6]

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 paras 10–15 above

Recording of plea; refusal to plead, insanity, &

45. 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[7], or it may be urged that the accused is unfit to plead by reason of insanity, for which event the Army Act and Rules of Procedure make provision [8]

Plea in bar of trial.

46. 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 military authority (*see* para 13 above), or that trial is barred by lapse of time (*see* para 14 above) Upon the hearing of this plea, evidence may be offered both by the accused and prosecutor, and

---

[1] See para 24 above.
[2] R P 16
[3] R P 32
[4] R P 33 (A)
[5] R P 33 (B)
[6] R P 34
[7] R P 35 (A)
[8] A A 190, R P. 87.

Ch V

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 their 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 [1]

Plea of guilty

47. 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[2] 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 [3]

Mixed plea

48. 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' [4] The Rules of Procedure make special provisions in the case where the accused pleads guilty to the first of two or more alternative charges [5]

Procedure on plea of guilty

49. 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 [6]

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 [7]

The procedure in connection with the giving in evidence of the character and particulars of service of the accused and with the consideration and award of sentence is dealt with in paras 75–86 below

Duties of President

50. 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 [8]

[1] R P 36.
[2] R P 35 (B)
[3] R P 35 (D)
[4] R P 37 (A)
[5] R P 35 (C)
[6] R P 37 (B) (C)
[7] R P 37 (D)
[8] R P 59

(ix) *Trial on plea of 'not guilty'*

Plea of not guilty.

51. Before proceeding with a trial on a plea of 'not guilty,' the court must ask the accused whether he wishes to apply for an adjournment on the ground that he has been prejudiced by non-compliance with any of the rules relating to procedure before trial or has had insufficient opportunity to prepare his defence The court may hear evidence upon any such application and may adjourn if they consider it proper to do so [1]

Duties of prosecutor.

52. 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 evidence to be called in support of it [2]

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 [3]

Witnesses for prosecution.

53. The witnesses for the prosecution will now be called Each witness will take the necessary oath or make the required declaration [4] 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 [5] 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 [6]

Recording the evidence.

54. As a witness gives his evidence it must be taken down, in narrative form, as nearly as possible in 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 [7] The form in which the record is to be made is provided in Appendix II of the Rules of Procedure

Special provision is made for the case where a shorthand writer is employed [8]

Interpreters

55. 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 [9]

In India a qualified military officer is usually appointed, in the overseas possessions courts-martial usually have the assistance

---

[1] R P 39 (A)
[2] R P 39 (B)
[3] R P 60 (A) (B)
[4] A A 52 (3) (4), R P 82, App II (3), pp 762-3
[5] R P 83 (A), 84 (A)
[6] R P 85
[7] R P 94, 95 (A)
[8] R P 83 (C)
[9] R P 95, note 1

Ch V

of interpreters employed by the civil courts A member of a court-martial is not disqualified from acting as an interpreter, but this is inconvenient where the trial is likely to be prolonged

Reading over the evidence

56. 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 This procedure may be dispensed with where a shorthand writer is employed [1]

Opening of defence.

57. After all the evidence for the prosecution has been given, the accused must be told that he may, if he wishes, give evidence on oath as a witness, and that if he does so, he will subject himself to cross-examination and to being questioned by the court, he must also be told that he need not give sworn evidence, but can make a statement not upon oath in his defence, if he wishes to do so He should be informed that evidence upon oath will naturally carry more weight with the court than a statement not upon oath [2]

Procedure on case for defence

58 The answer of the accused to the question as to whether he wishes to give evidence himself having been recorded, he will then 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 answers which he has given, and in order to determine the proper sequence in which, in varying circumstances, the evidence for the defence is to be taken and the addresses on behalf of the prosecution and defence are to be made, the court will consult Rules of Procedure 40 and 41, wherein every possible variation and contingency is provided for

Addresses for defence and reply.

59. 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 comment on the evidence (if any) of the accused and of the witnesses for the defence, but he may not at any time comment on the fact that the accused has refrained from giving evidence as a witness [3]

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 [4]

Accused as a witness

60 If the accused is the only witness as to the facts of the case called by the defence, he must give evidence immediately after the close of the case for the prosecution[5], if other witnesses as to the facts are called, the accused should, but need not, give his evidence before theirs is given The accused must, unless otherwise ordered by the court, give his evidence from the witness box or place from which the other witnesses have given their evidence [6] He will be examined by his counsel or defending officer or, if not represented, will tell his story, being assisted by the court, if necessary, to present it in proper form and sequence He may be cross-examined by the prosecutor, re-examined, and questioned

---

[1] R P 83 (B) (C)
[2] R P 40 (A) (B)
[3] R P 80 (B)
[4] R P 92 (C) (D), 87 (C).
[5] R P 80 (F)
[6] R P 80 (C)

by the court [1] The cross-examination of the accused must be conducted with fairness and moderation and with the sole object of arriving at the truth

Latitude to accused in defence

61. 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, whether in his sworn evidence or in a statement not upon oath [2]

If the accused elects to make a statement in his defence without being sworn, he cannot be cross-examined by the prosecutor or questioned by the court or any other person [3]

Witnesses for defence

62. The witnesses for the defence will be examined by the accused or his counsel or defending officer, cross-examined by the prosecutor, and re-examined, they may also be questioned by the court [4]

Recalling of witnesses

63. 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 of 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 interests of justice, such witness may be called or recalled at any time before the finding of the court is arrived at [5]

Withdrawal of plea of 'not guilty'

64 An accused person is at liberty at any time to withdraw a plea of 'not guilty' and plead 'guilty' [6]

Summing-up by judge advocate

65 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 must be impartial, but the judge-advocate may, at his discretion, comment on the failure of the accused to give evidence [7]

(x) *Consideration of finding*

Finding in closed court

66. The finding must be considered in closed court,[8] the members, judge-advocate (if any), and officers under instruction alone being present The court must make a finding on every charge upon which the accused was arraigned, including any alternative charge [9]

[1] R P 84 (A), 85, for cross examination as to character, see R P 80 (D)
[2] R P 60 (C)
R P 40 (D) (ii) (*a*), 41 (B) (ii) (*a*)
R P 84 (A)
R P 86 (D)
R P 38
R P 42, 103
R P 43 (A)
R P 44 (A)

Onus of proof, reasonable doubt, corroboration.

67. At the outset of their deliberations the court must remember that it is a principle of English law 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

Generally speaking, 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 law, in others it is required by practice almost amounting to a rule of law In some instances it is desirable that corroboration should be looked for though not actually required by law or practice [1]

Extraneous considerations

68. 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 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

Proof of facts charged, special finding on the charge

69. 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 some other offence of which they may, pursuant to their powers under s 56 of the 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 His Majesty's 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 [2]

Special finding as to the particulars of a charge.

70. 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 [3]

Insubordinate, &c language

71. Military offences frequently consist in the use of threatening, insubordinate or obscene language Great care should be taken to discriminate between mere angry or irritable expressions, and words indicating a deliberate intention to be insubordinate or to resist lawful authority A soldier in an outburst of momentary irritation or excitement often uses violent language without intending to be insubordinate Again, allowance must be made for the coarse expressions which a man of inferior

[1] As to evidence generally, see Ch VI, and particularly (as to corroboration) para 45
[2] A.A 56 (3), see R P App II (1), p 753
[3] R P 44 (D) (E), see R P App II (1), p 753

education will often use as mere expletives Such expressions may be insubordinate if used to a commissioned officer but not so when used to a non-commissioned officer, or when used in one set of circumstances but not in another Language, therefore, should be construed with due regard to all surrounding circumstances, and the intention of the user of it should be carefully considered before it is held to constitute the grave offence of using threatening or insubordinate language to a superior officer

Reference to confirming authority before finding

72. 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 [1]

Voting on the finding.

73. Every member must give, by word of mouth, his opinion as to the finding which should be made on each charge separately [2] The opinions must be taken in succession, beginning with the junior in rank [3] If the votes given are equal, the accused will be deemed to be acquitted [4] 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 [5]

Acquittal.

74. A finding of acquittal, whether upon all or any one or more of the charges in a charge-sheet, must be announced upon the reopening of the court If the accused has been acquitted on all the charges in a charge-sheet and there are no further charges to be tried, he must be released [6]

A finding of acquittal is final, it cannot be revised, nor does it require confirmation by superior authority [7]

An accused person may be 'honourably acquitted,' if his honour was affected by the charges preferred [8]

The record of the proceedings in the case of an acquittal must be authenticated by the signature of the president and judge-advocate (if any) and forwarded to the officer who would have confirmed them if a conviction had resulted [9]

(xi) *Proceedings on conviction*

Evidence of character on conviction.

75 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, &c, of the accused This evidence must be given by a witness on oath, usually by the prosecutor, who will produce extracts from the regimental books relating to the accused in accordance with the Rules of Procedure and King's Regulations The accused or

[1] R P 44 (C) (G).
[2] R P 43 (B), 69 (A)
[3] R P 69 (C)
[4] A A 53 (8)
[5] R P 69 (B), see however A A 48 (8)
[6] A A 54 (3), R P 45 (A) (C)
[7] A A 54 (3)
[8] R P 44 (A)
[9] R P 45 (A) (B)

Ch V

his representative may then cross-examine this witness Verbal 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 a 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 [1]

The court will then be closed for consideration of sentence

(xii) *Award of sentence.*

Legality and form of sentence

76. The punishment awarded must be one of those allowed by the Army Act[2], in some cases a combination of punishments is permitted by the Act [3]

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 [4]

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

Discretion as to sentence

77. A court-martial has (except in the case of an officer charged under s 16 of the Army Act with scandalous conduct, and in the case of a conviction for murder under s 41 (2)) 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 44 of the Army Act, which sets out a graduated scale of the punishments which a court-martial may award

Maintenance of discipline the object

78. In deliberating on their sentence a court-martial should remember that the object of awarding punishment is the maintenance of discipline, and should bear in mind the considerations to which their attention is directed by the King's Regulations [5]

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 any individual is not more than is necessary in the interests of the force itself and for the maintenance of that discipline without which all bodies of troops become irresponsible mobs and useless for the purpose for which they exist It

---

[1] R P 46

[2] See A A 44, as to Indian officers A A 180 (2), as to warrant officers A A 182, as to N C Os A A 183 As to punishments generally, see K R 652

[3] *E g*, A A 44 (2) (3) (4) (6) (11) (12), A A 180 (2) (*e*), A A 182 (2), A A 183 3)

[4] R P 48

[5] K R. 652.

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

Other considerations, degrees of criminality, &c

79. If the accused has elected to be tried by a district court martial, instead of submitting to the jurisdiction of his commanding officer, his punishment should not, in ordinary circumstances, exceed that which the commanding officer had power to award

A non-commissioned officer should, as a rule, be more severely punished than a private soldier 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]

Premeditation and provocation

80 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 striking his superior officer than to one who had deliberately struck 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

Previous convictions

81 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

Prevalence of offences

82 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,[2] and on that account a severe punishment may properly be awarded for 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

Punishment to be just and proper.

83. Finally the court, having due regard to the foregoing considerations, must always award such punishment 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

[1] R P 71 (D)
[2] See K R 652 (footnote)

Recommendation to mercy.

84. In view of the discretion of the court[1] in the matter of awarding sentence, 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 [2] 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

A court may recommend the restoration of service forfeited under s 79 of the Army Act [3]

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 [4]

Voting on the sentence

85. 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 president has a second or casting vote An absolute majority of the opinions of the members must be secured,[5] but sentence of death may not be passed without the concurrence of at least two-thirds of the members [6]

Signature and forwarding of proceedings

86. When the sentence has been decided upon, it must be recorded upon the proceedings, which will then be 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 [7]

(xiii) *Confirmation and revision*

Conviction not valid till confirmation

87. A finding of guilty and the sentence consequent thereon are not valid until confirmed by superior authority [8] Until promulgation the accused will be in ignorance of the sentence awarded, but special provision is made whereby he is to be informed prior to confirmation if a sentence of death has been passed [9]

Confirmation of district court-martial

88. 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 [10]

[1] See para 77 above
[2] A A 53 (9), R P 49
[3] R P 49 (B)
[4] R P 95 (D)
[5] A A 53 (8), R P 69 and notes
[6] A A 48 (8) See A A 49 (2) as to field general court martial
[7] R P 50
[8] A A 54 (6)
[9] R P App II note (b) on p 762
[10] A A 54 (1) (c), 123

Confirmation of general court-martial.

89. The finding and sentence of a general court-martial are to be confirmed by His Majesty, or by an officer deriving authority to confirm either immediately or mediately from His Majesty [1]

Reservation of powers.

90 This authority, where given by the King, is given by the warrant respecting courts-martial mentioned in paras 4–8 above Any warrant, whether issued by the King or by an officer, may reserve any of the powers which would otherwise be conferred by it [2]

Warrant to confirm in United Kingdom.

91. The warrant issued to an officer in the United Kingdom excludes power to confirm a sentence of death, penal servitude, cashiering or dismissal in the case of a commissioned officer, and a sentence of death or penal servitude in the case of a soldier, which consequently require confirmation by the King

Warrant to confirm abroad

92 The warrant issued to an officer commanding abroad usually gives authority to confirm the findings and sentences of general courts-martial, and to delegate that power Where the officer is the commander-in-chief in India and sometimes where he is commanding-in-chief on active service, the power of confirmation is given without any reservation, except at the option of the officer In other cases, besides the optional reservation, the warrant reserves for confirmation by the King the finding and sentence when a commissioned officer is sentenced to death, penal servitude, cashiering or dismissal [3] An officer commanding a force on active service serving in India, or proceeding from India, usually holds his warrant from the commander-in-chief in India, but if he comes under the command of an officer holding a warrant from the King, he can only exercise the confirming power by delegation from that officer

Delegation as to district courts martial

93 Every officer empowered to convene general courts-martial has, by virtue of the Army Act, authority to confirm the findings and sentences of district courts-martial, and to delegate that power [4]

Revision of finding and sentence

94. Upon receipt of proceedings which require to be confirmed, 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, the proceedings on revision must be in closed court, and no additional evidence can be taken

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, which must not be more severe than the original sentence

If the sentence only is sent back for revision, the court may not revise the finding nor pass a more severe sentence than that originally awarded

---

[1] A A 54 (1) (*b*), 122
[2] A A 122, 123
[3] This does not apply to a native commissioned officer in a colony, the finding and sentence on whom may, in all cases, be confirmed by the general officer commanding the forces in such colony, or, at his option, reserved for confirmation by the King
[4] A A 123 (1) (*c*).

Ch. V

In practice, revision of a sentence only is seldom necessary in view of the powers of the confirming authority [1]

Non-confirmation and re trial.

95 As a conviction and sentence are not valid until confirmed,[2] a refusal of confirmation, duly entered upon the proceedings, operates to annul the whole trial In such a case the accused has not been convicted and may legally be tried again, 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 technicality It must be remembered that if an accused at the first trial has disclosed his defence, that defence at a second trial may thereby be prejudiced In cases requiring confirmation by His Majesty and where such has been withheld, a re-trial is not to be ordered unless directions by His Majesty for such re-trial have been issued, in other cases in the United Kingdom where confirmation has been withheld, re-trial should not be ordered until the Judge-Advocate-General has first been consulted

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 [3]

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 [4]

Powers of confirming authority over findings

96 The confirming authority has no power to alter or amend the finding, whether original or revised, of a court-martial After one revision,[5] 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 of a court on a plea in bar of trial or on a finding of insanity, both of which require confirmation to support their validity

Powers of confirming authority over sentences

97 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 [6]

(*b*) *remission* of the whole or part of a sentence [6]

(*c*) *commutation* of the punishment to a different form of punishment[7] lower in the scale of punishments authorised in s 44 of the Army Act [6]

(*d*) *variation* of a sentence informally expressed, or which is in excess as regards its duration of the punishment allowed by law [8]

(*e*) *suspension* of the *execution* of a sentence (which will, however, be in force during the suspension) [9]

---

[1] A A 54 (2) (3), R P 51, 52
[2] A A 54 (6), 157 and note thereto
[3] K R 665
[4] A A 54 (5), R P 51 (B) (11)
[5] A A 54 (2)
[6] A A 57 (1) (3) (4) (5) As to the principles upon which the power of mitigation, &c, is to be exercised see K R 652 661–665
[7] The punishment awarded by the court can be commuted into any two or more punishments lower in the scale which can legally be awarded and which the court could have awarded in conjunction, but see A A 57, note 6
[8] R P 55
[9] A A 57 (1).

(*f*) *suspension* of the *operation* or *commencement* of a sentence This power can only be exercised by the confirming officer if he is a "superior military authority" within the meaning of s 57A (9) of the Army Act, and only where the sentence awarded is one of penal servitude, imprisonment or detention If the confirming officer is not a "superior military authority," the sentence can only be suspended by such authority upon reference from the confirming authority [1]

Approval of sentence in India or colony.

98. Sentence of death in a colony requires not only confirmation by the military authority, but also approval by the governor of the colony (save when passed in respect of an offence committed on active service) In India such approval is only required where the offence charged is treason or murder, but both in India and a colony a sentence of penal servitude for any offence tried as a civil offence under s 41 of the Army Act requires the approval of the governor In India the approval is required to be given by the Governor-General [2]

(xiv) *Promulgation*

Promulgation of finding, &c.

99. 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 [3]

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 [4]

Setting aside conviction.

100. Even after promulgation, the authority who confirmed the finding and sentence may direct the record of the conviction to be erased and the accused to be relieved of all the 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 [5]

Substitution of valid for invalid sentence

101. If after promulgation a sentence is found to be invalid, the authority who would have had power to commute it if it had been valid (in normal circumstances the confirming officer) may pass a valid sentence which will have effect as a valid sentence passed by the court, provided that such substituted sentence is not higher in the scale of punishments than the punishment awarded by the invalid sentence, or, in the opinion of the authority awarding such substituted sentence, in excess of the invalid sentence [6]

Mitigation, &c., after confirmation

102. After confirmation the punishment awarded can only be mitigated, remitted or commuted by the King, the Army Council or the officer specified in the Army Act or prescribed by the Rules

---

[1] A A 57A
[2] A A 54 (4) (7) (8) (9)
[3] A A 53 (9), R P 53
[4] R P 53
[5] K R 665.
[6] R.P 54 (C).

Ch V

of Procedure for that purpose [1] But as this power cannot be exercised by an officer inferior to the authority who confirmed the sentence, an officer in the United Kingdom has no power to mitigate, remit or commute a sentence passed by a general court-martial in the United Kingdom except as regards sentences less than dismissal in the case of an officer and less than penal servitude in the case of a soldier In the case of a court-martial held elsewhere, he can only do so if his command is not inferior to that of the officer who confirmed the sentence, unless in either case he acts under orders from superior authority [2]

After confirmation a sentence of penal servitude, imprisonment or detention can, in appropriate cases, be suspended by a superior military authority under s 57 A of the Army Act

(xv) *Execution and operation of sentence*

Directions for execution of sentence

103 An officer who confirms a sentence is responsible for seeing that the sentence is carried into effect, and for this purpose he will, where necessary, obtain the approval required for a sentence of death as stated in para 98, and in all cases will give the necessary directions for the execution of the sentence If the sentence is approved by the King, these directions will be given by the Army Council

Execution of sentence of penal servitude

104 Sentences of penal servitude, wherever passed, are (except in the cases where para 107 applies) required to be executed in the United Kingdom Provision is made for bringing a military convict from any place out of the United Kingdom to a prison in the United Kingdom, and, when once he is there, he comes under the authority of the Secretary of State for the Home Department, but the military authorities may at any time remit any portion of the sentence [3]

Execution of sentence of imprisonment

105. Sentences of imprisonment exceeding one year, wherever passed, are also (except where para 107 applies) to be executed in the United Kingdom A prisoner has to undergo his imprisonment either in a military prison or detention barrack or in other military custody or in a civil prison, or partly in one way and partly in another He can, however, be temporarily confined in any other prison [4]

Execution of sentence of detention

106. Sentences of detention exceeding one year must (except where para 107 applies) also be executed in the United Kingdom Detention has to be undergone either in military custody or in a detention barrack, but a soldier sentenced to detention cannot be confined in a prison In the United Kingdom sentences of detention may be undergone in a branch detention barrack or barrack detention rooms, but where they exceed 168 hours, should be carried out in a detention barrack [5]

Further provision as to sentences

107. An offender sentenced to penal servitude for an offence committed on active service may be ordered to undergo part of the sentence, not exceeding two years, in a military prison [6]

[1] A A 57 (2), R P 126 (B)
[2] A A 57 (3) See also para 91 above
[3] A A 58–62, K R 676–679
[4] A A 63–67 K R 680–715, and see for the mode in which a term of imprisonment is to be awarded, K R 654, and generally as to the disposal of military convicts, military prisoners and soldiers undergoing detention K R 674–714
[5] A A 63, K R 715
[6] A A 58 (proviso)

An offender sentenced to penal servitude, imprisonment or detention, need not be brought to the United Kingdom if he belongs to a class of persons with respect to whom the Secretary of State has declared that by reason of climate, or place of birth or of enlistment, it is not beneficial to the offender to transfer him to the United Kingdom, or if he enlisted in a colony, and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the governor of that colony that they may, if so sentenced, be transferred to or kept in the colony and there undergo sentence

An offender sentenced to imprisonment or detention need not be brought to the United Kingdom if the court or other prescribed authority for special reasons otherwise orders [1]

Date from which sentence operates.

108. A sentence of penal servitude, imprisonment or detention 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 [2] 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 This would not, however, be the case if the operation of the sentence were suspended in accordance with s 57A of the Army Act

Custody of courts martial proceedings.

109. After promulgation, court-martial proceedings must be forwarded for safe custody to the office of the Judge-Advocate-General in London, or of the Judge-Advocate-General in India (if the trial was in India), or, in the case of trials of men of the Royal Marines, to the Admiralty, 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 district court-martial The proceedings of a trial which has ended in an acquittal of the accused will be forwarded to the same authority [3]

A copy of the proceedings must be supplied upon payment to any person tried by court-martial if he demands it [4]

Petition.

110 An officer or soldier who considers himself aggrieved by the finding or sentence of a court-martial may forward a petition to the confirming or any reviewing authority through the usual channels If such petition raises any question of law it should, in the United Kingdom, be referred to the Judge-Advocate-General [5]

(xvi) *Field General Courts-Martial*

Field general courts-martial how and when convened.

111. The foregoing remarks have left out of notice a court martial of an exceptional kind, termed a field general court-martial This may be convened, without any warrant giving power to convene, by

(*a*) any officer commanding a detachment or portion of troops abroad, or

(*b*) the commanding officer of any corps or portion of a corps on active service, or

(*c*) any officer in immediate command of a body of forces on active service

[1] A A 59 and note 3, A A 64 (4) and note 9
[2] A A 68 (1)
[3] R P 98
[4] A A 124, R P 99
[5] K R 666

Ch V

If troops are not on active service, the power of convening a field general court-martial is limited to cases of offences committed by persons under the command of the convening officer and of offences against the person or property of some inhabitant of, or resident in, the country where the offence is alleged to have been committed [1]

Powers and composition

112 A field general court-martial has the same power as a general court-martial, provided that the court is composed of at least three officers If, in the opinion of the convening officer, three officers are not available two officers are legally sufficient, but a court consisting of two officers cannot award a sentence in excess of imprisonment [2]

Every member of a field general court-martial should have held a commission for not less than one year[3], the president may be of any rank, but, if practicable, must not be below the rank of captain [4]

A sentence of death requires the concurrence of all the members [5]

An officer can be tried by a field general court-martial

The provost-marshal, an assistant provost-marshal, the prosecutor or a witness for the prosecution must not be appointed as a member of the court [6] In certain circumstances the convening officer may appoint himself president [7]

The convening officer may appoint a judge-advocate [8]

Rules of procedure

113 A field general court-martial is subject to exceptional rules under which the procedure is or can be of a more summary character than that of an ordinary court-martial [9] 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 field general court-martial so far as is practicable having regard to the public service [10]

---

[1] A A 49, R P 105
[2] A A 49 (1), (*b*), (*d*), R P 107 (A)
[3] R P 106 (C)
[4] A A 49 (1), (*c*)
[5] A A 49 (2)
[6] R P 106 (D)
[7] A A 49 (1), (*c*) R P 106 (B)
[8] R P 106 (E)
[9] See A A 49, R P 105–123
[10] R P 121

CHAPTER VI

EVIDENCE

Introductory

Meaning of "Rules of Evidence"

1 The rules of evidence are the rules which regulate the mode in which questions of fact may be determined for judicial purposes 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

English rules of evidence primarily applicable to trial by jury

2 In trial by jury, these two questions are answered by different persons The jury, under the guidance of the judge, find the facts The judge lays down the law It was with reference to trial by jury that the English rules of evidence were originally framed, and it is to this mode of trial that they are still primarily applicable They are, in fact, the rules in accordance with which a judge guides a jury In trials before courts-martial, the members of the courts both find the facts and lay down the law, and thus perform the functions of both jury and judge It therefore becomes their duty, when applying their minds to questions of fact, in the capacity of jurymen, to consider themselves bound by the rules which, in the case of an ordinary trial by jury, are laid down by the judge, and it is provided in s 128 of the Army Act, that the rules of evidence to be adopted in proceedings before courts-martial shall be the same as those followed in civil courts in England 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 [1]

Nature of evidence.

3. A juryman 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 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 jury, or in the case of trial by court-martial 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 [2]

---

[1] R P 103 (*f*)
[2] A A 53 (7) R P 63 (B), 119 (D)

Difference between judicial and extra judicial inquiries

4. 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), and failing that, 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, and be liable to be tested by cross-examination, and there are certain rules of law which exclude from the consideration of a jury particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration Statements or documents so excluded are said to be " not admissible as evidence," or " not evidence "[1] And 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 it falls within any one of the negative or exclusive rules of law to which reference has been made above and which are more fully dealt with in para 15 *et seq*

Reasons for excluding certain classes of evidence in judicial inquiries

5. The answer to the question why particular statements, verbal 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 jury
2 It secures fair play to the accused
3 It protects absent persons
4 It prevents waste of time

It assists the jury 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 remotely connected

Evidence in courts martial to be governed by English law

6. As stated in para 2 above, the rules of evidence to be followed by courts-martial are to be those adopted in courts of ordinary criminal jurisdiction in England [2] These rules are to be found in the ordinary text-books on the subject, such as Taylor on Evidence,

[1] The two phrases illustrate the wider and narrower sense of the term " evidence " In its narrower sense it means that kind of evidence which is recognised by courts of law
[2] A A , 127 and 128, R P 73

Roscoe's Digest of the Law of Evidence in Criminal Cases, Stephen's Digest of the Law of Evidence, Wills' Theory and Practice of the Law of Evidence, and Phipson's Law of Evidence, but as only a limited number of these rules are from the nature of the case applicable to proceedings before courts-martial, it is thought that it may be useful to state and illustrate shortly the most important of those which are so applicable

Matters with which rules of evidence are concerned

7 The principal matters with which the rules of evidence are concerned may, for the purpose of this chapter, be classified as follows —

(i) *What must be proved*
(ii) *What facts are assumed to be known* (judicial notice)
(iii) *By which side proof must be given* (burden of proof)
(iv) *What statements are admissible as evidence* (admissibility of evidence)
(v) *Admissions and confessions* (when admissions or confessions may be admitted as evidence)
(vi) *Who may give evidence* (competency of witnesses)
(vii) *Privilege of witnesses* (what questions need not be answered and what documents need not be produced)
(viii) *How evidence is to be given*

(i) *What must be proved*

Charge brought must be proved

8 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[1], 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 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 [2] The former class of cases is illustrated by the enactments providing that a person charged with felony may, in certain cases, be convicted of a misdemeanour, and that a person charged with stealing may be convicted of embezzlement, and *vice versa* The second class is illustrated by the statutory enactment that on an indictment for wounding with intent to murder, if the prosecutor fails in proving the intent to murder, the accused may be convicted of unlawful wounding, and by the provisions contained in s 56 (3), (4A), (4B), (4C), (5) of the Army Act

Substance only of charge need be proved

9. 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 [3] In

[1] See R P 11–13 and 23

[2] A A 56 (4), which allows a person charged with attempting to desert to be found guilty of desertion, cannot be placed under either of these heads of exceptions, but is in a class by itself

[3] See R P 11–13 and 23, and as to particulars of time and place in the charge, see Note as to use of Forms of Charges (18)–(22), at the beginning of Appendix I to the Rules of Procedure

Ch. VI

some cases, as in charges against a sentinel for misbehaviour on his post,[1] the time or place of the offence is material, but in many cases it is not so Where the court think that the facts proved differ materially from the facts alleged in the statement of the particulars, but prove the same charge, they are empowered by Rule of Procedure 44 (D) to record a special finding, instead of a finding of " Not guilty "[2]

(ii) *What facts are assumed to be known*

Judicial notice

10. The court are said to take judicial notice, in other words not to require evidence, of any facts which are so generally known as not to require special proof

Matters of which judicial notice will be taken

11 By Rule of Procedure 74 the court are expressly authorised to take judicial notice of all matters of notoriety, including all matters within their general military knowledge 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 [3] Again, it would not be necessary to prove that an important battle was fought on the 18th June, 1815 Among the matters of which it is the duty of all judges to take judicial notice may be mentioned —Acts of Parliament the general course of proceedings and privileges of Parliament, the date and place of the sittings of each House, but not transactions in their journals, the course of proceedings and rules of practice in the Supreme Court of Judicature, the accession of the King, the existence and title of every State and Sovereign recognised by the King, the Great Seal, the Privy Seal, the Seals of the Superior Courts of Justice, the seal of any notary-public in the British dominions, and various other seals, the extent of the territories under the dominion of the Crown, and the territorial and political divisions of the different parts of the United Kingdom, the ordinary course of nature, natural and artificial divisions of time, and the meaning of English words, and all other matters which they are directed by any statute to notice Judicial notice will also be taken of the fact that the country is at war

(iii) *By which side proof must be given*

Burden of proof

12. In considering the question of " the burden of proof " (or *onus probandi*) regard must be had to two rules *first*, that every man is presumed to be innocent until he is proved to be guilty, and, *second*, that he who alleges a fact must prove it, whether the allegation is couched in affirmative or negative terms [4] It follows that it is incumbent on the prosecution to give evidence showing the commission of the offence, and connecting the accused therewith

---

[1] See A A 6 (1) (*k*), 6 (2) (*e*)
[2] See especially note 6 to R P 44
[3] See A A 6 (3) (*c*), 8, 10 (3), 17 and 25 (1), as illustrations of matters which would be presumed to be within the general military knowledge of an officer
[4] Except when a statute provides expressly that proof of an exception, &c , must be given by the accused (see para 13)

"Shifting" of the burden

13. When the prosecution have thus proved a *prima facie* case, it is not infrequently said that the burden of proof "shifts" on to the accused This expression, however, is very misleading There are certain statutes which expressly provide that the proof of lawful excuse, or authority, or the absence of fraudulent intent, shall lie on the person charged (although by the terms in which the offence is defined they are made elements of the offence), as, for example, in the statute making it a criminal offence to be found by night in the possession of housebreaking implements without lawful excuse, "the proof whereof shall lie on such person"[1] In such cases it is correct to say that after proof of the possession is once given, the burden "shifts" in other words, a judge would direct a jury that they *ought* to convict unless the accused proves to their satisfaction that he had lawful excuse Again, the burden may be "shifted" by some rebuttable "presumption of law," *e g*, that all homicide is murder until malice, express or implied, is disproved

On the other hand, where the evidence raises a strong presumption of guilt, but such presumption is one "of fact," it is not, strictly speaking, correct to say that the burden "shifts" For instance, A is accused of stealing a purse, 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, not one jury in a thousand would acquit him, if he offered no explanation (or no reasonable explanation) And the law recognises this by saying that upon proof of "recent possession" of stolen goods a jury *may* convict if no satisfactory explanation is offered Still, in law, the burden remains on the prosecution to the end, and it would be improper to direct a jury that they *ought* to convict [2]

There are certain cases where the subject matter of some allegation made by the prosecution is peculiarly within the knowledge of the accused, *e g*, in charges for leaving a post without orders, releasing a person without authority, absence without leave, &c In such cases "the court has regard to the opportunities of knowledge with respect to the fact to be proved which may be possessed by the parties respectively"[3] Such evidence as the prosecution 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

Proof of intent

14. As stated above, on a charge of murder the law presumes malice from the act of killing, and requires the accused to disprove the malice But intention is not capable of positive proof, it can only be inferred from overt acts

As a general rule a person is presumed in law to have intended the natural and probable consequences of his act

(iv) *What statements are admissible as evidence*

Rules as to admissibility of evidence.

15. It has been remarked above that there are certain rules which exclude from consideration on judicial inquiries classes of

[1] Larceny Act, 1916, s 28 (2)
[2] *R* v *Badash* [1917] 13 Cr App Rep 17 *R* v *Brain* [1918] 13 Cr App Rep 197
[3] Steph, Dig Ev art 96, Phipson 6th Ed p 36

Ch VI — evidence which would be taken into consideration on ordinary inquiries The most important of these negative or exclusive rules may, with reference to criminal proceedings, be stated as follows —

Rule of relevancy — I Nothing shall be admitted as evidence which does not tend immediately to prove or disprove the charge

Rule of best evidence — II The evidence produced must be the best obtainable under the circumstances

To these may be added, subject to important qualifications —

Hearsay — III Hearsay is not evidence

Opinion — IV Opinion is not evidence

I Rule of relevancy.

16. The form in which the first rule is expressed shows the vagueness, and, it may be added, the necessary vagueness, of its character What classes of facts " tend immediately " to prove or disprove a charge? Or, to use a more technical expression[1], what facts are " relevant " ? To this question no direct answer can be given No precise line can be drawn between " relevant " and " irrelevant " facts All that can be done is to state certain subordinate rules illustrating the kind of line which experience has induced courts to draw with respect to particular classes of facts Common sense must supply the rest

Character not evidence for prosecution

17. In the first place the character or general reputation of the accused person is not admissible as evidence of his guilt This rule is most important to prevent the injustice which might arise from prejudice or unpopularity "Give a dog a bad name and hang him," represents the popular instinct " A man shall not be convicted because he has a bad name," says the law For this reason the prosecutor may not (before conviction) give evidence of bad character, except to rebut evidence to a contrary effect given on behalf of the accused [2]

Character admissible as evidence for defence

18. On the other hand, the accused may call witnesses to speak generally as to his character The evidence, however, of such witnesses should be confined to the reputation of the accused for good character generally or for his good character in special respects—*e g* , for honesty, bravery, &c , evidence of particular cases of praiseworthy conduct in the accused is not properly admissible This general reputation for good character may be evidenced by showing that the record of the accused in the conduct book is good, or that his superior officers have publicly approved of the way in which he has conducted himself while in the service

Effect of evidence as to character

19. 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 testimony, probably, 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 so "[3]

[1] See R P 73 (A)

[2] See R P 86 (C) The court may, after conviction, for their guidance in determining the sentence, take evidence as to the character of the accused (R P 46).

[3] *R* v *Bliss Hall* [1918], 13 Cr App Rep 125

On a charge of murder, where malice is the essence of the crime, expressions of goodwill and acts of kindness by the accused towards the deceased are always considered important evidence, as showing what was his general disposition towards the deceased, and leading to the conclusion that his intention could not have been that imputed to him On a charge of stealing, character for honesty may be entitled to great weight So also on a charge implicating the courage of a soldier, character for bravery and resolution might be of vast importance But it would be manifestly absurd on a charge of stealing, to allow character for bravery to weigh in the scale of proof, 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

Evidence of similar acts When not admissible.

20 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 offences 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 So, 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 conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct [1]

When admissible

21. The mere fact that evidence adduced tends to show the commission of other criminal acts (whether prior or subsequent to the act charged) does not render it inadmissible if it is relevant to an issue before the court, and it may be so relevant if it bears on the question whether the acts alleged to constitute the offence charged were designed or accidental, or to rebut a defence which would otherwise be open to the accused [2] In such cases the evidence of other transactions being in some way relevant to the issue is admissible, not because it tends to show that other offences have been committed by the accused, but notwithstanding that it may happen to do so [3]

It is impossible to give anything like a detailed catalogue of circumstances in which evidence of the kind may be relevant to some issue before the court, and cases upon the point are constantly arising in criminal courts A few of the leading decisions are referred to in the following paragraphs It may be laid down as a rule of prudence that such evidence should only be admitted where no serious doubt is felt as to its admissibility, for if it be held to have been wrongly admitted a resulting conviction will

---

[1] See, however, below, para 96
[2] *Makin* v *A G for New South Wales*, L R [1894] A C 57
[3] *R* v *Ollis*, L R [1900], 2 Q B 758

Ch VI

usually be quashed further, where it is intended to "rebut a defence"—*e g*, accident, absence of malice, absence of guilty knowledge, &c ,—it should not be tendered, or even "opened" to the court, until the defence in question is definitely put forward by the accused [1]

Where several offences connected, evidence of one admissible as proof of another

22. Where several offences are so connected with each other as to form part of one entire transaction, evidence of one is admissible as proof of another On a charge of stealing, for example, though it is not material in general to inquire into any other taking of goods besides that specified in the charge, yet for the purpose of ascertaining the identity of the thief, it may be very relevant and therefore admissible to show that other goods which had been upon 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 robbery So, too, on a charge of arson, it may be shown that property which had been taken out of the house at the time of the firing was afterwards found secreted in the possession of the accused

To prove design, and negative accident, &c.

23. The following are instances of cases where evidence of similar acts has been admitted to prove design, or intention, or a systematic course of conduct, or to negative ignorance or accident, &c On charges of murder or of maliciously wounding, former menaces or attacks or expressions of vindictive feeling against the same person are admissible as disproving accident Again, where women or children have been murdered, to rebut the defence of accident or to prove design, evidence has been admitted to prove that other women or children living with the accused have died under similar suspicious circumstances, or have suffered from similar symptoms [2]

On charges of embezzlement effected by falsifying accounts, evidence of other incorrect entries in the prisoner's accounts has been admitted to show that particular errors covered by the actual charge were not made accidentally [3]

On charges of "receiving," evidence may by statute[4] be given that other property stolen during the preceding 12 months was found in the possession of the accused, to prove his guilty knowledge Upon charges of uttering forged notes or counterfeit coin evidence has been admitted to prove the uttering on other occasions of notes or coins which were not genuine, or the possession thereof [5]

Where the gist of an alleged attempt is fraud, evidence of similar[6] 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 was admitted as to another cheque (dishonoured on presentation) having been given to a third person [7]

---

[1] *R* v *Bond*, L R [1906], 2 K B 389 Under R P 86 (B) the court can allow rebutting evidence to be called after the witnesses for the accused

[2] *R* v *Geering* [1849] 18 L J (M C) 215, several cases of arsenic poisoning in a house *Makin* v *A G for New South Wales* L R [1894] A C 57, previous deaths of other nurse children *R* v *Smith* [1915] 11 Cr App Rep 229, three "wives" dying in succession in the same way

[3] *R* v *Richardson* [1860] 8 Cox Crim Ca 448, *R* v *Proud* [1861] 31 L J (M C), 71

[4] Larceny Act, 1916, s 43 (1) (*a*)

[5] Archbold, Crim Ev , 27th Ed , 366

[6] But the frauds must be of a similar nature, *cf R* v *Fisher* L R [1910] 1 K B.

[7] *R* v *Ollis* L R [1900 2 Q B , 758

Again, on a charge of obtaining credit (for food and lodgings) by fraud, evidence was admitted to show that the accused had previously obtained accommodation at other houses and had left without making payment, either to prove a systematic course of conduct, or as negativing any mistake or honest motive [1]

On a charge of arson where the object suggested was to defraud an insurance company, the prosecution was allowed to prove, as negativing an accidental cause for the fire, that the two houses previously occupied by the prisoner were burnt, and that claims in respect of them had been paid by other companies [2] Similarly, to prove malice or intent, or to negative accident, where men have been charged with maliciously wounding or arson, evidence has been admitted to show that on a previous occasion the accused had shot at the same person or tried to set fire to the same object [3]

Other instances

24. On a charge of gross indecency, where the defence was mistaken identification and an *alibi*, the prosecution were allowed to prove that indecent photographs and articles suggestive of a tendency to commit such offences were found on the prisoner when arrested, and in his house The ground for this decision was that the person who committed the offence was a person of abnormal propensities, and that the evidence corroborated the identification by showing that the person picked out had those propensities [4] In a similar case where the defence was not in the nature of *alibi* it was held that evidence of possession of indecent photographs was admissible on the same principle as evidence of possession of tools in cases of housebreaking [5] On charges of incest and of carnal knowledge of young girls evidence of former similar acts between the same parties has been admitted [6]

Again, on a charge of indecent exposure, evidence of a previous act towards the same person was admitted as relevant on the question of identification and on the question of intent to insult [7]

Facts showing intention (further illustration)

25. In support of a charge of insubordinate 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 either 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

Facts showing intention (further illustration)

26. Where the charge is of a nature which makes the intention a principal issue, as where a person is charged with treason, or with a design to undermine the influence of the commanding officer, an inquiry may be allowed into the conduct and sentiments of the accused on particular occasions, but with reference only

---

[1] *R* v *Wyatt* L R [1904] 1 K B , 188 , *R* v *Walford* [1907] 71 J P , 215 See also *R* v *Bond* L R [1906] 2 K B , 389 as to "course of conduct '

[2] *R* v *Gray* [1866] 4 F & F , 1102

[3] *R* v *Dossett* [1846] 2 C & K , 306 Archbold, Crim Ev , 27th Ed , 366

[4] *R* v *Thompson* L.R [1918] A C 221

[5] *R* v *Twiss* L R [1918] 2 K B , 853

[6] *R* v *Ball* L R [1911] A C 47 , *R* v *Shellaker* L R [1914] 1 K B 414

[7] *Perkins* v *Jeffery* L R [1915] 2 K B 702

Ch VI to the overt act laid or specified in the charge, and to the transactions proved against him The intention of one particular act may be best evinced by other contemporaneous actions, but great caution is needed to prevent injustice to the accused by extending the inquiry to matters wholly unconnected with the charge It would be the height of injustice to allow such an attack upon him as might involve the necessity of his entering unprepared and at once on the defence of every action of his life

Evidence as to motive, preparation, subsequent conduct, or consequences admissible

27. Again, where there is a question whether a person committed an offence, evidence may be given of any fact supplying a motive or constituting preparation for the offence, of any subsequent conduct of the person accused, which is apparently influenced by the commission of the offence, and of any act done by him, or by his authority, in consequence of the offence Thus, evidence may be given that, after the commission of the alleged offence, 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

Acts of conspirators

28. 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, the charge against one conspirator may be supported by evidence of anything done, written, or said, not only by him, but by any other of the conspirators, in furtherance of the common purpose Thus, on the consideration of a charge of mutiny, evidence of this kind may, after such *prima facie* proof, be received against a particular one of the accused

Statements not forming part of conspiracy inadmissible

29. Statements of the class above described are admissible as evidence, if they are made in execution of the common purpose, because they form part of the transaction to which the inquiry relates [1] But a statement made by one conspirator, not in execution of the common purpose, but in narration of some event forming part of the conspiracy, falls within the rule of hearsay, to which reference will be made hereafter, and is not admissible as evidence against another conspirator, unless made in his presence [2] In consequence of this distinction, the admissibility of writings often depends on the time when they are proved to be in the possession of fellow conspirators, whether it was before or after the apprehension of the accused or whether or not the accused had joined the conspiracy at the date referred to

Acts and declarations of accused when evidence for him in conspiracy cases

30. As, in trials for conspiracies, whatever the accused may have done or said at any meeting alleged to have been held in pursuance of the conspiracy may be given in evidence against him on the part of the prosecution, so, on the other hand, any other part of his conduct at the same meeting will be allowed to be proved in his behalf for his intention and design at a particular time are best explained by a complete view of every part of his conduct at that time, and not merely from the proof of a single isolated act or declaration

[1] See below, paras 51, 52
[2] See *R* v *Blake* [1844] L R, 6 Q B, 126, Steph Dig Ev, pp 6 and 7, Wills, p 116 *et seq*

Rule as to best evidence

31. The meaning of the rule that the evidence produced must be the best obtainable in the circumstances, is this —No evidence which leads to the supposition that other and better evidence remains behind can have any weight, as the production of such inferior evidence suggests that there is some secret or sinister motive for withholding the better and more satisfactory evidence

Rule chiefly applicable to documents

32. The rule in question is more strictly enforced with regard to documentary evidence than with regard to oral evidence, and is usually applied in the form of the two well-known sub-rules (1) That a verbal account of the contents of a document can never be received if the document itself is obtainable (2) That, subject to certain exceptions, a copy of a document is not admissible when the original document can be produced In these cases the document itself is said to be primary, whilst the verbal account, or the copy, is called secondary evidence

Primary and secondary evidence

Primary evidence of document

33. Primary evidence of the contents of a document is given by producing the document for the inspection of the court

Attested and unattested documents

If the document is of a kind which is required by law to be attested, but not otherwise,[1] 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 it is proved that there is no attesting witness alive, and capable of giving evidence, 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

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

Distinction between private and public documents

34 The rule as to the inadmissibility of a copy of a document is applied much more strictly to private than to public or official documents

Secondary evidence of private documents, when admissible

35. Secondary evidence may be given of the contents of a private document in the following cases —

(*a*) Where the original is shown or appears to be in the possession of the adverse party, and he, after having been served with reasonable notice to produce it, does not do so

(*b*) Where the original is shown or appears to be in the possession or power of a stranger not legally bound to produce it, and he, after having been served with a writ of *subpœna duces tecum*, or after having been sworn as a witness and asked for the document, and having admitted that it is in court, refuses to produce it

(*c*) Where it is shown that proper search has been made for the original, and there is reason for believing that it is destroyed or lost.

---

[1] Evidence Act, 1865, ss 1, 7.

Ch VI

(*d*) Where the original is of such a nature as not to be easily movable,[1] or is in a country from which it is not permitted to be removed

(*e*) Where the original is a document for the proof of which special provision is made by any Act of Parliament, or any law in force for the time being [2]

(*f*) Where the document is an entry in a banker's book, provable according to the special provisions of the Bankers' Books Evidence Act, 1879

Secondary evidence of private documents, how given

Secondary evidence of a private document is usually given either by producing a copy and calling a witness who can prove the copy to be correct, or when there is no copy obtainable, by calling a witness who has seen the document, and can give an account of its contents

Letters proof of receipt

36. Where there is no relevant statutory provision applicable to the particular case[3] a letter proved to have been properly addressed, stamped and posted (and not returned by the P O), is presumed to have been delivered in due course The presumption may be rebutted, and if receipt is denied, it is for the court to decide whether to accept the denial

Public documents, what deemed to be

37. No general definition of "public documents" is possible, but the rules of evidence applicable to public documents are expressly applied by statute to many classes of documents

Primary and secondary evidence of public documents

Primary evidence of any public document may be given by producing the document from proper custody, and by a witness identifying it as being what it professes to be Public documents may always be proved by secondary evidence, but the particular kind of secondary evidence required is in many cases defined by statute Where a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom is admissible as proof of its contents, if it is proved to be an examined copy or extract, or purports to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted [4]

Certified copies

38. It is provided by many statutes that various certificates, official and public documents, documents and proceedings of corporations and of joint stock and other companies, and certified copies of documents, bye-laws, entries in registers and other books, shall be receivable as evidence of certain particulars in courts of justice, if they are authenticated in the manner prescribed by the statutes Whenever, by virtue of any such provision, any such certificate or certified copy is receivable as proof of any particular in any court of justice, it is admissible as evidence, if it purports to be authenticated in the manner prescribed by law, without calling any witness to prove any stamp, seal, or signature required for its authentication, or to prove the official character of the person who appears to have signed it [5]

---

[1] *E g*, a placard posted on a wall, or a tombstone

[2] These are practically treated on the same footing as public documents See A A 168

[3] *E g*, Reserve Forces Act, 1882, s 24 (2)

[4] Evidence Act, 1851, s 14, Law of Property Act, 1922, s 144

[5] Evidence Act, 1845, preamble, and s 1, and Steph, Dig Ev, art 79 A certificate, &c, so receivable is merely handed in to the court by the party producing it

Provisions of Documentary Evidence Act as to certain documents

39 Under s 2 of the Documentary Evidence Act, 1868, *prima facie* evidence of any proclamation, order, or regulation issued by His Majesty, or by the Privy Council, also of any proclamation, order, or regulation issued by or under the authority of any such department of the Government or officer as is mentioned in the first column of the schedule to the Act,[1] may be given in all courts of justice, and in all legal proceedings, whatsoever, in all or any of the following modes —(1) By the production of a copy of the *Gazette*, purporting to contain the proclamation, order, or regulation (2) By the production of a copy of the proclamation, order, or regulation purporting to be printed by the Government printer,[2] or, where the question arises in a court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of that colony or possession (3) By the production, in the case of any proclamation, order, or regulation issued (i) by His Majesty, or the Privy Council, or (ii) by any of the departments specified in the schedule, of a copy or extract purporting to be certified as true either (*a*) by the clerk or any Lord of the Privy Council, or (*b*) by the proper certifying officer specified in the second column of the schedule

Any copy or extract made in pursuance of the Act may be in print or in writing, or partly in print and partly in writing, and no proof is required of the handwriting or official position of any person certifying in pursuance of the Act, to the truth of any copy of or extract from any proclamation, order, or regulation

Special provisions of Army Act as to documents provable by copies

40 Special provision is made by the Army Act for proving, by means of copies, attestation papers on enlistment, King's Regulations, Royal Warrants, and rules, warrants, and orders made in pursuance of the Act, records in regimental books, and proceedings of courts-martial [3]

Rules as to best evidence not applicable to distinction between direct and indirect evidence

41. In connection with the rule as to best evidence, reference may be made to the distinction between direct and indirect evidence By direct evidence is meant the statement of a person who saw, or otherwise observed with his senses, the fact in question By indirect, or, as it is often called, circumstantial evidence, is meant evidence of facts, from which the fact in question may be inferred or presumed The rule as to best evidence has no application to the difference between direct and indirect evidence Direct evidence is not better than indirect or circumstantial evidence, the difference between them being one not of *degree* but of *kind*

Nature and strength of circumstantial evidence

42 From the circumstances in which crimes are ordinarily committed, it follows that direct evidence of their commission is not always obtainable, 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

[1] This schedule has by the Documentary Evidence Act, 1895, and subsequent enactments been extended so as to include practically all Government departments

[2] Under the Documentary Evidence Act, 1882, this expression includes His Majesty's Stationery Office

[3] A A, 103, 165.

Ch VI —

suggest is 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 [1]

Illustrations of difference between good and bad circumstantial evidence

43. The writer of a series of papers on the value and danger of circumstantial evidence, which appeared in 1879 in a legal paper[2], states one of the leading rules with respect to this class of evidence as follows —" *The facts on which it is sought to found the inference " of guilt must be visibly and evidently connected with the crime,*"— and illustrates the rule by contrasting two groups of facts, of which the first would not, whilst the second would, constitute convincing circumstantial evidence of a crime The characteristic difference between good and bad circumstantial evidence cannot be better explained than by quoting the passage which contains this illustration —

" In one of the works on evidence there is an admirable example " of a series of circumstances such as are intended to be excluded by " this rule, which we take the liberty of epitomising —

" 1 The accused was a man of bad general character

" 2 He belonged to a nation characteristically regardless of " human life

" 3 He narrowly escaped conviction on a charge of murder some " years before

" 4 There is a strong ill-feeling between his nation and that of " the deceased

" 5 He was heard to make exclamations in his sleep indicating " a consciousness of having committed some terrible deed

" 6 The deceased was robbed, and the accused is proved to be " notoriously greedy about money

" It is scarcely necessary to say that, if a series of such circum- " stances were indefinitely accumulated, it would fail to produce " in a sane mind a conviction that the accused was guilty There " is no visible *ligamen* between these facts and the facts sought to " be established that the accused committed the murder, as all the " facts are perfectly consistent with his innocence Contrast such " circumstances with such as ordinarily present themselves in " strong cases of circumstantial evidence Let us take, for " instance, the following series of facts —

" 1 The deceased was found apparently murdered by a pistol " bullet, which penetrated the skull

" 2 On the ground near the body was found a small fragment " of a newspaper, which smelled strongly of burnt powder, and led " to the supposition that it had been used in separating the powder " from the ball, and on the accused being arrested there was " found another piece of newspaper, which corresponded minutely " at the point where it was torn with that found near the body of " the deceased

" 3 In a pond near the scene of the murder was found a pistol, " which had evidently been only recently thrown into the water, " and into which the bullet fitted

[1] *Hodge's case* [1838], 2 Lewin, C C , 227
[2] Law Journal, Oct 11, 1879

" 4 The pistol was proved to have belonged to a gentleman in " the neighbourhood, but it also appeared that the prisoner was " a servant in his employment, and that the pistol was missed the " day before the murder from among several fowling pieces, " pistols, powder flasks, and other articles connected with the " paraphernalia of the sportsman which were arranged in a small " room in the gentleman's house devoted to the purposes of sport " It was a part of the prisoner's duty to keep this room and its " contents in order

" 5 When asked whether he ever saw the pistol, he denied it

" On the prisoner were found two bank notes, which were proved " to have been given to the deceased in part payment for a horse " sold by him to a neighbour

" The first of these facts at once suggests suspicion against the " accused As the second and subsequent circumstances are " disclosed, the suspicion becomes intensified, and, as the " narrative goes on, the strong apparent connection between the " facts and the crime rapidly culminates, until, even before the " last of them is reached, the climax of moral certainty is attained, " and the mind is forced to accept the conclusion that the accused " was the perpetrator of the crime "

Best evidence does not mean strongest possible assurance

44. The rule which requires production of the best obtainable evidence does not require the strongest possible assurance, in other words, does not require the fullest proof of which the case will admit, nor the repetition of evidence beyond that which is sufficient to establish the fact For instance, it is not necessary, in order to prove handwriting, to call the writer himself, nor, if a whole regiment should be present at some overt act of mutiny or insubordination, as the striking of a commanding officer in front of his regiment, would the law require the production of all the persons present, for if one witness only were produced, and if, from his situation at the moment of the occurrence, he had as favourable an opportunity of observing what took place as any person present, his evidence would be complete, and not inferior in kind to any that could be produced

Number of witnesses requisite.

45. On the same principle the law admits as sufficient the uncorroborated testimony of one credible witness, subject to statutory exceptions in the case, *e g*, of treason, procuration of women and girls,[1] and in certain cases where a child of tender years is allowed to give evidence without being sworn,[2] and to the further exception that in a trial for perjury one witness alone is not sufficient, without some material and independent corroborative evidence in proof of the statement as to which the perjury is charged [3] Apart from any such statutory requirement the evidence even of an accomplice is in strict law sufficient, if the jury consider him credible, but it is now held to be the duty of the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated evidence of an accomplice and, in his discretion, advise them not to do so, though at the same time pointing out that it is within their legal province to convict upon it if they choose In a trial by court-martial, where

[1] Criminal Law Amendment Act, 1885, ss 2 and 3
[2] Children Act, 1908, s 30 as amended by the Criminal Justice Administration Act, 1914, s 28 (2) See also para 90 *post*
[3] Perjury Act, 1911, s 13

Ch VI

the court performs the functions of both judge and jury, they should very carefully consider the danger before convicting on the uncorroborated testimony of an accomplice, and, if there is a judge-advocate, it is essential that he should direct their attention to the point Except where a statute makes provision as to the nature of the evidence necessary, 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 [1]

III Rule as to hearsay

46. The rule as to best evidence says that second-best evidence shall not be produced if better evidence can be found The rule as to hearsay goes a step further, and says that certain classes of second-best evidence shall not be produced in any circumstances The term " hearsay " is primarily applicable to what a witness has heard another person say with respect to facts in dispute But it is extended to all statements, whether reduced to writing or not, which are brought before the court, not by the authors of the statements, but by persons to whose knowledge the statements have been brought The reasons for excluding such statements are, first, that they are not made on oath, and, secondly, that the person to be affected by the statement has no opportunity of cross-examining its author The rule has been often criticised on the ground that it sometimes excludes the only means of proof obtainable in the circumstances, but its utility in excluding irresponsible proof is obvious [2] It is subject to various limitations or exceptions, the most important of which will be noticed below

Its terms and exceptions

47. The rule as to hearsay in its narrower sense may be stated as follows —" No statements with reference to a person charged with an offence, relative to the charge, made in his absence can be received in evidence against him " This rule is subject to several exceptions first, the admissibility of so-called " dying declarations ", secondly, the admissibility of statements forming part of what is known by the name of the " *res gestæ* "—that is to say, of the fact, or set of facts, or transaction forming the subject of judicial inquiry, thirdly, the admissibility of statements made by a deceased person against his pecuniary or proprietary interest, and, fourthly, the admissibility of statements made by a deceased person in the strict course of duty

Statement made in presence of accused

48. It will be observed that the rule does not exclude evidence as to statements made in the presence of the accused A statement made in a man's presence and hearing accusing him expressly or impliedly of having committed a crime is evidence against him of the truth of the allegation or suggestion so far, but only so far, as by words or demeanour (including his silence if the occasion calls for a reply[3]) he accepts the statement so as to make it his own In strict law the prosecution may put such statement before the jury, together with evidence of the accused's behaviour on hearing it—even if such behaviour was a plain denial—and

---

[1] *R* v *Baskerville* L R [1916] 2 K B 658

[2] " Hearsay evidence, as a general rule, is not admissible, and it is not admissible because one knows to what extent people will be and are disposed to speak untruly, even without any motive whatever, and one knows what little importance can be attached to any rumour or anything stated as a mere hearsay "—James, L J, in *Polini* v *Gray* [1879], L R, 12 Ch Div at p 425

[3] *R* v *Norton* L R [1910], 2 K B 496, *R* v *Feigenbaum* L R. [1919], 1 K B 431

leave them to judge whether he accepted it, but in practice, judges do not allow such a statement to be proved unless they see some evidence that the accused did accept it In a trial by court-martial, if the accused when he heard the statement made merely denied it, or said or did nothing which could reasonably be construed as an acceptance of it, the court should reject the whole of the statement, and pay no attention to it [1]

Dying declarations

49. The first of the exceptions above referred to is that relating to dying declarations, which are admissible only in trials for murder or manslaughter In such trials a declaration made by the person killed as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is admissible as evidence, if it is proved that the declarant, at the time of making the declaration, had abandoned all hope of living and was expecting to die within a very short time though not necessarily immediately "Dying declarations ought to be admitted with scrupulous, I had almost said with superstitious, care They have not necessarily the sanction of an oath, they are made in the absence of the prisoner, the person making them is not subject to cross-examination, and is in no peril of prosecution for perjury There is also great danger of omissions and of misrepresentations, both by the declarant and the witness To make a dying declaration admissible, there must be an expectation of impending and almost immediate death from the causes then operating The authorities show that there must be no hope whatever" [2]

Dying declarations are only admissible in evidence where the death of the deceased is the subject of the charge and the cause of the death is the subject of the dying declaration

Dying declarations, illustration of rule.

50. The circumstances in which, at trials for murder, statements by the person alleged to have been murdered as to the cause of his death are and are not admissible as evidence against the accused, may be illustrated by the following cases —

(*a*) At the time of making the statement the deceased had no hope of recovery, though his doctor had, and he lived ten days after making the statement The statement was admitted as evidence [3]

(*b*) The deceased, at the time of making the statement, which was written down, said something which was taken down thus "I make the above statement with the fear of death before me, and with no hope of recovery" On the statement being read over, she corrected this to "with no hope *at present* of my recovery" She died thirteen hours afterwards The statement was not admitted as evidence [2]

Statement forming part of *res gestæ*.

51. Passing to the second of the exceptions referred to in para 47 above, the rule is, that where a statement is part of the *res gestæ* or transaction constituting the offence, then, whether it is or is not made in the presence of the accused, it is admissible

[1] *R* v *Christie* L R [1914], A C 545 See also para 83 *post* as to a confession made by an accomplice in the presence of the accused, and also para 78 as to the duty of police officers in such cases

[2] *R* v *Jenkins* [1869], L R 1 C C R at p 193, *per* Byles, J.

[3] *R* v *Mosley* [1825], 1 Moo. C C 97

Ch. VI

as evidence against him Words uttered during the continuance of the main action, whether by the active or by the passive party, though they cannot amount to acts for which the accused can be held responsible, yet may so qualify or explain the acts which they accompany, that they become essential for the due appreciation of them Even where the accused is no longer present, if the words are the immediate and natural effect and consequence of continuing action on his part, they may well be considered as part of the transaction though uttered out of his hearing

Principle on which admitted

52 There is no difficulty in understanding the general principle on which such statements are admitted, but there is sometimes great practical difficulty in determining how long the "transaction" ought to be considered as continuing, and what ought to be treated as "the immediate and natural effect of continuing action" Speaking generally a statement cannot be admissible in evidence as part of the *res gestæ* unless it was made while the offence was being committed or so immediately thereafter that the person making it had no time to devise anything for his own advantage [1]

Special rule in case of trials for rape and kindred offences

53. In trials for rape, and kindred offences against women and girls, evidence is allowed to be given of the fact that, shortly after the commission of the offence, the person against whom the offence was committed made a complaint about it, and of the particular terms of the complaint so far as they relate to the charge This is admissible, not as being evidence of the facts complained of, but for the purpose of showing that the conduct of the person against whom the offence was committed was consistent with the story told by her in the witness box [2]

The rule as to the admissibility in evidence of such a complaint and of its terms has been held to apply where the charge was one of indecent offences with male persons [3]

Statements as to bodily or mental feeling admissible

54. When it is intended to prove the state of health of a person at a particular time, evidence may be given of expressions indicative of that state used by him at that time [4] Thus, in the Rugeley poisoning case, statements made by the deceased before his illness as to his state of health, and during his illness as to his symptoms, were admitted as evidence against the accused

Declaration of deceased person against interest

55. As regards the third exception referred to in para 47, a declaration, written or oral, made by a person since deceased against his pecuniary or proprietary interest is admissible [5] If it is admitted, the whole of the statement of which it forms part becomes admissible The expressions "pecuniary or proprietary" must be strictly construed, and a declaration is not "against interest" within the meaning of the rule because, *e g*, it would have tended to show that he had committed a crime

Statements made in course of business by person since deceased.

56. As regards the fourth exception, a statement, written or oral, or an entry, which it is the duty of a person to make in the ordinary course of his business or professional employment, is

[1] *R* v *Christie* L R [1914] A C 545 *Thompson* v *Trevanion* [1693], Skin 402
[2] *R* v *Lillyman* L R [1896], 2 Q B 167, *R* v *Osborne* L R [1905], 1 K B 551
[3] *R* v *Camellers* L R [1922], 2 K B 122, *R* v *Wannell* [1922], 17 Cr App Rep 53.
[4] Steph, Dig Ev, art 11
[5] Steph, Dig Ev, art 28

admissible as evidence after his death, provided it is made contemporaneously with the act to which it relates But it is only admissible to prove those facts which it was the duty of the person making the statement or entry to include in it, and of which he had personal knowledge Thus, where on a trial for murder it appeared that the deceased, a constable, in the course of his duty and shortly before his death, had made a verbal statement to his superior officer as to where he was going, and what he was going to do, it was held that this statement, which was to the effect that the deceased was going to watch the accused, was admissible [1]

Admissibility of deposition

57. It may sometimes happen that a material witness, who has given evidence at the preliminary inquiry, cannot attend at the trial In proceedings before a civil court for indictable offences, provision is made for such cases by a statute[2], which enacts that the deposition may be read as evidence on proof that the witness is dead or insane or so ill as not to be able to travel or is kept out of the way by means of the procurement of the accused or on his behalf, that the deposition was taken in the presence of the accused person, that the accused then had a full opportunity of cross-examining the deponent, and further, that the deposition purports to be signed by the justice by or before whom it purports to be taken

Summary of evidence, how far admissible

58. In the case, however, of trial by court-martial, there is no similar provision making the summary of evidence taken before a commanding officer, when an accused person is remanded for trial, admissible in evidence in the same circumstances as depositions taken before a magistrate when a prisoner is committed for trial by a jury Accordingly, the summary, except so far as it contains admissions by the accused himself, made after proper caution,[3] cannot be admitted as evidence of the facts recorded in it unless the accused has pleaded guilty [4] 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 the *verbatim* signed statement of the witness, may be given in evidence as confirmatory of the statement having been made

Application of hearsay rule to documentary evidence

59 The rule excluding hearsay evidence is, as has been seen, applicable to written or documentary, as well as to oral evidence The statement of a person who is not called as a witness is none the less "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, either under the general law, or under express statutory provisions, admissible as evidence of the matters to which they relate

Recitals of public facts or statements, proclamations &c

60. Thus, by the general law, a statement of any fact of a public nature, if made in any recital in a public Act of Parliament, or in any Royal proclamation, or speech in opening Parliament, or in

[1] See Steph, Dig Ev, art 27
[2] Criminal Justice Act, 1925, s 13 (3).
[3] See R P. 4 (E).
[4] See R P 37

Ch VI — any address to the Crown of either House of Parliament, is admissible as evidence of that fact

Entry in public record made in performance of duty

61. So also an entry in any record, official book, or register, whether British or foreign, made at the proper time for public information or reference by any person in the discharge of any duty imposed on him by law, is admissible as evidence of the facts to which it relates

Special provisions of Army Act

62. And, under the special provisions of the Army Act, attestation papers, letters, returns, and documents respecting service, army lists, gazettes, warrants, and orders made in pursuance of the Act, records in regimental books, descriptive returns, and certificates of conviction or acquittal, are made evidence of the facts stated by them [1]

IV Rule as to opinion

63. 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 absence of the accused 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

Exception in case of experts

64 The chief exception to this rule relates to the evidence of experts The opinion of an expert, that is to say, a person specially skilled in any science or art, is admissible as evidence on any point within the range of his special knowledge

Medical experts

65. 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 lunacy is set up as a defence, an expert may be asked whether, in his opinion, the symptoms proved to be exhibited by the alleged lunatic 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 [2]

Experts in military science

66. 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 it may be perfectly proper to put questions involving opinion to an engineer as to the progress of a

---

[1] See A A 163–165 Note the distinction between the provision making the copy evidence of the original, as an exception from the rule as to best evidence (*e g*, s 163 (1) (*c*), as to copies of the King's Regulations, Royal Warrants, &c), and the provisions which make the document, as an exception from the rule as to hearsay, evidence of the facts to which it relates, also the distinction between a document being evidence of certain facts and (as a letter or record) evidence of the statement of those facts by some person

The statements in the text, particularly in para 59, as to the admission of documents, do not exclude the admission in evidence of documents which are part of the *res gestæ* If, *e g*, a person is charged with embezzlement, the books which it was his duty to keep are admissible in evidence as part of the transaction under investigation, and the entries made by him or under his authority in those books will be evidence against him, as part of his conduct in relation to that transaction, and as raising presumptions which appear to require explanation

[2] See Steph, Dig Ev, art 49, and cases there cited as illustrations

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 presumably to be known to each member of a court-martial

Experts in handwriting

67. With respect to handwriting, it is specially provided by statute[1] that comparison of a disputed handwriting with any writing, proved to the satisfaction of the court to be genuine, is permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute The comparison may be made either by a person acquainted with the handwriting, or by an expert in handwriting,[2] or by the court itself A witness may be required to read writing or to write in the presence of the court But it must be borne in mind that writing made for the special 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 [3]

Rule excluding opinion does not exclude evidence as to belief

68. 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

Opinion as to conduct, how far admissible

69. 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, being in possession of facts, are the only proper judges of their tendency If the witness is asked a question inviting him to 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

Refreshing memory

70. 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

---

[1] Criminal Procedure Act, 1865, s 8

[2] Provided the witness is *in fact* skilled in the comparison of handwriting, it is immaterial that he is not a professional expert and immaterial how he acquired his skill *R* v *Silverlock* L R [1894], 2 Q B 766

[3] *R.* v *Richard* [1918], 13 Cr App Rep 140

Ch. VI

himself 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 any other person, and read by the witness within the time aforesaid if, when he read it, he knew it to be correct Any writing so referred to 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

Notes referred to not evidence of themselves

71. But a witness who refreshes his memory by reference to a 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 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

(v) *Admissions and confessions*

Rule as to admissions.

72. In civil actions for damages, &c , admissions are often made before trial by both parties to save the expense of calling witnesses as to facts not really in dispute This practice is not permissible in criminal cases , but it would seem that at the actual trial the accused or his counsel can admit facts without formal proof, at any rate in the case of offences not amounting to felonies [1] It is the practice of courts-martial to receive admissions so made in 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

Of course the rule that criminal cases are not to be tried upon admissions designedly made out of court does not preclude the prosecutor from proving statements made by the accused either verbally or in writing, which either amount to confessions (see succeeding paragraphs) or form part of the *res gestæ* or transaction alleged against him, such as, for example, entries in his account books, &c

Meaning of "confession"

73. In the following paragraphs the word " confession " means not merely a full confession of a person's guilt, but any statement, verbal or written (including the giving of a specimen of his handwriting), which may tend to show that he is guilty

Confession must be voluntary,

74. The rule as to confessions is that before a confession can be received in evidence, it must be proved affirmatively by the prosecution that it was free and voluntary

[1] *R* v *Thornhill* [1838] 8 C. & P 575.

Confession when not deemed voluntary

75. For this purpose a confession is deemed not to be free and voluntary if it appears to have been caused by any inducement, threat, or promise proceeding from a magistrate[1] or other person in authority or concerned in the charge (*e g*, the prosecutor or the person having the custody of the accused), and having reference to the charge against the accused person, whether addressed to him directly or brought to his knowledge indirectly, and if, in the opinion of the court, the inducement, threat, or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage, or avoid some evil in reference to the proceedings against him [2] Thus, on the trial of A for murdering B, a handbill issued by the Secretary of State, promising a reward and pardon to any accomplice who would confess, was brought to the knowledge of A, who, under the influence of a hope of pardon, made a confession It was held that the confession was not voluntary [3]

Confession when deemed voluntary

76 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 being charged with the murder of B, the chaplain of the gaol read the Commination Service to A, and exhorted him on religious grounds to confess his sins A in consequence made a confession, and it was held that this confession was voluntary and admissible in evidence, inasmuch as the inducement amounted to a mere moral exhortation and did not refer to any temporal benefit to be derived by A [4]

Confession made after removal of impression produced by threat, &c, deemed voluntary

77. 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 take away its voluntary character Thus, A is accused of the murder of B, and C, a magistrate, tries to induce A to confess by promising to try to get him a pardon if he does so The Secretary of State informs C that no pardon can be granted, and this is communicated to A After this A makes a statement This is a voluntary confession [5]

Question by, and statement to, police officers

78. There are numerous reported cases in which the admissibility of confessions made to, or elicited by, police officers has been discussed, and it cannot be said that the law upon the point is even yet absolutely settled

The Judges of the King's Bench Division have issued the following rules for the guidance of the police, and they are of course equally applicable to persons concerned with the arrest or custody of military offenders —

"(1) When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting

[1] A C O investigating a charge, or an officer taking a summary of evidence, may be regarded as in the same position for this purpose as a magistrate

[2] "No statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale"—*Ibrahim* v *R* L R [1914], A C 599

[3] *R* v *Boswell* [1842] Car & Marsh, 584, cited as an illustration by Steph, Dig Ev, art 22, *R* v *Thompson* L R [1893], 2 Q B 12

[4] *R* v *Gilham* [1828], 1 Moo C C, 186, cited by Steph, Dig Ev, art 22

[5] Steph, Dig Ev, art 22, *R* v *Clewes* [1830], 4 C. & P, 221

Ch VI.

questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained

(2) Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be

(3) Persons in custody should not be questioned without the usual caution being first administered

(4) If the prisoner wishes to volunteer any statement, the usual caution should be administered

It is desirable that the last two words of the usual caution should be omitted, and that the caution should end with the words " be given in evidence "

(5) The caution to be administered to a prisoner, when he is *formally* charged, should therefore be in the following words " Do you wish to say anything in answer to the charge ? 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 "

Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge

(6) A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible

(7) A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point

(8) When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read these statements to the other persons charged, but each of such persons should be furnished by the police with a copy of such statements and nothing should be said or done by the police to invite a reply If the person charged desires to make a statement in reply, the usual caution should be administered

(9) Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish "

Provided that such rules are observed there can be no question as to the admissibility of the statement. Whether non-observance

of them renders a statement inadmissible is perhaps doubtful, but the better view appears to be that a statement is in law admissible notwithstanding that it was obtained by a person in authority, and notwithstanding non-observance of the rules, if the prosecution satisfy the court that it was not in fact induced by any fear of prejudice or hope of advantage as explained in the preceding paragraphs

Statements obtained unfairly

79. At the same time it is contrary to the elementary principles of English law to endeavour to trap a man into incriminating himself Though a confession obtained by fraud or deception, or under a promise of secrecy, or from a drunken man, or by unfair questioning, may be legally admissible, yet the person obtaining it will expose himself to judicial censure, and the judge may even consider himself justified in excluding the statement, if the confession was an unguarded answer made in circumstances that rendered it unreliable, or for some other reason unfair to be allowed in evidence against the prisoner

Facts discovered through involuntary confession admissible

80. Facts discovered in consequence of a confession improperly obtained, and so much of the confession as distinctly relates to those facts may be proved Thus, A, accused of burglary, makes a confession to a policeman under an inducement which prevents it from being voluntary 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 [1]

Whole of confession must be given

81. If a confession is given in evidence, the whole of it (subject as stated in para 80) must be given, and not merely the parts disadvantageous to the accused person

Confession made on oath or in previous proceedings

82. A confession may be used as such against the person who makes it though it was given on oath, and though the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be used, and though the witness may have refused to answer the questions put to him, but if after refusing to answer such questions, the witness is improperly compelled to answer, his answers are not voluntary [2] Thus A was charged with maliciously wounding B Before the magistrates A had appeared as a witness for C, who was charged with the same offence A's deposition was allowed to be used against him on his own trial [3]

Statements made by a man when charged before his commanding officer, or at the taking of a summary of evidence are admissible before a court-martial, if he was cautioned (see R P 4 (E)), but the proceedings of a court of inquiry, or any confession or statement made at a court of inquiry, cannot be used as evidence against an officer or soldier before a court-martial, unless the court-martial is one for the trial of an officer or soldier for wilfully giving false evidence before the court of inquiry [4]

Against whom confession admissible.

83. The general rule is that a confession is not admissible as evidence against any one except the person who makes it

---

[1] Steph., Dig Ev, art 22, *R* v *Gould* [1840], 9 C & P, 364
[2] Steph, Dig Ev, art 23
[3] *R* v *Chidley and Cummins* [1860], 8 Cox, Crim Ca, 365
[4] R.P 124 (L) The privilege under this R P does not extend to civil proceedings, see note 3 thereto

Ch VI

Rule (8) in para 78 shows how such a statement may properly be brought to the notice of another person implicated in the offence who does not hear it made

Where one prisoner in the hearing of another makes a confession implicating that other, it would appear to be admissible against that other to exactly the same extent as a statement made in his hearing by any other person—as to which see para 48 *ante*

(vi) *Who may give evidence*

General rule as to competency of witnesses

84. As a general rule, every person is a competent witness Formerly persons were disqualified by crime or interest, or by being parties to the proceedings, but these disqualifications have now been removed by statute,[1] and the circumstances which formerly created them do not affect the competency, though they may often affect the credibility, of a witness

Competency of persons charged

85. Under the general law as it stood before the Criminal Evidence Act, 1898, came into force, a person charged with an offence was not competent to give evidence on his own behalf, but many exceptions had been made to this rule by legislation, and the rule itself was finally abolished by that Act Under the present law a person charged is a competent witness for the defence if he wishes to give evidence

So, too, under the law as it stood before 1898, persons jointly charged and being tried together were not competent to give evidence either for or against each other Under the present law a person charged jointly with another is a competent witness for the defence, but he cannot be called against his will by his co-defendant If, therefore, an accused thinks that the evidence of a person whom it is proposed to try with him is material to his defence, but will not be given voluntarily, he should claim a separate trial [2]

An accused person who gives evidence for the defence may be cross-examined by his co-defendants, and also by the prosecution with a view to establishing either his own guilt or that of his co-defendants [3]

If the prosecution find it necessary to call one suspected 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 He can also be called if and when he has himself pleaded guilty

Evidence of accomplices

86. The evidence of an accomplice is admissible against his principal, and *vice versa*, subject, if they are tried together, to what has been stated in the preceding paragraph As has been stated in para 45 the evidence of an accomplice should always be received with great caution

[1] Evidence Acts, 1843 and 1851, Criminal Evidence Act, 1898 The provisions of the last-mentioned Act were, in accordance with s 6 of the Act, applied to courts-martial by R P 73 (B)

[2] See R P 16

[3] *R* v *Macdonell or Macdonald* [1909], 2 Cr App Rep 322, *R* v *Hadwen* L R [1902] 1 K B 882, *R* v *Paul* L R [1920], 2 K B, 183

Competency of wife

87. The wife of a person charged is now a competent witness, but, except in certain special cases[1]—

(i) She can only give evidence for the defence, and,

(ii) She can only give evidence if her husband applies that she should do so

These restrictions apply only to lawful wives

Incompetency from idiocy, &c

88. A witness is incompetent if, in the opinion of the court, he does not appear to have sufficient discretion Thus an idiot cannot give evidence, but if a lunatic is tendered as a witness, he may be sworn and give evidence, provided that the court consider that he is of competent understanding and is aware of the nature and obligation of an oath [2]

Deaf and dumb persons not incompetent

89. A witness unable to speak or hear is not incompetent, but may give his evidence by writing or by signs, or in any other manner in which he can make it intelligible, but such writing must be written and such signs made in open court Evidence so given is deemed to be oral evidence [2]

Evidence not intelligible to an accused must be translated to him if he is not defended by counsel if he is so defended, then, with the approval of the judge, this requirement may be waived

Children's evidence

90 An infant may be sworn as a witness in any criminal case provided that such infant understands the nature and moral obligation of an oath But where a child of tender years who is put forward as a witness does not, in the opinion of the court, understand the nature of an oath, his or her evidence may be received though not given on oath, if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, such evidence, however, requires to be corroborated (see para 45 *ante*)[3]

Religious belief immaterial as to competency.

91. The particular form of the religious belief of a witness, or his want of religious belief, does not affect his competency If he takes an oath he may take it with such ceremonies and in such manner as makes it binding on his conscience [4] If he objects to take an oath on the ground that he has no religious belief, or that taking an oath is contrary to his religious belief, he may make a solemn affirmation or declaration [5]

Competency of member of court to give evidence

92. A member of a court-martial is a competent witness in favour of the accused, and might, as such, be sworn to give evidence at any stage of the proceedings, but the Army Act and Rules of Procedure 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 [6]

---

[1] The special cases in which a wife can be called as a witness either for the prosecution or for the defence, and without the consent of the person charged, are where the accused is charged with an offence under the following enactments —ss 48–55 of the Offences against the Person Act, 1861, ss 12 and 16 of the Married Women's Property Act, 1882, the Criminal Law Amendment Act, 1885, the Vagrancy Act, 1898, the Immoral Traffic (Scotland) Act, 1902, the Children Act, 1908 (Part II), the Criminal Law Amendment Act, 1912, s 7, the Vagrancy Act, 1824, s 3, the Punishment of Incest Act, 1908, Mental Deficiency Act, 1913, s 56, Criminal Justice Administration Act, 1914, s 28 The same rule applies in cases in which the wife is by common law a competent witness against her husband, *i e*, where the proceeding is against the husband for bodily injury or violence inflicted on his wife

[2] Steph, Dig Ev, art 107

[3] Children Act, 1908, s 30 as amended by the Criminal Justice Administration Act, 1914, s. 28 (2), see also Criminal Law Amendment Act, 1885, s 4.

[4] R P 30, and see Oaths Act, 1838

[5] Oaths Act, 1888, s 1, A A 52 (4), R P 82 See also Oaths Act, 1909

[6] A A 50 (3), R P 19 (B) (ii) and 106 (D)

Distinction between competency and credibility

93. It will be seen that the effect of the successive enactments which have gradually removed the disqualifications attaching to various classes of witnesses has been to draw a distinction between the *competency* of a witness and his *credibility* No person is disqualified on moral or religious grounds, but his character may be such as to throw grave doubts on the value of his evidence No relationship, except to a limited extent that of husband and wife, excludes from giving evidence The parent may be examined on the trial of the child, the child on that of the parent, master for or against servant, and servant for or against master The relationship of the witness to the person preferring the charge or the accused in such cases may affect the credibility of the witness, but does not exclude his evidence

(vii) *Privilege of witnesses*

Person *competent* not always *compellable* to give evidence

94. It by no means follows that, because a person is *competent* to give evidence, he is therefore *compellable* to do so There are many cases in which a witness before a civil court may decline to answer a question or produce a document, and the like privileges are expressly extended by statute to witnesses before courts-martial [1]

Witness not to be compelled to criminate himself

95. A witness (other than the accused himself when giving evidence on his own application, and as to the offence wherewith he is charged), cannot be compelled to answer a question if the answer would, in the opinion of the court, have a tendency to expose him to any criminal charge, penalty, or forfeiture, or to any military punishment In practice the court should warn a witness that he cannot be compelled to answer any question tending to incriminate him, but a witness himself is not the sole judge whether his evidence will bring him into danger, the court must be satisfied that there really is reasonable ground to apprehend any such danger, and any doubt upon the matter will be solved in favour of the witness

Rules as to accused giving evidence

96 Where the accused offers himself as a witness he may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged, But he may not be asked, and if he is asked must not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless—

(i) The proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or,

(ii) He has personally or by his advocate asked questions of the witnesses for the prosecution, with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution, or,

(iii) He has given evidence against any other person charged with the same offence [2]

[1] See A A 128, and R P 73 (B)
[2] See R P 80

He may not be asked questions tending to criminate his wife

Evidence tending to show that the accused has been guilty of criminal acts other than those covered by the charge is only admissible in the circumstances mentioned in para 21 *et seq* above

Privilege does not extend to answers showing civil liability

97. The privilege as to incriminating answers does not cover answers merely tending to establish a civil liability No one is excused from answering a question or producing a document only because the answer or document may establish or tend to establish that he owes a debt, or is otherwise liable to any civil suit, either at the instance of the Crown or of any other person [1]

When privilege may be waived by witness

98 The privilege of not answering for the above reasons is the privilege of the witness, and therefore he may waive it, but the privilege mentioned in the following paragraph is for the protection of other parties and cannot be waived except with their consent

Evidence as to affairs of State

99 No one can be compelled to give evidence relating to any affairs of State, or as to official communications between public officers upon public affairs, except with the permission of the officer at the head of the department concerned This class of privilege is based on considerations of public policy

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

Privilege as to proceedings of court of inquiry

100 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 The only exception to this rule is in the case of a court-martial held for the trial of an officer or soldier for wilfully giving false evidence before the court of inquiry [2]

Information as to commission of offences

101 Again, in cases in which the Government is immediately concerned, no witness can be compelled to answer any question the answer to which would tend to discover the names of persons by or to whom information was given as to the commission of offences It is, as a rule, for the court to decide whether the permitting of any such question would or would not, in the circumstances of the particular case, be injurious to the administration of justice [3]

Communications during marriage

102 A husband is not compellable to disclose any communication made to him by his wife during the marriage, and a wife is not compellable to disclose any communication made to her by her husband during the marriage [4]

Professional communications

103 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 docu-

---

[1] 46 Geo III, c 37
[2] See also para. 82 above, and R P 124 (L)
[3] Steph, Dig Ev, art 113
[4] Criminal Evidence Act, 1898, and R P 80 (E)

Ch VI

mentary, made to 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 criminal purpose,

(2) Any fact with which the legal adviser became acquainted otherwise than in his character as such

The expression " legal adviser " includes barristers and solicitors, their clerks, and interpreters between them and their clients, and the person representing or assisting the accused during trial before a court-martial [1]

Doctors and clergymen not privileged

104 Medical men and clergymen are not privileged from the disclosure of communications made to them in professional confidence, but it is not usual to press for the disclosure of communications so made to clergymen

Questions to be entered on proceedings whether answered or not

105 The questions, whether answered or not, should be entered on the proceedings When the witness claims the privilege of not answering, it is for the court to decide whether the question is within any of the exceptions Courts-martial, like other courts, 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

(viii) *How evidence is to be given*

Mode of giving evidence dealt with by Rules

106 The mode in which evidence is to be given before courts-martial is fully dealt with in the Rules of Procedure, to which the following paragraphs must be taken as supplemental

Points requiring attention of court

107 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 is relevant to the issue

(*b*) That it is the best evidence procurable

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

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

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

(*f*) That if it is a document, it is legally admissible and properly put in evidence [2]

(*g*) That no document or other thing which has not been properly put in is used for the purposes of the trial [3]

[1] Steph, Dig Ev art 115

[2] A document is said to be " put in " when it is produced to the court, and, unless verification by a witness is unnecessary (para 38), properly verified It should be noted that a document which is used by a witness merely for the purpose of refreshing his memory is not produced to the court or " put in "

[3] This must, however, be taken subject to the qualification that for purposes of *identification*, &c, any document or thing may be shown to a witness before it has been formally proved and put in See para 112

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

(*i*) That any document with which a witness proposes to refresh his memory can legally be used by him for the purpose

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

Examination of witnesses

108 This last point requires a little more detailed notice The examination of a witness by the person who calls him is called his examination, or direct examination, or examination-in-chief, and on this examination the questions must be relevant to the issue, that is to say, must relate to the matters in issue at the trial The court must see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege, and must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him

Leading questions

109 Accordingly, a witness must not be asked in examination-in-chief leading questions, that is to say, questions suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts, as to which the witness is to testify 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 made to give any evidence that is desired It would 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 the 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"

Test of what are leading questions

110 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 he witness

Examples of fair and unfair questions

111 The following may be taken as examples of fair and unfair examination of a witness Suppose a man to be charged with the murder of another by stabbing, the body having been found at the upper end of a certain street, and a witness to be called to speak to the circumstances in which the blow was struck There would be no objection to asking the witness—

If he remembered the 12th August, and—

If he was in North Street about noon on that day

These questions, though in a leading form, are merely introductory If the defence of the accused was that he had struck the

Ch. VI blow, but that he had done it in self defence, there would be no objection to going a little further and asking—

Whether he saw the deceased and the accused there

But from this point all leading questions should be avoided, and the examination should be continued in some such form as this

In what part of the street were the accused and deceased when you first saw them ?

How far were you from the accused and the deceased ?

Tell us in your own words exactly what passed

To ask, instead of the first question—

Were they at the upper end of the street when you first saw them ?

would be highly improper, as it might be very important in considering whether or not there had been a long quarrel or scuffle, to know whether they had moved far from the place where the witness first saw them to the place where the body was found It would obviously be still more improper to ask,

Did you see the accused go up stealthily behind the deceased and strike him a blow with a knife ?

or any question of that character

If, on the other hand, the defence set up were an *alibi*, it would be improper to ask directly after the introductory questions—

Whether the witness saw the deceased and the accused there

The questions in that event should rather be—

Whether he saw anyone there

Whether he could identify them

Whether he can identify anyone in court as having been present,

though, finally, if an answer could not be got in any other way, the attention of the witness might be called to the accused, and he might be distinctly asked,

Whether he saw that person there

But this should not be done until the witness had said that he saw some persons there, and that he would know them again

Rule as to directing attention to particular persons and things

112 The rule in these cases is, that the attention of a witness who has alluded to any person or thing, may be called to a particular person or thing for the purpose of identification, and that the witness may be asked directly whether that is the person or thing to which he alluded , but in practice this should only be done after examination in the ordinary way has failed to elicit any distinct replies When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witness may be asked such questions 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

Exceptions in case of hostile witness

113. Of course, 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 fails, and the court should 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 except that (as he had been put forward as worthy of credit

by the person calling him) that person must not be permitted, either by cross-examination or by direct evidence, to impeach his credit by general evidence of bad character [1]

Rules as to cross-examination

114 When the examination-in-chief is finished the opposite party cross-examines the witness In cross-examination leading questions and questions not directly bearing on the issue may be put, and must be answered, as the cross-examining party is entitled to test the examination-in-chief by every means in his power, and questions are often put in cross-examination for the sole purpose of putting a witness who is supposed to have learnt up the story, off his guard Questions also may be put in cross-examination which tend either to test the accuracy or credibility of the witness or to shake his credit by impeaching his motives or injuring his character, though such questions cannot be put on the examination-in-chief or re-examination

Further observations on cross-examination

115 Questions which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact, are improper and should not be allowed even in cross-examination Again, though questions not directly bearing on the issue may be asked, a witness should not 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 be required to 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

A witness under cross-examination may be asked any questions which tend to test his accuracy, veracity, or credibility, or (except in the case of a witness originally called by the person cross-examining him) to 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, is qualified in the case of trials before courts-martial by Rule 92 of the Rules of Procedure

Exclusion of evidence to contradict answers as to questions testing veracity

116 Evidence cannot be given to contradict the answer of any witness to a question which only tends to shake his credit by injuring his character, except —

(i) Where the witness is asked whether he has ever been convicted of any felony or misdemeanour and denies or refuses to answer [2],

(ii) Where he is asked a question tending to show that he is biassed or partial,

(iii) Where he has previously made inconsistent statements,

(iv) Where he can be shown to be a notorious liar

In the first two cases proof may be given of the truth of the facts suggested The other two cases are dealt with in the following paragraphs

Cross examination as to previous statements

117. A witness may be asked whether he has, on a previous occasion, made a statement relative to the issue and inconsistent

[1] Criminal Procedure Act, 1865, s 3

[2] Criminal Procedure Act, 1865, s 6 Such questions could not be put to an accused person giving evidence except in the cases mentioned in para 96

Ch. VI

with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not admit that he made such a statement, proof may be given that he did in fact make it 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 the evidence given by him at the investigation before the commanding officer Such a question may be put, even though the statement may have been in writing (notwithstanding the rules as to documentary evidence), and even without the writing being shown to him or proved in the first instance, though it should be shown to him afterwards, and his attention called to those parts of the writing which are to be used to contradict him, as otherwise the contradictory proof cannot be given [1]

Impeaching credit of witnesses

118 The credit of any witness may be impeached by the adverse party by the evidence of persons who swear that they, from their knowledge of the witness, believe him to be unworthy of credit on his oath 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 the witness is worthy of credit

Rule as to re-examination

119 At the conclusion of the cross-examination the person who called the witness 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, and if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it

Questions by court

120 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 [2] 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 [3]

---

[1] Criminal Procedure Act, 1865, ss 4, 5

[2] See *R* v *Jackson* [1919] 14 Cr App Rep 41 *A* v *Dora Harris* L R [1927] 2 K B 587

[3] See R P 85 86

CHAPTER VII

OFFENCES PUNISHABLE BY ORDINARY LAW

Introductory

Liability of soldier to civil as well as military law

1. The first forty sections of the Army Act specify the various military offences of which a person subject to military law may be guilty The sections embrace not only offences against discipline, but also offences against the persons and property of persons subject to military law Nearly all the offences of which a soldier can be guilty as a soldier and as against another soldier are included in these sections

A soldier, however, is not only a soldier but a citizen also, and as such is subject to the civil as well as to the military law An act which constitutes an offence if committed by a civilian is none the less an offence if committed by a soldier, and a soldier not less than a civilian can be tried and punished for such an offence by the civil courts [1]

Jurisdiction of military courts over civil offences

2. In order to give military courts complete jurisdiction over soldiers, courts-martial are authorised to try and punish soldiers for civil offences, namely, offences which, if committed in England, are punishable by the law of England

They are not allowed to try the most serious offences[2]—treason, murder, manslaughter, treason-felony, or rape—if those offences can, with reasonable convenience, be tried by a civil court They are, therefore, prohibited from trying any such offence if it is committed in the United Kingdom, or if it is committed anywhere else in the King's dominions, except Gibraltar, within a hundred miles from a place where the offender can be tried by a civil court, unless indeed the offence is committed on active service

Subject to the above exceptions, a court-martial can try all civil offences of a soldier wherever committed

Principles on which jurisdiction should be exercised

3 But though this wide power of trial is given, it is not as a rule expedient to exercise the power universally

Where troops are stationed at places having no available civil courts under British judges within a reasonable distance, or are stationed in a foreign country, and the only law to which the troops are subject is that administered by military tribunals, it is necessary to try all offences committed by soldiers by courts-martial

But in the United Kingdom, in most parts of India, and in most of the colonies, where there are regular civil courts close by, it is, as a general rule, desirable to try by a civil court a civil offence committed by a person subject to military law if the offence is one which relates to the property or person of a civilian, or if the civil authorities intimate a desire to bring the case before a civil court

This 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 barracks or

---

[1] A A 41 (*b*), 162 (2), and Ch VIII.
[2] A A 41

Ch. VII

military lines There may be a doubt whether the person affected by the offence is or is not a civilian The soldier may be one of a body of troops about to sail abroad 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 before 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 [1] On the other hand, a very serious offence, especially one which would ordinarily be tried by a jury, had better be relegated to the civil court, as should also any case where intricate questions of law are likely to arise

Object of the chapter

4. 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, as no scientific classification of offences has been attempted, but the more common offences have been treated in greater detail than those which experience shows rarely, if ever, to come within the cognizance of courts-martial [2]

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

(1) *Punishments*

Punishments

5 Section 41 of the Army Act specifies the punishments which may be awarded for the most serious offences, *i e* , treason, murder, manslaughter, treason-felony and rape With regard to every other civil offence, the effect of the section is to empower courts-martial to award as a maximum punishment either, in the case of an officer cashiering, or in the case of a soldier two years' imprisonment, with or without hard labour, or the punishment which under the civil law may be awarded for the offence This rule is, of course, subject to the general limitation on the powers of punishment by district courts-martial[3] and to the general prohibition applicable to all courts-martial against awarding a period of imprisonment exceeding two years or penal servitude

---

[1] A A 138(3)

[2] To those who wish for a more detailed knowledge of the criminal law of England the following authorities are recommended —Russell on Crimes and Misdemeanours, Archbold's Pleadings and Evidence in Criminal Cases, Kenny's Outlines of Criminal Law, Stephen's Digest of Criminal Law, Stephen's General View of the Criminal Law, the Report of the Criminal Code Bill Commission, 1879, and the Article on Criminal Law and Procedure in Halsbury's "Laws of England" A convenient summary of the law relating to each particular offence will be found in the Encyclopædia of the Laws of England (edited by Mr A W Renton), under the proper heading

[3] A A 48(6) Under this provision a district court martial may award any punishment except death or penal servitude, but cannot try an officer

for a term less than three years [1] In the table at the end of this chapter will be found the punishments which a civil court can award in respect of each of the offences described in the chapter. 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 murder, any less punishment 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* , discharge with ignominy from His Majesty's 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 [2]

(11) *Responsibility for Crime*

Criminal responsibility

6. The general rule is that a person is responsible for the natural consequences of his acts But there are cases in which it would be obviously unfair to make a person criminally responsible for doing a particular act, though in ordinary circumstances such an act would be an offence

Children.

7. A child is considered to be incapable of committing an offence before the age of seven years, and any act of a child between the ages of seven and fourteen can only be held to be an offence if it is shown affirmatively that the child had sufficient capacity to know the nature and consequences of his act, and to appreciate that he was doing wrong

Insane persons

8. A person cannot be convicted on a criminal charge in respect of an act done or omission made by him if it is proved that at the time when he did the act or made the omission he was labouring under such defect of reason through disease of the mind as made him incapable of knowing the nature and quality of the act he was doing, or, if he did know it, that such an act was wrong [3] Thus, if a man kills another under the insane delusion that he is breaking a jar, he will not be criminally responsible

Every person is, however, presumed to be sane and to be responsible for his acts until the contrary is proved, and it must, therefore, be clearly established by the defence that the accused is brought within the terms of the exception as above laid down before he can have the benefit of it Unless a person is brought strictly within the terms of the exception it is no excuse whatever to show that his mind is affected by disease For instance, the fact that a person is under the delusion that his nose is made of glass will not in any way excuse him if he commits an offence, unless he can prove that the delusion had a connection with the offence

It is immaterial whether the unsoundness of mind is permanent or only temporary, whether it is due to natural imbecility or produced by disease, or whether the disease itself is due to the sufferer's own dissipation, as, for instance, in the case of *delirium tremens*

---

[1] A A 44, (*b*) and (*f*) and proviso (1B)
[2] See Ch V, paras 76–86
[3] When on the trial by court martial of a person charged with an offence it appears that uch person did the act or made the omission with which he is charged but that he was insane at the time when he did or made the same, the court must find specially the fact of his insanity—A A 130 (*2*)

Temporary intoxication

9 Temporary intoxication (from liquor or drugs)—as distinct from mental disease, which alcoholism, &c , may bring on—is not (if voluntary) in itself any excuse for crime, but evidence of drunkenness which rendered the accused incapable of forming the specific intent essential to constitute the crime must be taken into consideration together with the other facts proved in order to determine whether or not he had that intent

Evidence of drunkenness falling short of a proved incapacity in the accused to form the essential intent, and establishing merely that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the ordinary presumption that a man intends the natural consequences of his acts [1]

Compulsion

10. An act may also be excused if committed by a person acting in subjection to the power of others, provided that he is compelled to act as he does by threats of death or serious physical injury, continued during the whole time that he so acts, and that the part taken by him in the unlawful act or acts is throughout strictly a subordinate part

Necessity

11. In extreme cases an act may sometimes be justified on the plea of necessity, if it is done by a person in order to avoid inevitable and irreparable evil to himself or those whom he is bound to protect, though, of course, the act must not be disproportionate to the end to be attained, nor must more be done than is absolutely necessary to attain that end [2] Thus, if the captain of a steamer, without any fault on his part, finds himself in such a position that he must either change his course or run down a boat with twenty people in it, he is justified in changing his course, although by so doing he runs a risk of swamping a boat with two people in it

Ignorance of law

12. Ignorance of *law* is no defence to a criminal charge Thus, if A, a foreigner unacquainted with the law of England, kills B in a duel fought in England, A's act is murder, although he may have supposed it to be lawful But ignorance of law may properly be taken into consideration in determining the amount of punishment to be awarded

Ignorance of fact

13. Ignorance or mistake of *fact* may, in some cases, be an excuse, thus, an honest and reasonable belief in the existence of facts which, if true, would make the act with which a person is charged an innocent act, would generally provide a good defence But this excuse will not avail a person if his ignorance proceeds from wilfulness or negligence In some few cases[3] even an honest and reasonable belief will not protect a man, if he is actually mistaken, and a man therefore does the act at his peril

Parties to offence

14 The responsibility of a person for the natural consequences of his acts is not limited to the simple case where he is present, and actually commits an offence with his own hand Thus, if a soldier by design or through criminal (*i e* , culpable) negligence mixes a ball cartridge with blank cartridges, he will be criminally responsible if injury results, even in his absence

[1] *Director of Pub Pros* v *Beard*, L R [1920] A C 479
[2] See para 30 (*post*) as to self-defence,
[3] See para 38,

Innocent agent

15. Again, where a person commits an offence through the medium of an innocent agent, he is criminally responsible even though absent when the offence is committed Thus, if a soldier, knowing a note to be forged, induces a comrade, who does not know it to be forged, to get it changed, or, knowing that a pair of boots does not belong to him, induces a comrade to steal them by representing that they were his own property and not the property of the actual possessor, in both these cases the soldier, but not his comrade, is criminally responsible

Assisting offence

16. If a person is present at the commission of an offence and aids and abets its commission by another person, he is responsible as though he had committed it himself But it is not necessary that he should be actually present as an eye-witness or ear-witness of the transaction, he is, in law, present aiding and abetting if, with the intention of giving assistance, he is near enough to afford it should occasion arise , thus, if two or three men go out together to commit a burglary and one waits at the corner of the street to keep watch while the others commit the burglary, the watcher will be guilty of burglary equally with the others On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognizant of the intentions of the person whom he assisted, thus, on a charge of wounding with intent to murder, it must be shown that an assistant not only assisted the principal offender in what he did, but also knew what his intention was, before the former can be convicted on the full charge

Common intent

17. 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 any 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 a police officer goes with an assistant to arrest A in a house and all the occupants of this house combine to resist the arrest, and in the struggle the assistant is killed, the occupants are responsible 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

Instigating an offence

18. A person is in all cases fully responsible for any offence which is committed by another at his instigation, even though the offence may be committed in a different way from the one that he suggested , as, for instance, if a person were to instigate another to murder a man by shooting him, and the murderer stabbed the man instead, the instigator would still be responsible Further, he is responsible for any other offence which may, and was likely to result from such instigation But a person will not be responsible for an offence which he may have instigated another to commit, if he countermanded its execution, and notice of the countermand was received by the person instigated before the commission of the offence[1] nor where he instigates one offence will he be responsible for the commission of another unconnected therewith

[1] Of course, though the execution of the crime was countermanded, the instigator would still be liable to be prosecuted for the misdemeanour of inciting to commit an offence, though not for the offence itself

Knowledge of intended offence

19. Mere knowledge that a person is about to commit an offence, and even conduct influenced by such knowledge, will not make a person responsible for that offence unless he does something actively to encourage its commission, for instance, if a man knows that two others are going to fight a prize-fight, and acts as stake-holder, but takes no other part in the circumstances attending the fight, at which he is not present, and one of the prize-fighters is killed, the stake-holder will not be responsible for his death

Accessory before the fact

20. When a person is responsible for an offence under paras 16, 17 and 18, he is equally responsible and liable to the same punishment as the principal offender, he may be tried before the principal offender has been tried and may be convicted even if the principal offender has been acquitted Such a person if not present either actually or constructively at the actual commission of the offence is called an accessory before the fact, if the offence is a felony

Accessory after the fact

21. A person may in some cases incur criminal responsibility, even after an offence has been committed, if the offence is a *felony*,[1] and he becomes what is called an accessory after the fact, *i e*, if he assists the felon to evade justice (knowing that he has committed a felony) either by comforting, hiding, or otherwise actively assisting him, or by opposing his apprehension, or rescuing him from arrest, or by voluntarily permitting the felon to escape from his custody where the accessory is himself the custodian Merely allowing a felon to escape, without giving him active assistance, will not make a person not being his custodian an accessory after the fact All persons who, in felonies, would be accessories after the fact, are, in misdemeanours,[1] principals and may be charged and punished as such

Attempt to commit offence

22. An attempt to commit or to procure the commission of an offence is in itself an offence and renders a person criminally responsible even though the attempt is unsuccessful [2]

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 man goes to Birmingham to buy dies to make bad money, the mere going there is not an attempt to make bad money 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 the man had not only gone to Birmingham, but had actually bought the dies, he would have been guilty of an attempt to make bad money

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 a felony or misdemeanour but the evidence shows merely an attempt to commit that offence, a jury may convict him of the attempt to commit the offence charged A court-martial has the same power as a jury in this respect.[3]

---

[1] As to what offences are felonies or misdemeanours, see table at end of chapter
[2] As to attempts to murder see para 48, and as to what amounts to an attempt to shoot, see para 35 (footnote 3)
[3] See A A 56 (6)

Intention

23. In some cases the intention—that is to say, the immediate intention as distinguished from the motive—with which an act is committed becomes essential and must be proved Intention is not, however, capable of positive proof, it can only be implied from overt acts, and, where this is the case, the intention may either be proved by independent evidence, as, for instance, by words proved to have been used by the offender or by a previous course of conduct,[1] or may be presumed from the act itself, according to the maxim that a man intends the natural consequences of his own act In other words, the mode of discovering a man's intention is to consider what were at the time of his act the natural consequences of that act Thus, if A sets fire to B's mill, the intent of A to injure B is inferred as being a natural consequence of the act of A in setting fire to the mill

If a man bound by law to perform any duty does an act which necessarily causes, or most probably will cause, a failure in the performance of that duty, he will be held in law to have intended to fail, and therefore to have wilfully failed, to perform that duty

Thus, for example, if one soldier in charge of another who is in military custody leaves him in a public-house, and goes away to visit a friend elsewhere, and the soldier in custody escapes, the soldier in charge of him must be considered to have wilfully permitted him to escape, because the escape was the natural result of the act, but if there was no evidence of any deliberate act of the soldier contrary to his duty, or if the escape was due to mere ordinary carelessness in the course of the performance of the soldier's duty, then he could not be held wilfully to have permitted the escape

Motive

24. The motive for which a crime is committed is not an essential ingredient of that crime, but it may often serve as a clue to and explain the immediate intention

Consent

25. Generally speaking, a person will not be criminally responsible for an act affecting the person or property of another if done with that other's consent This does not apply to cases of killing or maiming, except when the killing or maiming results from a surgical or some similar operation reasonably and properly performed for the sufferer [2] Thus, if one soldier with the consent or even at the request of another cuts off that other's forefinger with a view to enable him to obtain his discharge, the consent or request does not relieve the former of responsibility The consent must be free and must not be extorted by fear of injury or given under a misapprehension of fact Such a consent, or the consent of a lunatic, of a child, or of a person in a state of intoxication, will not relieve the person who does the act of responsibility if the act apart from the consent would constitute an offence

Accident

26. A person is not criminally responsible for the result of a pure accident which is not to be attributed in any way to any carelessness or negligence, or to an unlawful act on his part

Thus, if a woodcutter is lawfully cutting down a tree and the head of his axe flies off, or if a man is lawfully riding down a

[1] See Ch VI, paras 23–26 and 96

[2] In cases of this kind the consent of the sufferer will be presumed if he is unable to give it (*e g*, if he is unconscious from the loss of blood)

Ch VII road and his horse is whipped by another person, and caused to start off, or if a man is lawfully shooting at game or any other object, and in any of these cases there result to a bystander injuries which cannot be attributed to negligence on the part of the woodcutter, rider, or shooter, as the case may be, he will not be responsible for the injuries caused

On the other hand, if a person points a gun at another in sport and pulls the trigger without having good grounds for believing, or having taken any proper precautions to ascertain, that the gun was unloaded, he will be responsible if death or injury results, as the accident might clearly have been prevented if he had not been culpably negligent

In each of the above illustrations it will be noticed that it is assumed that the act from which the injuries resulted was not in itself an unlawful act For if the act was in itself unlawful, as if the woodcutter was doing an unlawful and malicious injury to the property of another, if the rider was a horse thief riding away with a stolen horse or if the shooter was a poacher, the offender would in each case be criminally responsible for the injuries caused This qualification is, however, confined to the cases of acts which are in themselves *unlawful*, and not mere breaches of excise laws or similar regulations, for instance, if the shooter, instead of being a poacher, was merely shooting without a gun licence, this would not of itself render him criminally responsible

Negligence

27. If a person fails to take proper precautions when doing anything which is in its nature dangerous, he will be responsible though he had not the least intention of bringing about the consequences of his act [1] For instance, 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

(iii) *Responsibility for the Use of Force*

Use of force

28. The general rule is that a person is criminally responsible for the use of force, but there are cases where the use of force is justifiable The amount of force which may be so used and the circumstances under which it may be used vary widely

Amount of force to be used

29. In some cases any amount of force may be used, even if it entails bodily injury or even death, in other cases any amount of force may be used provided that it is not used in a manner intended or likely to cause death or grievous bodily harm

The general principle applicable to all cases is that *no more force* may be used in any case than the person using it believes, and has reasonable grounds for believing, to be necessary to effect the object in respect of which he is entitled to use force So long as this principle is observed, a person is not responsible for the consequences which may result in any particular case from the use of any force which is not in excess of that allowed in the class of cases to which it belongs Nor will a person be responsible if death accidentally results from the legitimate use of force

[1] See also para 31

Cases in which use of force is justifiable.

30. The most important cases in which the use of force is justifiable are cases relating to administration of justice, prevention of crime, self-defence, the defence of property, the preservation of discipline, and the defence of the realm

A person acting as a ministerial officer in execution of the orders of some superior authority, and any person lawfully assisting him, may use force in obedience to the orders of the superior authority, if that authority when giving the order is acting as a court, that is to say, acting in a judicial capacity, in the exercise of some jurisdiction conferred by law

The general rule in such cases is that any duly authorised person is justified in using whatever force may be necessary in order to execute the lawful order of a court of competent authority, and in overcoming any violent resistance which may be made to the lawful use of such force, as, for instance, a police officer in executing a warrant of arrest But such a person must not use such force as is either likely or intended to cause death or grievous bodily harm (unless he is violently resisted), except where he is specially required to do so by the order itself, or where the order is a warrant of arrest for treason, felony,[1] or piracy, in which cases he may at once use whatever amount of force may be necessary Should a person be unable to justify himself under the rule above stated, it will in general be no excuse for him to show that he acted under the orders of some superior civil or military authority His justification will, in such cases, depend upon the same considerations as though he had acted entirely on his own responsibility, and the fact of his having received the orders will merely be of importance as a fact in the case which may throw light upon the state of his mind, as to reasonable belief, intent, or otherwise

If a person believes on reasonable grounds that another is about to commit any treason or violent crime he is justified in using any amount of force in preventing its commission Similarly, any amount of force may be used by an officer of justice to execute a warrant of arrest for treason or felony, provided in either case that the object for which force is used cannot be otherwise accomplished

If a person is lawfully called upon to assist a police officer in the execution of his duty, he is bound to go to the officer's assistance, and will be justified in using force to the same extent as the officer himself

The law respecting the use of force for the suppression of riots and breaches of the peace is dealt with in another part of this work [2]

A person may in all cases use any amount of force which is reasonably necessary for the defence of himself or his property, if he is not himself in the wrong [3]

A person who is in peaceable possession of property of any description is entitled to defend it against trespassers, and to use force for the purpose of removing them from his land, or of retaining or re-taking his goods from them, but he must not

---

[1] As to what offences are felonies, see table at the end of the chapter
[2] See Ch XIII
[3] For an illustration of this, see Ch. VIII, para 59

Ch. VII

intentionally strike or hurt an ordinary trespasser unless he is resisted, in which case he may use such force as is reasonably necessary to overcome such resistance, though even in this case, unless himself assaulted and in danger, he must not intentionally inflict death or grievous bodily harm If, however, the trespass is a serious one, as where a trespasser endeavours forcibly to break and enter a dwelling-house with the intention of committing an indictable offence therein, any amount of force may be used to prevent him, and if it is night, such force may be used even though the trespasser has really no such intention, if the person using the force reasonably believes that he has such an intention

The law also permits force to be used for correction or for the maintenance of discipline Thus, a parent or schoolmaster may forcibly correct any child or pupil under his care In all such cases the force used must be reasonable and not excessive,[1] otherwise the person using the force will be fully responsible for the consequences

Finally, the law permits the use of force against the enemies of the realm in the actual heat and exercise of war

(iv) *Responsibility for Acts of Omission*

Acts of omission.

31. A person is not ordinarily considered to cause injury to another by the mere omission to do an act, 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 it For example, every person who has charge of another, *e g*, a child, a lunatic, an 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

Omission to perform duty.

32. 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

Neglect of servants

33. If a person, legally liable as a master to provide necessary food, clothing or lodging for a servant, wilfully and without lawful excuse refuses or neglects to do so, so that the life of the servant is endangered, or his health is or is likely to be permanently injured, he is guilty of an offence

[1] See case of Governor Wall, Ch VIII, para 54

(v) *Assaults and Sexual Offences*

Assault

34 An "assault" is a movement which attempts or threatens the unlawful application of force to another person without his consent, if force is actually applied it constitutes a "battery" which is included in the term "assault" [1]

The use of force, however slight, is sufficient to justify a conviction for assault, if exercised with the intention to cause, or with the knowledge that it is likely to cause injury, fear, or annoyance to the other person

The consent of the other person, in order to be an excuse, must be *bona fide* consent and not mere acquiescence [2]

Not only the actual use of such force, but any act or gesture which causes the other person to apprehend that force will be used, is sufficient to constitute the offence of assault Thus, shaking a fist in a man's face or pointing a pistol at him may be assaults

A common assault, such as has been described above, is not generally a very serious offence, though a sentence of one year's imprisonment, with or without hard labour, may be imposed But if the assault is attended with aggravating circumstances it becomes far more serious, and, if death results from the assault, it becomes homicide

Aggravated assaults.

35. The following are examples of aggravated assaults —

(1) Assault with intent to commit a felony
(2) Assault with intent to resist the lawful arrest or detention of a person
(3) Assault on a police officer in the execution of his duty
(4) Assault with intent to commit sodomy
(5) Unlawful wounding, assault occasioning actual bodily harm
(6) Wounding with intent to murder, wounding or shooting or attempting to shoot[3] with intent to maim or do grievous bodily harm[4] or prevent apprehension
(7) Indecent assault on male or female

Indecent assaults

36 In the case of an indecent assault upon a male or female person, consent provides no defence if the person upon whom the offence is committed is under the age of sixteen

Rape

37. Rape is the act of a man having carnal knowledge without her consent of a female who is not his wife [5]

Penetration is considered to constitute carnal knowledge, 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

---

[1] See specimen charge, No 102, p 733
[2] See also para 25
[3] A man attempts to shoot if he does any act (such as pulling out a loaded pistol, pointing it at a person, or fumbling with the trigger) from which it might be inferred that he intended to discharge it See also para 22
[4] See specimen charge No 101 p 739
[5] Though a husband cannot himself commit rape on his wife, he may be convicted of rape if he assists another person to commit rape on her

Ch. VII

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

Consent, to be an excuse, must be actual consent, and not mere submission, and it must be voluntary, and not extorted by force or duress or fear of immediate bodily harm [1] Thus, if an idiot submits to a man having connection with her without actually permitting it, this is no consent, but if she actually permits the act, though from mere sexual instinct, and without really understanding its nature, this is a sufficient consent, and therefore the man is not guilty of rape [2] A man who induces a woman to permit him to have connection with her by personating her husband is guilty of rape

A boy under the age of fourteen is conclusively presumed to be incapable of having carnal knowledge, and evidence cannot be received to show that he is capable in point of fact He cannot therefore be convicted, as a principal in the first degree, of rape, but he may, as in the case of other felonies, be convicted as a principal in the second degree if he aids and assists in the commission of the offence For the same reason a woman may be convicted as a principal in the second degree of rape A boy under the age of fourteen may be convicted of an indecent assault

Carnal knowledge of a child

38. Carnal knowledge[3] or attempted carnal knowledge of a girl under the age of sixteen is an offence even though the girl consents [4]

Before 1922, if the girl was over thirteen it was a sufficient defence to show that the accused had reasonable cause to believe that she was over sixteen By the Criminal Law Amendment Act, 1922, [5] this defence was abolished except in cases where the accused is under twenty-four and has not previously been charged with this offence The prosecution for the offence must be commenced within nine months from the date of the commission of the offence

If the girl is under thirteen, it is no excuse, whether the offence has been committed or only attempted, that the offender believed that the girl was above the specified age, if she was really below it

If the girl upon whom the offence was committed or any other child of tender years tendered as a witness does not understand the nature of an oath, her evidence may be received though not on oath if the court is of opinion that the girl or child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but no person may be convicted in any such case unless such unsworn evidence is corroborated by some other material evidence in support of it implicating the accused, and the witness will be liable to be punished for perjury for giving false evidence exactly as if he or she had been sworn [6]

[1] See also para 25
[2] Though not guilty of rape, he is guilty of an offence punishable with two years' imprisonment, if at the time he knew she was an idiot or imbecile
[3] For definition see para 37
[4] Of course, if the girl does not consent the offence becomes rape
[5] 12 & 13, Geo V, c 56, s 2
[6] See Ch VI, para 90

Sodomy

39. The offence of sodomy is committed when a male has carnal knowledge of an animal or of a human being "per anum" Penetration is required, as in the case of rape, to constitute carnal knowledge But it is not necessary to prove that the offence was committed against the consent of the person upon whom it was perpetrated, both agent and patient (if consenting) are equally guilty If the evidence upon this charge is insufficient to justify conviction for the full offence, the accused person may be found guilty of an attempt to commit it

Acts of indecency;

40. It is an offence for a male person, either in public or private, to commit, or to be a party to the commission of, any act of gross indecency with another male person, or to procure the commission of any such act

It is also an offence to do any grossly indecent act in a public place in the presence of two or more persons, or to publicly expose the person, or exhibit any disgusting object

Disgraceful conduct

41. Inasmuch as disgraceful conduct of an indecent or unnatural kind is, in itself, an offence under section 18 (5) of the Army Act, most of the charges of indecency which are brought before courts-martial will be laid under that section and not charged as civil offences

(vi) *Homicide*

Homicide

42. If the death of a human being results from any action of any person, that person is said to have committed homicide

A person is criminally responsible for homicide unless he can show some legal excuse, *e g*, that it was justifiable or excusable The consent of the person killed is no excuse [1]

Death must result, either directly or indirectly, from the act Whether it does so or not must depend on the circumstances of the case, but if the death occurs more than a year and a day after the act, the law presumes that death did not result from the act but from some other cause, and the accused cannot be made responsible

Further, a person is not responsible for causing death unless death naturally results from his conduct For instance, if a person wounds another dangerously, and that other dies, whether from neglect of proper treatment, or from improper treatment applied in good faith for the purpose of effecting a cure, the person causing the injury is legally responsible for the death, on the other hand, if the wound is not dangerous in itself, but is rendered so by improper treatment, he is not responsible

The death caused must be that of a human being A child is considered to become a human being as soon as it has wholly proceeded in a living state from the body of its mother, and has an independent circulation, whether it has breathed or not, and whether the umbilical cord has or has not been severed, and a person is responsible for killing such a child, though the injuries of which it dies were inflicted by him or her before or during birth

A person is guilty of causing death even if he merely accelerated the other's death, and it is no excuse that the person killed must have died very shortly from some other cause

[1] As to when the use of force resulting, or possibly resulting, in death is justifiable, see para 30

Ch VII

The fact that the blame is shared by another will not relieve from responsibility a person contributing to the death Thus, if two drivers are illegally racing their cars along a high road, and one or both of the cars run over a man and kill him, each driver is responsible for having caused the death

Justifiable and excusable homicide

43. Homicide is justifiable (i) where the proper officer executes a criminal in strict conformity with his sentence, (ii) where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it, and (iii) where the homicide is committed in prevention of a forcible and atrocious crime

Homicide is excusable (i) where a man doing a *lawful* act, without any intention of hurt, by accident kills another, and (ii) where a man kills upon a sudden encounter, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling

Murder

44. The law presumes every homicide to be murder until the contrary appears It will rest with the accused to prove such facts as may reduce the offence to manslaughter or excuse him from all criminal responsibility If a person has unlawfully caused death by conduct which was intended to cause death or grievous bodily harm to *some* person, or even by an act, unlawful in itself, attended with probable serious danger and done with a mischievous intention to hurt people although no mischief is intended to any particular individual, he is guilty of murder

The offence of murder is not confined to cases where the offender has deliberately intended to kill the particular person whom he has killed, though this is the most usual form of the crime The law provides that many cases of homicide where there has been no premeditated desire to kill a particular person, or, indeed, any person at all, must be brought under the definition of murder if the offender is actuated by a form of guilty mind sufficiently wicked to constitute murderous malice Thus, if A shoots at B intending to kill him but accidentally kills C instead, A commits murder Or if a person intends to kill and does kill the next person whom he chances to meet without selecting any particular person he is guilty of murder So, also, if a person intends to commit a felony upon or do grievous bodily harm to another by means of an act which is likely to kill—*e g*, by beating him with an iron bar—and death results therefrom, it is murder [1]

It is immaterial what may be the particular form of death, whether from poisoning, striking, starving, drowning or any other cause

A person is guilty of murder if he unlawfully resists and kills any person who is lawfully endeavouring to execute the duties of an officer of justice, or the orders of some civil or military authority, provided that the offender has sufficient notice of the capacity in which the person killed is acting

Letters threatening to murder

45. Sending a letter threatening to murder, and even the delivery of such a letter, knowing its contents, is an offence

Man-slaughter

46. It may be taken generally, that in all cases where a killing cannot be justified or excused, if it does not amount to murder, it is

[1] See specimen charge No 95, p. 732

manslaughter, and a person charged with murder can be convicted of manslaughter [1]

If a person does an unlawful act of such a kind that a reasonable man would not have known that it was likely to cause death or serious injury, that person is guilty, if death results, of manslaughter and not of murder

Where death results from negligence it must be shown, in order to justify a conviction for manslaughter, that the negligence was so gross and culpable and showed such disregard for the life and safety of others as to amount to a crime against the State and to conduct deserving punishment

The offence is manslaughter if the act from which death results was committed under the influence of passion arising from extreme provocation by the victim

No person is considered to give provocation to an offender merely by doing that which he has a legal right to do, or which the offender has incited him to do with the express purpose of providing himself with an excuse

The provocation must be great, that is to say, such as might reasonably be expected to put an ordinary person not of an exceptionally passionate disposition into such a passion that he would lose his power of self-control

Gestures, injuries to property, breaches of contract, or slight blows unaccompanied by special insult, are not considered a sufficient provocation

Mere words of abuse are not considered to afford sufficient provocation, except, perhaps, in some extreme cases Where, however, words are accompanied by a blow, though a slight one, the two may be taken into account together in estimating whether the provocation is sufficient

Test of sufficiency of provocation

47. It must be clearly established in all cases where 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

Attempt to murder

48 Attempts to murder[2] are only one degree less criminal than murder itself, and any person doing or attempting to do any act with intent to commit murder is guilty of an offence

The act or attempt alleged, for instance, a wounding or stabbing, an attempt to fire a pistol[3] which does not go off, or any similar act or attempt, must be laid in the charge and proved as laid

It must also be proved that the accused intended thereby to commit murder, which intent may be gathered from the nature of the act itself, or may be proved by other evidence, as for instance, by threats and words proved to have been used by the accused [4]

---

[1] See specimen charge No 96, p 732

[2] As to what amounts to an attempt, see para 22

[3] As to what amounts to an attempt to fire a pistol, see note to para 35

[4] Attempts to commit suicide do not amount to attempts to commit murder, such attempts should be dealt with under A A 38 (2)

Conspiracy to murder

49. It is an offence to conspire with or endeavour to persuade or propose to any other person to murder a third party, whether a subject of the King or not, and this even though no overt act is done or attempted

(VII) *Theft and the Cognate Offences* [1]

Theft or larceny

50. A person steals[2] who, without the consent of the owner, fraudulently and without a claim of right made in good faith, "takes" and "carries away" anything "capable of being stolen"[3] with intent, at the time of such taking, permanently to deprive the owner thereof

For the purposes of this definition, the expression "takes" includes obtaining possession (i) by any trick, (ii) by intimidation, (iii) under a mistake on the part of the owner, with knowledge[4] on the part of the taker that possession has been so obtained, (iv) by finding, where at the time of finding the finder believes that the owner can be discovered by taking reasonable steps The expression "carries away" includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached And the expression "owner" includes any part owner, or person having possession or control of, or a special property[5] in anything capable of being stolen

Explanation of definition

51 No attempt can be made here to deal fully with these definitions, but the following notes may be useful

If the "owner" (the person in possession or control, &c) consents to the taking, there is no theft, but consent obtained by force or fraud will be no defence In this connection, however, it is important to distinguish between a transfer of "possession" only, and a transfer of "property' in the goods taken[6] 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 "obtaining by false pretences" (see para 57 *post*)

The article must be taken fraudulently and without any colour of right If it is taken under the supposition, honestly enter-

---

[1] See also Ch III, paras 30–40

[2] Larceny Act, 1916, s 1 This was the first statutory definition of "larceny" it reproduced the effect of numerous judicial decisions as to what constituted larceny by the common law of England

[3] Everything which has value and is the property of any person (and if adhering to the "realty then after severance therefrom) is "capable of being stolen," subject to two qualifications viz (i) that things attached to or forming part of the "realty" cannot be stolen by the person who severs them, unless after severance he has abandoned possession thereof, and (ii) that the carcase of a wild beast or bird (not reduced into possession while living) cannot be stolen by the killer unless after killing he has abandoned possession thereof (Larceny Act, s 1) "Realty" means, speaking broadly, the land and any permanent structure thereon The new definition reproduces the old common law rule that things attached to the realty could not be the subject of "larceny" until after severance and abandonment A man who steals or who with intent to steal severs, cuts, roots up, &c , fixtures, trees, plants, crops, &c , is punishable under a later section (s 8) of the Act See specimen charge of stealing, No 103, p 733

[4] *i e* , knowledge at the time, see next paragraph

[5] "*Special* property ", see next note

[6] The "property" in goods is obtained if the person obtaining them becomes the owner Thus, if A sells goods, the property in them passes to the purchaser, if he pawns them, the pawnbroker obtains possession of them (and a "special" or temporary property in them), but the permanent property in them does not pass to him

amed, that the taker has an immediate[1] right to possession, the taking is not fraudulent and there is no theft The fraudulent intention must exist at the time when the owner is deprived of possession without his consent If the original taking is innocent, a subsequent fraudulent misappropriation will not retrospectively convert the taking into theft

Stealing by a trick —Examples of this are the forms of cheating known as "ringing the changes," and "ring dropping "

Stealing under mistake on the part of the owner - A familiar instance of this is where A meaning to give to B a penny in fact hands to him a half-crown, and B knowing at the time of receiving it that a mistake has been made, keeps the coin without saying anything

Stealing by finding —No one can steal an "abandoned' article If a person finds an article and appropriates it, he is not guilty of stealing it if the former owner had really abandoned it, or if the taker honestly believed that he had abandoned it, or if the taker honestly believed that he could not find the owner by taking reasonable steps The belief referred to is his belief at the time of the finding

"Carries away "—The smallest amount of moving, so long as there is a severance of the property from the possession of the person from whom it is taken, is sufficient Thus, taking goods out of a box and laying them on the floor is sufficient to constitute theft if the other elements of theft exist The line between what is and what is not a sufficient taking is extremely fine, and if there is any doubt as to whether the taking is sufficient, a jury, and under section 56 (6) of the Army Act a court-martial, may convict of an attempt to steal only

The property must be taken with the intention of permanently depriving the possessor of it Whether such an intention existed is a question of fact to be decided in the light of all the circumstances of the case

Theft by "bailees'

52 As "deprivation of possession" is an essential element of the offence, a person cannot, in general, steal anything which is already in his possession There is, however, a statutory provision to meet the cases of a "bailee" and a part owner by which a person may be guilty of stealing a thing, notwithstanding that he has lawful possession thereof, if being a bailee or part owner thereof, he fraudulently converts the same to his own use or to the use of any person other than the owner [2] Speaking generally, a person is a "bailee" of an article when it is delivered to him for the purpose of ultimately re-delivering it,[3] or delivering it to some other person Thus, if a man hires a bicycle for a day he becomes "bailee" of it, if he sells it, then although he had at the time lawful possession of it, his act is theft This, however, applies only where the obligation is to re-deliver or deliver the specific article * For instance, if A is entrusted with a sum of money, his obligation would ordinarily[4] be, not to return the

[1] A person who has pawned his watch has no immediate right to possession of it (*i e*, until he "redeems" it), he may therefore be guilty of "stealing" it, if he takes it from the pawnbroker without repaying the loan

[2] Larceny Act, 1916, s 1

[3] *e g* after doing repairs to it, or after using it

[4] It might be otherwise if the coins were deposited with him in a sealed package

Ch VII — identical coins, but only an equivalent sum, and he would not be guilty of "stealing" if he wrongfully appropriated it to his own purposes He would, however, be guilty of "fraudulent conversion," another offence dealt with by the Larceny Act [1]

Embezzlement

53. Special reference must be made to the doctrine as to "possession" in the case of clerks or servants Possession by a servant of anything on behalf of his master is considered to be the possession of the master or the possession of the servant according to the circumstances in 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 to whom the master has given the custody, the servant will have no real possession of the thing, the possession remaining in the master In this case misappropriation of the thing by the servant will be theft If, however, a servant receives anything from a stranger on his master's account, 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 him to the master In this case misappropriation by the servant (before such transfer) is called "embezzlement" [2] The two offences of "theft by a servant" and "embezzlement by a servant" are dealt with in the same section of the Act, and the legal distinction between them is of comparatively little practical importance, because if on a charge of theft the evidence proves embezzlement, the jury[3] can convict of embezzlement, and *vice versa* on a charge of embezzlement can convict of theft

Evidence of embezzlement

54 By "clerk" or "servant" is meant a person who is acting under and bound to carry out the instructions of his master or employer not merely as to what to do, but also as to how and when to do it The employment may be either general, or for a specified time, or for the performance of a single act

On a charge of embezzlement, the fraudulent misappropriation of the property may be inferred either from the fact that the accused person has not handed it over in the ordinary course, or from the fact of his having falsely accounted for it, or from the fact of his having absconded, or in any similar way It must, however, be remembered that none of these facts in itself constitutes the offence of embezzlement, each is *evidence* only of the fraudulent misappropriation

Embezzlement by persons in public service

55. A somewhat similar offence is committed where a person who is employed in the public service steals any chattel, money, or valuable security belonging to His Majesty, or entrusted to him by virtue of his employment, or embezzles or fraudulently disposes of any such chattel, &c , for any purpose other than the public service

Fraudulent conversion

56. The offence of "fraudulent conversion" [4] to which reference is made in paragraph 52 is committed by every person who (1) being

---

[1] s 20 (iv), and see para 56 (below)

[2] *i e* , the fraudulent misappropriation of the whole or any part of any property delivered to, or received, or taken into possession by him for or in the name or on account of his master or employer, Larceny Act, 1916, s 17 Embezzlement in the narrow sense is confined to acts of misappropriation committed by persons in the position of clerks and servants, but as pointed out in para 34 of Chapter III it is used in a wider sense in connection with military offences under the Army Act, *i e* , those dealt with by ss 17, 18 (4)

[3] Larceny Act, 1916, s 44 (2), so, too, can a court martial, A A 56 (1) (2).

[4] See specimen charge No 104, p 733

entrusted either solely or jointly with any other person with any property in order that he may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof, or (ii) having either solely or jointly with any other person received any property for or on account of any other person, fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof

Many offences of fraudulent conversion as above defined would, in the case of persons subject to military law, amount to the military offence of fraudulent misapplication under s 17 or s 18 (4) of the Army Act

Obtaining by false pretences

57. As has been said (para 51), when a person obtains not only the possession of, but also the property in, goods by fraud, the offence is not theft but obtaining goods by false pretences [1] The elements constituting the offence of obtaining goods by false pretences are very similar to those constituting theft

Any chattel, money, or valuable security may be the subject of the offence of "obtaining by false pretences" except such things as are not the subject of theft at common law [2]

There must have been an intention of depriving the owner permanently of the thing obtained, and the intention must have been fraudulent, though it is not necessary to allege an intention to defraud any particular person

The goods must have been obtained either directly or indirectly by the pretence, that is to say, they would not have been obtained but for the pretence If the person from whom the goods are obtained is not deceived by the pretence, but knows it to be false, the goods are not obtained by false pretences, but in such a case the person making the false statement may be convicted of attempting to obtain the goods by false pretences

The false pretence must be a false representation, express or implied, as to the past or present existence of some fact, a mere promise as to future conduct, or representations as to future expectations are not sufficient For instance, the giving of a cheque in exchange for goods is a representation that the drawer has an account at the bank on which the cheque is drawn, and that that account is in such condition that in the ordinary course of events the cheque will be met If the drawer knows that these conditions do not exist the giving of the cheque is in law a false pretence But representations of future expectations, as distinct from representations of existing facts, do not constitute a false pretence

The false pretence may be made in any way, either by words, by writing, or by conduct, for instance, if a person, not being an officer, represents himself to be so by wearing an officer's uniform, and thus obtains goods from a tradesman, this is a false pretence

---

[1] See specimen charge No 105, p 733

[2] The following classes of things are not the subject of theft at *common law* —

(1) Things abandoned by the owner
(2) Land, and things permanently attached to land
(3) Title deeds, bonds, &c
(4) Wild animals (including game)
(5) Base animals, such as dogs, ferrets, &c

But the stealing of plants and shrubs growing in gardens, &c , title deeds, and all animals which are usually kept in confinement, including dogs, has been made punishable *by statute*

Ch VII

by conduct It may be made direct to the person to be defrauded or to his agent, but a pretence made to a stranger in the hope that it will be repeated to, and acted on by, the intended victim is insufficient

It is no excuse to say that a person of common prudence could easily have found out that the pretence was untrue, or to say that the existence of the alleged fact was impossible, or that it was intended to make compensation for the goods in the future

Conviction of theft on charge of obtaining by false pretences

58 If a person is charged with obtaining goods by false pretences, and it appears that he obtained them under circumstances which in law amount to stealing, the jury may nevertheless convict him of the offence actually charged If he is charged with simple stealing and the evidence proves "obtaining by false pretences," they may convict him of the latter offence A court-martial has the same power under s 56 (6) of the Army Act

Robbery

59 "Robbery" is an aggravated form of stealing from the person accompanied by violence or threats of injury to the person robbed or to his property [1] If the robber is armed with an offensive weapon or has one or more companions (even if all are unarmed) operating with him at the time of the robbery, he is liable, upon conviction, to be sentenced to penal servitude for life The same punishment may be awarded if at the time of, or immediately before, or immediately after the robbery the offender uses personal violence to the person robbed The maximum punishment for robbery, if not aggravated by the circumstances mentioned above, is fourteen years' penal servitude

The violence or threats must be intentionally used for the purpose of overcoming or preventing resistance, or of extorting the thing stolen Violence used merely for the purpose of obtaining possession of the thing such as snatching a watch out of a pocket, is not sufficient to constitute robbery

A person charged with robbery with violence may be found guilty of robbery (without aggravation) or of an assault with an intent to rob or of stealing from the person or of simple stealing

Demanding with menaces, extortion

60 It is an offence to demand from any person with menaces or by force any property capable of being stolen, with intent to steal it "Menaces" include threats of injury to persons or property, and threats which would involve injury to a third person intended to be injured, such as would induce a person to whom the menaces are addressed to part with money or valuable property The menaces may be by words or gestures

There are various other offences of a similar kind, such as accusing or threatening to accuse a person (whether living or dead) of crimes of a particular kind with intent to extort any property or valuable thing, or, with a like intent, publishing or threatening to publish a libel upon any person or threatening to publish any matter touching any other person (whether living or dead)

Burglary

61. Offences closely allied to thefts and robbery are those of burglary, housebreaking and stealing in a dwelling-house Burglary can only be committed during the night, *i e*, between 9 p m and 6 a m, and it can only be committed in respect of

[1] See specimen charge No 100, p 733

a dwelling-house [1] It must be proved that the offender broke and entered the dwelling-house of a person with intent to commit a felony therein or broke out of such dwelling-house having either entered it with intent to commit a felony[2] or after actually committing a felony The maximum punishment for burglary is penal servitude for life

A person is considered to "enter" a house as soon as he introduces into the house any part of his body or any instrument held in his hand for the purpose of intimidating anyone in the house or of removing any goods, the introduction into the house of a housebreaking tool is not sufficient if it be merely part of the act of breaking into the house

A person is considered to "break" a house—

(1) if he breaks any part, internal or external, of the building itself, or
(2) if he opens by any means whatever[3] any *closed* door, window, or other thing intended to cover openings to the house, or leading from one part of it to another, or
(3) if he gets down the chimney, or
(4) if he gains entrance to the house by threats, artifice, or collusion

House breaking

62 The offence of housebreaking[4] falls under two heads —

(*a*) *Housebreaking and committing felony*[2]

This consists in breaking and entering a dwelling-house or various other buildings (*e g* , shop, office, garage, or building belonging to His Majesty) and committing any felony therein, or breaking out of such house or buildings after committing a felony therein This offence can be committed at any time of the day or night

(*b*) *Housebreaking with intent to commit felony* [2]

This consists in entering (breaking is not necessary) any dwelling-house between 9 p m and 6 a m , with intent to commit a felony therein, or, with a like intent, breaking and entering, at any time of the day or night, any dwelling-house or building of the kind mentioned in (*a*)

Stealing in a dwelling-house

63 It is an offence, to which a maximum punishment of fourteen years' penal servitude is attached, to steal in any dwelling-house any chattel, money or valuable security if the value of the property stolen amounts to five pounds , or if the offender by any menace or threat puts any person in the dwelling-house in bodily fear, whatever be the value of the property stolen

Other offences

64 It is also an offence—

(1) to be found by night[5] in possession of housebreaking tools unless a lawful excuse for such possession can be given,

[1] A dwelling house is any permanent building or separate part thereof in which the owner or tenant, or any one with their consent, habitually sleeps at night See specimen charge of burglary No 97 p 732

[2] As to what offences are felonies, see table at the end of the chapter

[3] This includes opening a shut window or door, but not pushing an open window or door further open

[4] See specimen charges 98, 99 p 732

[5] Night means the interval between nine at night and six in the morning

Ch VII

(2) to be found by night[1] armed with an offensive weapon with the intention of breaking into a building and committing felony therein,

(3) to be disguised at night[1] with the intention of committing felony,

(4) to be found by night[1] in any building with the intention of committing felony therein

Receiving stolen goods, &c

65 A person who receives goods with knowledge that they have been stolen or obtained by another[2] in any way whatsoever under circumstances which amount to felony or misdemeanour commits the offence of "receiving"[3]

The guilty knowledge of the receiver must be established, it is not enough to prove that he merely suspected the goods to have a tainted origin And the knowledge must have existed at the moment of receiving, if he took them innocently no subsequent guilty knowledge will suffice The fact that he bought them much below their value, or that he falsely denied his possession of them would 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 the goods 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

The doctrine of recent possession

66. If a person is found in possession of goods recently stolen, there is a strong presumption that he stole them or received them with knowledge that they were stolen [2] The *onus* of proving guilty knowledge always remains upon the prosecution, and upon the prosecution establishing that the accused was in possession of goods recently stolen, a jury or a court-martial may, in the absence of any explanation by the accused of the way in which the goods came into his possession, which might reasonably be true, find him guilty, but if an explanation is given which the jury or a court-martial think might reasonably be true, and which is consistent with innocence, although they were 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

Cheating, &c

67. The following are offences somewhat similar to theft, embezzlement, and obtaining money by false pretences —

(1) Obtaining money by cheating at cards, &c ,

(2) Fraudulently obtaining the execution of a valuable security, or affixing a name on any paper with a view to its being subsequently dealt with as a valuable security,

(3) Cheating, by a deceitful practice affecting the public, *e g* , selling by false weights,

(4) Conspiring to cheat and defraud, that is, an agreement by two or more persons to do an act with the intention of

---

[1] Night means the interval between nine at night and six in the morning

[2] Where it is clear that an accused is either the thief or a receiver, it is wrong to convict him of receiving unless there is something in the evidence to suggest that he was not the actual thief *R v Evans* [1916] 12 Cr App Rep 8

[3] See specimen charge No 103, p 733

defrauding the public or any person or class of persons, or to extort money or goods from any person,

(5) Fraudulently obliterating any mark denoting the property of His Majesty in any stores

(viii) *Forgery, Perjury, Personation*

Forgery

68 Forgery[1] is the making of a false document in order that it may be used as genuine A document is false if it or any material part of it purports to be made by or on behalf of a person who did not make it or authorise its making, and in particular, if any material alteration by addition, insertion or obliteration has been made in it, or if the whole or some material part of it purports to have been made by or on behalf of a fictitious or deceased person A document is also considered to be false, though made by a person in his own name, if it is so made with the intention that it should pass as being made by someone else These definitions must not be taken to be exhaustive

For forgery to constitute an offence there must be an intent to defraud or deceive, in the case of some documents an intent to defraud is essential, in the case of others an intent either to defraud or to deceive must be charged and proved

To forge wills, deeds and banknotes, and such documents as valuable securities, cheques, receipts or requests for the payment of money, and insurance policies is a felony punishable in the case of the three first mentioned documents with penal servitude for life, and in the case of the other documents with penal servitude for a term not exceeding fourteen years, in all these cases an intent to defraud is essential

Forgery of a large number of specific documents of an official nature such as birth or death certificates, court registers, &c, is also a felony, the maximum sentence for which is penal servitude for either fourteen or seven years according to the nature of the document forged In these cases an intent to defraud or to deceive is essential

The forging of various documents where such forgery does not amount to a felony is a misdemeanour, punishable with imprisonment, in these cases an intent to defraud is essential, except in the case of public documents when an intent either to defraud or to deceive must be charged and proved

A false signature to a genuine document or a genuine signature to a false document amount equally to forgery if the necessary intent is present

It is not essential, in order to constitute the offence of forgery, that the false document should be completed, or that it should be in such a form as would be binding in law, though, if a person is charged with the forgery of any particular instrument, it must be shown that the document has such a resemblance to it as would be likely to deceive an ordinary person.

[1] See the Forgery Act, 1913, and specimen charge No. 106, p 734.

Ch VII

The fraudulent intention may be inferred from the document itself or proved by external evidence The intention must be that either—

(*a*) the document should be used or acted on as genuine, or

(*b*) the actions of some person should be influenced by the belief that it is genuine

Uttering forged documents

69 A person is said to "utter" a forged document if he knowing it to be forged, delivers or disposes of it, or tenders it in payment or exchange, &c [1] If the document is one the forging of which is a felony, the uttering of it is also a felony, if the forging of it is a misdemeanour, the uttering of it is also a misdemeanour

The intent to defraud or to deceive (as the case may be) which is an essential element of the offence of forging a particular document is also an essential element in the offence of uttering it

The same punishment may be awarded for the uttering as for the forgery of any particular document

Possession of forged notes &c

70 The mere purchase or possession of forged banknotes, and some similar documents (whether complete or not) with the knowledge that they are forged, is in itself an offence

It is an offence to make, use, or knowingly be in possession of any banknote paper or any instruments or contrivances for making banknotes and similar documents

It is also an offence to demand, receive or obtain any property or money upon or by virtue of any forged instrument, knowing the same to be forged

Abettors &c, in forgery &c

71. Persons who aid or abet the commission of an offence mentioned in paras 68–70 are liable to be tried and punished as principals

Perjury

72. Perjury may shortly be defined as the wilful (*i e*, intentional) giving of evidence which he knows to be false or does not believe to be true by a witness or interpreter in a judicial proceeding [2] The term "judicial proceeding" includes a proceeding before any court, tribunal, or person having, by law, power to hear, receive and examine evidence on oath

The witness must have been duly sworn by the court or officer, *i e*, he must either have taken the oath or made an affirmation or declaration

The false evidence must be an assertion as to some matter of fact, opinion, belief, or knowledge, which the witness does not believe to be true, or as to the truth of which *he knows* that he is ignorant

The assertion must be as to some point which is material, *i e*, it must be as to some point which affects, directly or indirectly, the probability of some question which is to be determined by the proceeding in the course of which it is given, or the credit of some witness giving evidence in the course of the proceeding

The parts of the evidence alleged to be false should be set out in the particulars of the charge, and in order to prove a charge of perjury it is not sufficient to call one witness only, but the evidence of such a witness must be corroborated either by the evidence of another witness, or by the proof of material and relevant facts confirming it

[1] See specimen charge No 107 p 734.

[2] See the Perjury Act, 1911

The civil offence of perjury, as such, will rarely come before courts-martial, inasmuch as the giving of false evidence before a court-martial or any court or officer authorised by the Army Act to administer an oath is made a military offence when committed by a person subject to military law [1]

S 126 of the Army Act provides for the offence of perjury when committed before a court-martial by a person not subject to military law

The making of a false declaration in the cases specified in s 142 of the Army Act is declared to be perjury, and subject to the same penalties

Personation

73 Under the False Personation Act, 1874, the false and deceitful personation of any person with the intention of fraudulently obtaining any property whatever is an offence

By s 142 of the Army Act a person is deemed guilty of personation who falsely represents himself to any military, naval, air-force, or civil authority to belong to, or to be a particular man in, or who has been in, the regular, reserve, or auxiliary forces [2]

(ix) *Malicious Damage to Property*

Malicious injury to property

74 Numerous offences come under the category of malicious injuries to property

The essence of the offence is injury to the property of another, it is immaterial whether the offender is himself benefited by the act or not

Such acts are offences if done unlawfully and maliciously

A person is considered to cause an injury unlawfully and maliciously if he wilfully causes it without any lawful excuse, *i e* , if he causes it by an act which he must know will probably cause it, or is reckless whether he causes it or not, and if he has not either a legal right to act as he does, or a *bona fide* and reasonable belief that he has such a right Generally speaking the act itself justifies a presumption of malice until the contrary is shown, *e g* , that it was due to negligence or accident For instance, a deliberate trespass on land whereby substantial injury is caused to crops amounts to malicious injury to property But the charge must allege that the injury was caused maliciously Unless the evidence clearly shows that the damage was caused maliciously, a charge of malicious injury should not be laid

Arson

75 Of the various instances of malicious injury the most important is arson which consists in unlawfully and maliciously setting fire to buildings or to certain peculiarly inflammable kinds of property To set fire to one of His Majesty's dockyards or to any ship of war therein is still a felony punishable with death The offences of setting fire to a church, railway-station, public building, stack of corn, ship or coal-mine are punishable with penal servitude for life, the same punishment may be awarded to a person who sets fire to a dwelling-house when any person is therein, or, with intent to injure or defraud, to any house, office, shop, shed, &c , whether in the possession of the offender or any other person To set fire to or to attempt to set

[1] See A A , 29 See also A A 46 (6), 47 (4), 70 (5) (6), 72 (1), R P , 124 (H), 125 (E)
[2] As to the punishment for this offence, see the section and note thereto

Ch VII — fire to other buildings or their contents or to growing crops is an offence punishable with penal servitude for fourteen years

It is not a necessary element of the crime of arson that malice should have been shown against the person in respect of whose property the offence was committed "Maliciously" means that the offender intended that the building should be set on fire or that he acted with recklessness, not caring whether or not it took fire though he realised that such a consequence was almost inevitable.

The sending of a letter threatening to commit arson is an offence

Other examples of malicious damage

76 Amongst other offences mentioned in the Malicious Damage Act, 1861, are the following —

(i) Destruction of buildings with explosives,
(ii) Riotous or tumultuous demolition of or damage to houses,
(iii) Destruction of or damage to machinery or ships,
(iv) Destruction of bridges, telegraphs, &c
(v) Obstruction of railways,
(vi) Killing or maiming of certain animals

(x) *Miscellaneous Offences*

Bigamy

77. Bigamy is committed by a person who, being already married to one person, goes through the form of marriage with another person during the life of the former husband or wife whether the second marriage has taken place in England or Ireland or (except in the case of a person who is not a British subject) elsewhere

It is a good defence to a charge of bigamy that the wife or husband of the accused has been continually absent from such person for seven years then last past, and has not been known by that person to be living within that time, the burden of proving such knowledge is upon the prosecutor when the fact that the parties have been continually absent for seven years has been proved It is also a good defence if the accused can show that even though the seven years have not elapsed before the second marriage, he or she had reasonable grounds for believing that his or her wife or husband was dead at the time of the second marriage Proof that the accused was divorced from the bond of his first marriage or that the first marriage was null and void provides a complete defence to a charge of bigamy

A person who, being unmarried, goes through the form of marriage with another person, knowing that person to be married to someone else, may be charged with and convicted of aiding and abetting the felony of bigamy

Treason

78. The only forms of treason which need here be mentioned are—

(1) Levying war against the Sovereign in any of His dominions
(2) Aiding the enemies of the Sovereign

Certain other acts of treason (namely, compassing to levy war against the King, and compassing to move any foreigner to invade the King's dominions) can, under an Act of 1848, be also treated as felonies, these acts are commonly known as "treason-felonies," and are so described in s 41 of the Army Act

Conspiracy

79. Conspiracy consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful

means The mere intention to do such an act is not a conspiracy An agreement to carry out a crime, even if the crime is not afterwards committed, is a conspiracy Unless two persons, at least, are found to have combined there can be no conviction, but a person may be charged with conspiracy with persons unknown or persons who cannot be brought before the court or who are dead

The main forms of conspiracy are —

(i) To commit an offence punishable by law,
(ii) To cheat and defraud,
(iii) To prevent or obstruct the course of justice

80 It is an offence — Offences relating to the obstruction of justice

(*a*) To try to dissuade witnesses from giving evidence, in order to obstruct the course of justice,
(*b*) To obstruct the execution of any legal process,
(*c*) To conceal or procure the concealment of a felony[1],
(*d*) To enter into an agreement for valuable consideration to refrain from prosecuting a person for a felony[1], or to show favour to the accused in any such prosecution

81. Offences relating to escape from civil custody would probably never be tried by court-martial, and it seems only requisite to observe here that— Escape

if a person assists any alien enemy who is a prisoner of war within His Majesty's dominions, whether in confinement or on parole, to effect his escape, or

if a person (being a British subject) on the high seas assists any such prisoner of war who has escaped from His Majesty's dominions in his escape towards any other country,

he is, in either case, guilty of an offence

[1] As to what offences are felonies, see table at end of chapter

TABLE OF OFFENCES AND PUNISHMENTS

NOTE — (i) Only such offences as are dealt with in Chapter VII are included in this Table

(ii) The second column states in the case of each offence the maximum "punishment assigned for such offence by the law of England" (see A A 41 (5)). Courts-martial cannot (A A 44, proviso (1B)) award a longer term of imprisonment than two years. It may be observed that in a few cases a heavier punishment than that stated in this column can be inflicted by sentencing the offender to "such punishment as might be awarded to him" for an offence under A A 40 (See A A 41 (5)). In all cases in the second column imprisonment may be with or without hard labour

(iii) The minimum term of penal servitude which can be awarded is three years. Where penal servitude may be awarded, the court may, as an alternative, award imprisonment up to two years

(iv) The third column shows the other offences of which an accused may be found guilty by civil court or court martial under A A 56 (6)

(v) On a charge of felony or misdemeanour, the accused may be found guilty of an attempt to commit the offence charged

F = Felony M = Misdemeanour P S = Penal Servitude Imp = Imprisonment

Offence	Maximum Penalty	Other offences of which accused may be found guilty	Paragraph in which described
Arson—			
Buildings generally	F P S 14 years		75
Church, coal mine, public building, station, &c	F P S life		,,
Crops	F P S 14 years		,,
Dockyard, arsenal, H M Ships	F Death		,,
Dwelling-house with person therein	F P S life		,,
Goods in buildings	F P S 14 years		,,
Stack	F P S life		,,
Attempted, buildings generally, coal mine ship	F P S 14 years		,,
,, stack	F P S 7 years		,,
Assault—			
Common	M Imp 1 year		34
Indecent See "Indecent Assault"			
Occasioning actual bodily harm	M P S 5 years	Common assault	35
On police officer in execution of his duty	M Imp 2 years		,,
With intent to commit felony	M Imp 2 years		,,
,, ,, ,, ,, sodomy	M P S 10 years		,,
,, ,, ,, resist lawful arrest, &c	M Imp 2 years		,,
See also "Robbery"			
Attempt—			
To commit crime generally	M Imp 2 years		22
,, ,, murder	F P S life		48
,, ,, sodomy	M P S 10 years		39
See also "Arson," "Carnal Knowledge"			

Bigamy ..	F	P S 7 years		77
Buggery See "Sodomy "				
Burglary	F	P S life	(1) Entering dwelling house in the night with intent to commit felony (2) Housebreaking (3) Stealing in dwelling-house (if stealing alleged and property stolen is of value £5) (4) Simple stealing (if stealing alleged)	61
Carnal Knowledge—				
Of girl under 13 ..	F	P S life	(1) Procuring unlawful carnal connection by threats, fraud or drugs (2) Carnal knowledge of idiot or imbecile (3) Indecent assault	38
Attempted, of girl under 13	M	Imp 2 years		"
Of girl 13–16, or attempted	M	Imp 2 years		"
Cheating—				
At cards, games, &c	M	P S 5 years		67
Fraudulently obliterating marks on public stores	F	P S 7 years		"
" obtaining execution of a valuable security	M	P S 5 years		"
The public .	M	Imp 2 years		"
Conspiracy to cheat and defraud See 'Conspiracy "				
Conspiracy—				
Generally	M	Imp 2 years		79
To cheat and defraud	M	Imp 2 years		67
" murder	M	P S 14 years		49
Embezzlement—				
By clerk or servant	F	P S 14 years	Stealing	53
" person employed in the public service	F	P S 14 years		55
Extortion See "Menaces, Demanding with "				
False Pretences—				
Fraudulently obtaining execution of a valuable security See "Cheating "				
Obtaining chattel, money, valuable security, &c , by	M	P S 5 years	Not entitled to be acquitted if stealing is proved (See Ch VII, para 58)	57, 58
" credit by	M	Imp 1 year		57

Offence	Maximum Penalty	Other offences of which accused may be found guilty	Paragraph in which described
Forgery—			
Of official documents	F P S 7 years		68
,, registers of births, marriages, deaths, &c	F P S 14 years		,,
,, valuable security, cheque, receipt, &c	F P S 14 years		,,
,, will, bond, deed, banknote, &c	F P S life		,,
Where the crime is not made a felony by statute	M Imp 2 years		,,
Uttering forged document	F or M As if guilty of forging		69
Demanding, &c, money on forged instrument	F P S 14 years		70
Making or possession of paper or instruments for forgery	F P S 7 years		,,
Purchase or possession of forged banknotes, &c	F P S 14 years		,,
Fraudulent Conversion of Property—			
In general	M P S 7 years		56
High Treason See "Treason"			
Housebreaking, &c —			
And felony committed, by day or night	F P S 14 years	(1) Stealing in dwelling house (if stealing alleged and property stolen is of value £5) (2) Simple stealing (if stealing alleged)	62
With intent to commit felony entering dwelling house at night	F P S 7 years		,,
With intent to commit felony breaking and entering building by day or night	F P S 7 years		,,
Being found by night in building with intent to commit felony	M P S 5 years		64
Being disguised at night with intent to commit felony	M or for		
,, in possession of housebreaking tools by night	M second offence		
,, ,, ,, ,, offensive weapon with intent to break and enter	M P S 10 years		,,
See also "Burglary"			,,
Indecency, Gross See "Indecent Assault"			
Inciting to Commit Crime	M Imp 2 years		18
Indecent Assault, &c —			
On females	M Imp 2 years	Common assault	35, 36
,, males	M P S 10 years	Common assault	35, 36
Gross indecency with male person	M Imp 2 years		40

Justice, Conspiracy to obstruct the course of	M Imp 2 years		79 80
Malicious Damage—			
To agricultural and certain other machinery	F P S 7 years		76
,, animals other than cattle	M Imp 6 months (1 year for second offence)		,,
,, bridges	F P S life		
,, cattle	F P S 14 years		,,
,, electric lines, works, &c	F P S 5 years		,,
,, machinery	F P S life		,,
,, mines	F P S 7 years		,,
,, property, real or personal	M Imp 2 years (P S 5 years if at night)		,,
,, railways, &c	F P S life		
,, ships	F P S life		,,
Causing explosion likely to endanger life or injure property	F P S life		,,
Destroying, &c, by explosives, dwelling-house, any person being therein	F P S life		,,
Possession of explosives for purpose of committing an offence	M Imp 2 years		,,
Putting explosives near buildings with intent to destroy	F P S 14 years		,,
Obstructing railways	M Imp 2 years		,,
Manslaughter	F P S life		46
Menaces, &c —			
Demanding money by, with intent to extort, defraud, or injure	F P S life		60
Demanding money by, with intent to steal	F P S 5 years		,,
Threatening to accuse of crime with intent to extort	F P S life		,,
,, ,, publish with intent to extort or induce favour	M Imp 2 years		,,
Murder	F Death	(1) Manslaughter (2) Concealment of birth (where murder of infant charged)	44
Attempt to See "Attempt"			
Conspiracy to See "Conspiracy"			
Sending letter threatening to	F P S 10 years		45
Wounding with intent to See "Wounding"			
Perjury	M P S 7 years (except in a few cases)		72
Personation—			
False, in order to obtain property, &c	F P S life		73

Offence	Maximum Penalty	Other offences of which accused may be found guilty	Paragraph in which described
Prisoners of War—			
Assisting escape of	F P S life		81
Rape	F P S life	(1) Carnal or attempted carnal knowledge of girl, imbecile or idiot (2) Indecent assault (3) Incest	37
Receiving .	F or M P S 14 years if stealing is F P S 5 years if stealing is M		65
Robbery—			
Armed	F P S life		59
With violence	F P S life	(1) Robbery (2) Assault with intent to rob (3) Stealing from the person (4) Simple stealing	"
Not aggravated as above	F P S 14 years	Assault with intent to rob	"
Assault with intent to rob	F P S 5 years		"
" " " " " if armed	F P S life		"
Sodomy (or **Buggery**)	F P S life		39
Assault with intent to commit See "Assault "			
Attempt to commit See "Attempt "			
Stealing (Larceny)—			
Simple (including stealing by bailee) .. .	F P S 5 years (After previous conviction for felony, P S 10 years)	(1) Embezzlement (2) False pretences	50–52
From the person	F P S 14 years		59
In dwelling-house	F P S 14 years		63
Mail-bag, letters, &c , in course of transmission by post	F P S life		50–52
Treason, High	Treason Death		78
Treason-felony	F P S life		"
Wounding—			
Unlawful	M P S 5 years	Common assault	35
With intent to maim or do grievous bodily harm	F P S life	Unlawful wounding	"
" " " murder	F P S life	Unlawful wounding	"
Uttering Forged Document See "Forgery "			

CHAPTER VIII

THE COURTS OF LAW IN RELATION TO OFFICERS AND COURTS-MARTIAL

No appeal from courts-martial

1. A right of "appeal" in the ordinary sense of that term exists only where it is expressly conferred by statute and no such right of appeal to any court[1] (whether civil or military) is given against the decision of a court-martial or against the award or order of an officer

Control of superior courts over courts martial

2. Notwithstanding the absence of a right of appeal, military tribunals are to a great extent subject to the control and supervision of the superior civil courts The proceedings by which such control and supervision are exercised may be either criminal or civil Criminal proceedings might take the form of a prosecution for assault, manslaughter or even murder, civil proceedings may be either preventive, *i e* , to restrain the commission or continuance of an injury, or remedial, *i e* , to afford a remedy for an injury actually suffered Broadly speaking, the civil jurisdiction of the courts of law is exercised against a court-martial as a tribunal in applications for "prerogative" writs[2], and against individual officers in actions for damages

Grounds for invoking aid of civil courts

3. Until recently considerable doubt existed as to the right of a person subject to military law to invoke the aid of the civil courts to redress grievances arising out of his service as an officer or soldier, or out of the authority exercised over him by his superiors From a line of decisions starting in 1786 with the famous case of *Sutton* v *Johnstone*[3] the deduction had been drawn that a civil court would not inquire at all into the exercise of military discipline In 1919, however, these decisions were re-examined in the case of *Heddon* v *Evans*[4] and the following principles were laid down —(1) If the rights which an officer or soldier is seeking to enforce are given to him not by the common law, but only by military law—if, for example, they concern only his rank, promotion or emoluments—it may well be that he can seek his remedy in the military code alone, (2) if such rights are fundamental common law rights—such as immunity of person or liberty —then, save in so far as they are taken away by military law, they may be asserted in the ordinary courts, (3) in the case of such fundamental rights, distinction is to be drawn between acts done in excess of, or without, jurisdiction, and acts done within jurisdiction but maliciously "First, a military tribunal or

---

[1] It is open to any officer or soldier who considers himself aggrieved by the finding or sentence of a court martial to forward a petition to the confirming or any reviewing authority through the usual channels (K R 666) Independently of any such petition, the proceedings of all general and district courts martial before being filed in the office of the Judge Advocate-General are carefully reviewed there as a matter of course with a view to detecting any illegality or miscarriage of justice In the case of illegal or excessive punishments awarded by a commanding officer or by an authority dealing summarily with a charge under s 47 of the Army Act, R P 10 provides for their cancellation, variation or remission by superior military authority

[2] *i e* , the writs of *Mandamus, Prohibition, Certiorari* and *Habeas Corpus*

[3] See para 40 *post*

[4] See para 45, *post*

Ch VIII — officer will be liable to an action for damages if when acting in excess of or without jurisdiction, it or he does, or directs to be done, to a military man, whether officer or private, an act which amounts to assault, false imprisonment or other common law wrong, even though the injury purports to be done in the course of actual military discipline Secondly, if the act causing the injury to person or liberty be within jurisdiction and in the course of military discipline no action will lie upon the ground only that such act has been done maliciously and without reasonable and probable cause ''

Juris diction, limits of

4. The jurisdiction of any tribunal may be limited by conditions as to its constitution, as to the persons whom or the offences which it is competent to try, and as to the sentences which it is empowered to award, or by other conditions which the law makes essential to the validity of its proceedings and judgments If it fails to observe these essential conditions, it acts without jurisdiction or in excess of jurisdiction, as the case may be

The jurisdiction of an army officer or court-martial to try and punish offenders is strictly limited by the military code of law which confers it, and to which an individual impliedly undertakes to submit when he joins the army If they disregard the provisions and limitations of such code, they act without or in excess of their jurisdiction

Thus, a commanding officer or a court-martial will act without jurisdiction if they deal with a person not amenable to military law as if he were so amenable, so, too, will a commanding officer who punishes a warrant officer, or a junior officer who assumes to himself the punitive powers of a commanding officer A court-martial will act without jurisdiction if it is not properly convened, or is not properly constituted, if for instance the number of members is below the legal *minimum*, if the members are not duly qualified to act, or if the president is not of the proper rank, or has not been properly appointed [1] An officer or court-martial will act without jurisdiction if they convict a man of an offence which is not an offence under the Army Act, or (save as provided by s 56) of an offence different from that with which he is charged An officer who confirms the proceedings of a court without having authority to do so acts without jurisdiction, and an officer who (with authority) confirms proceedings is equally responsible with the members, if they have acted without, or in excess of, jurisdiction [2]

A court which awards a heavier punishment than it has authority to award exceeds its jurisdiction There is old authority[3] also for the proposition that jurisdiction is exceeded if it be exercised with cruelty or oppression amounting to an abuse of it , but it may be doubted whether such abuse of jurisdiction can really be distinguished from malicious exercise of jurisdiction

It has been said that "in testing the legality of sentences passed under the provisions of the Army Act, a civil court ought not to apply the rigorous tests sometimes applied in questioning the

[1] Accordingly, for the protection of members themselves, the Rules of Procedure require that the convening order shall be read at the commencement of the proceedings and that the court shall ascertain that it is properly constituted

[2] See *Comyn* v *Sabine*, para 31, *post*

[3] *Wall* v *Macnamara*, para 37, *post*

acts of a civil court of summary jurisdiction A reasonable latitude should be allowed, and mere mistakes of procedure, if actual jurisdiction existed, ought not to receive undue weight "[1]

Dismissal or discharge of officer or soldier

5 An officer holds his commission at the pleasure of the Sovereign, who can at any time dismiss him without assigning a reason[2], no contract to the contrary unless sanctioned by statute has any legal effect[3] So, too, a soldier can be discharged at any time,[4] and in his case the form of his attestation undertaking recognises this rule for it binds him to serve for a definite period if his services are so long required In practice, of course, the prerogative power to dismiss or discharge is not exercised arbitrarily

An officer cannot claim as a matter of right to resign his commission whenever he pleases[5]

An officer or soldier cannot recover pay (or half-pay) alleged to be due to him by action or petition of right against the Sovereign in the civil courts[6]

(1) *Writ of Mandamus*

Mandamus when it issues

6 The writ of *mandamus* is a command issuing from the High Court of Justice directing some person or inferior court to do some particular act which is in the nature of a public duty There must be a specific legal right to have the act performed, and there must be no other equally convenient and effectual remedy available

There is no record of an application for a *mandamus* to a court-martial, but the following cases illustrate the principles governing the issue of such a writ

Example

7. An officer considering himself aggrieved in respect of his emoluments applied for a *mandamus* to the Secretary of State for War, directing him to carry out the terms of the Royal Warrant as to the pay and pensions of officers, it was refused on the ground that neither common law nor statute imposed on the Secretary of State any legal duty in respect of officers and their remuneration[7]

An officer whose conduct had been investigated by a military court of inquiry, and who had been subsequently placed on half-pay, considered that the Rules of Procedure had not been properly complied with, and that he had not had full opportunity of being present throughout the inquiry He asked for a *mandamus* directing the Army Council to cause the court to reassemble and hear his case according to law The application was refused on four grounds —(1) That the court would not interfere in matters relating to military law, prescribing rules for the guidance of officers, (2) that another equally appropriate remedy was open to the officer under s 42 of the Army Act, (3) that it was in every case a matter for the discretion of the Council whether to assemble

---

[1] *Heddon* v *Evans*, para 45 *post*

[2] *Grant* v *Sec of State for India* [1877], L R 2 C P D 445, *re Mansergh*, para 16, *post*, *re Tufnell*, p 112, note 1, *post* *Dunn* v *R* L R [1896], 1 Q B 116

[3] *Hales* v *R* [1918] 34 T L R 589

[4] *Leaman* v *R* L R [1920] 3 K B, 663

[5] *Hearson* v *Churchill*, L R [1892], 2 Q B 144, and older cases there cited

[6] *Leaman* v *R*, *supra* no engagement between the Crown and an officer in respect of services either present, past or future can be enforced by civil action, *Mitchell* v *R*, L R [1896], 1 Q B 121, note

[7] *R* v *Secretary of State for War*, L R [1891], 2 Q B, 326

Ch VIII

a court of inquiry or not, and that the court never ordered an authority to exercise its discretion in a particular way, (4) that under the circumstances a *mandamus* would be ineffectual, because the Council could act upon any information which reached them and were not confined to a report from a formal court of inquiry [1]

(ii) *Writ of Prohibition*

Prohibition when it issues

8. The writ of prohibition issues out of the High Court of Justice to any inferior court which concerns itself with any matter not within its jurisdiction, or transgresses the bounds prescribed to it by law It forbids the inferior court to proceed further in the matter, or to exceed the bounds of its jurisdiction, and if want of jurisdiction in the inferior court be once shown, any person aggrieved by the usurpation of jurisdiction is entitled to the writ as a matter of right

The writ will not be granted for irregularity in the proceedings or wrong decision of the merits, or when it can be of no use, as, for example, after a sentence has been carried into execution

Examples

9 Applications for a prohibition to restrain courts-martial have hitherto been few and uniformly unsuccessful The earliest reported is that of *Grant* v *Gould*[2] in which Lord Loughborough affirmed the general principle that courts-martial are subject to the control of the superior courts, and can be prohibited if they exceed their jurisdiction, but that on the other hand mere error in matters within their jurisdiction is no ground for a prohibition The plaintiff, Serjeant Grant, was tried by court-martial on a charge of having persuaded two drummers of the Guards to desert and enlist in the service of the East India Company He was convicted and sentenced to be reduced to the ranks, and to receive one thousand lashes Grant moved for a prohibition to prevent the execution of this sentence on the grounds (i) that he was not a soldier and therefore a court-martial had no jurisdiction to try him, (ii) that evidence was improperly admitted and rejected, (iii) that he was convicted of a crime not properly alleged in the charge, and (iv) that such crime was not an offence under the Mutiny Act The court agreed that the first ground was material, as it affected the jurisdiction of the court-martial[3], but after examining the facts they were satisfied that Grant was in fact subject to military law the other grounds they considered as unsubstantial—at the most, errors in procedure, and accordingly they refused prohibition, leaving the sentence to the King's clemency

Grant v Gould

Poe's case

10 The next case[4] illustrates the rule that a prohibition will not be granted when it is too late for it to effect any remedy

---

[1] *R* v *Army Council ex parte Ravenscourt*, L R [1917], 2 K B , 504

[2] (1792) 2 Bl , H , 69

[3] In this case the court reviewed the evidence on which the court martial had acted , but Lawrence, J , when referring to it in *Warden* v *Bailey*, 4 Taunt at p 77 remarked that whether Grant was or was not a soldier was one of the questions which the court martial had before them to try," as if their decision on the point was conclusive The rule now appears to be that where the jurisdiction of the inferior tribunal depends upon a question of law, or of law and of fact mixed, the High Court will review its decision, but not when it depends upon a question of pure fact as to which there was conflicting evidence

[4] *Re Poe* (1832) 5 Barn & Adol , 681 see also *re Clifford & O'Sullivan* L R [1921] 2 A C 570 (referred to in para 14 *post*)

Lieutenant Poe, being a passenger on board ship, was accused of stealing money and clothes from his servant's trunks, which were kept in his (Poe's) cabin On investigation of the charge by the captain of the ship and other officers on board, Poe was expelled by the officers and passengers from their table and society He took no measures to vindicate his honour, and being tried for conduct to the prejudice of good order and military discipline, was found guilty, and sentenced to be dismissed the service The sentence was confirmed by the King and carried into execution An application on behalf of Poe that a prohibition might issue "to the Judge-Martial and Advocate-General of His Majesty's forces" to restrain the execution of the sentence was refused, Denman, C J , observing that even supposing the case of *Grant* v *Gould* to furnish some argument that a writ of this nature might be directed to the Judge-Advocate before execution of the sentence, it was impossible to discover what he could be required to abstain from after execution

M'Carthy's case

11 Serjeant M'Carthy[1] was tried in 1866 by a general court martial on a charge of "coming to the knowledge of an intended mutiny, and not revealing such knowledge to his superior officers" The evidence given implicated him in the Fenian conspiracy, and showed endeavours on his part to induce soldiers to become members of that conspiracy, and various other acts amounting to overt acts of treason After the close of the prosecution the court-martial was adjourned in order to permit the prisoner to apply for a writ of prohibition on the ground that the evidence establishing the military offence of mutiny disclosed also that the prisoner was guilty of treason, which a court-martial would have no jurisdiction to try The Irish Court of Queen's Bench held that the military offence did not merge in the greater offence, and declined to accede to the application

S A Labour Corps case

12. In 1917 some members of the South African Native Labour Contingent mutinied on the voyage to South Africa, to which country they were being repatriated in accordance with the conditions of their enlistment-contract after the termination of their service in France After their arraignment before a field general court-martial at Cape Town, the Supreme Court of South Africa was asked to prohibit the president of the court from proceeding further with the case on the ground that the accused were amenable only to a civil tribunal The court considered the terms of enlistment, and held that recruits to the contingent submitted themselves to military discipline knowing that they were joining a military organisation to be officered by regular officers under War Office orders they held that s 176 (3) (9) (10) applied and rendered the accused subject to the Army Act and military tribunals, and consequently refused prohibition [2]

No example of issue of prohibition to a court-martial

13. Although no writ of prohibition has ever actually been issued to a court-martial, there seems no doubt that it might issue in a proper case, as, for example, if a court-martial were proceeding to try a person not subject to military law

[1] *Re M'Carthy* (1866) 14 W R , 918

[2] *Makubedi* v *Gutsche* [1917] S A Supreme Court Reports 632 Incidentally the court said that the respondent ought strictly to have been the G O C in C and not the president

To officer

The question whether a writ of prohibition would issue to an officer exercising individual authority does not seem ever to have been raised

To court of inquiry

In a recent case[1] it was said that, "In a matter affecting the discipline of the Army this Court cannot interfere by *mandamus*, prohibition or *certiorari*, at the suit of an officer or soldier, with the proceedings of a military court of inquiry or with any action that may thereupon be taken by the Army Council"

Re Clifford and O Sullivan

14. On May 3rd, 1921, Patrick Clifford and Michael O'Sullivan, civilians, were tried by a military court held under a martial law proclamation applicable to County Cork and were convicted and sentenced to death for an offence committed in the martial law area and made capital under the proclamation

They thereupon applied in the Chancery Division in Ireland for a writ of prohibition against the military court, the Commander-in-Chief in Ireland and the General Officer Commanding in Cork to prohibit them from proceeding further with the trial or from pronouncing or confirming any judgment upon the prisoners as a result of the trial or from carrying into execution any such judgment on the ground that the military court was illegal and had no jurisdiction Powell, J, following the decision in *R* v *Allen*,[2] refused the application An appeal was brought to the Court of Appeal in Ireland who held that they had no jurisdiction to entertain the appeal and dismissed it A further appeal was then taken to the House of Lords and it was there held that, as proceedings before a military court were not in any sense criminal proceedings, an appeal would lie, but, on the merits of the application itself, it was decided that prohibition did not lie, first, because the officers constituting the military court did not claim to act as a judicial tribunal in any legal sense, and, secondly, following the decision in *R* v *Poe*, that they were *functi officio* In the course of his judgment Viscount Cave, L C, said "A further difficulty is caused to the appellants (the original applicants) by the fact that the officers constituting the so-called military court have long since completed their investigation and reported to the commanding officer, so that nothing remains to be done by them and a writ of prohibition directed to them would be of no avail What the appellants really desire is an order restraining General Macready and Major-General Strickland from confirming and carrying out the sentence, and it is clear that as against these officers, who are in no sense the officers or agents of the military court, prohibition could not be granted"[3]

(iii) *Writ of Certiorari*

Certiorari when it issues

15 *Certiorari* is a writ issuing to the judges or officers of inferior courts, and commanding them to certify and return the record of a matter, *e g*, a conviction or order, depending before them, to the end that more sure and speedy justice may be done If the conviction or order of the inferior court is found to be bad in law, it will be quashed

---

[1] *R* v *Army Council, ex parte Ravenscroft*, L R [1917], 2 K B, 504
[2] See para 29, *post*
[3] *Re Clifford and O Sullivan*, L R [1921], 2 A C 570

In the case of inferior civil courts, if absence or excess of jurisdiction is shown, the writ is issued on the application of the person aggrieved almost as a matter of course, unless he has by his conduct precluded himself from taking an objection [1] As the law is at present understood, in the case of a court-martial sentence, it will issue only when the rights affected by the judgment of the court are civil rights, and not when they are dependent on military status and military regulations [2]

Examples

16 In January, 1858, Captain Mansergh was on duty with his regiment, the 6th Foot, at Calcutta, under the command of Colonel Barnes In February, 1858, he was gazetted to a majority in the 15th Foot, at that time stationed in England Notice of this appointment was transmitted to India and notified in orders in the usual way, after which notification Major Mansergh ceased, according to the rules of the army, to belong to the 6th Foot The latter regiment was about to start on active service when Colonel Barnes informed Major Mansergh of his promotion and desired him to hand over his company to another officer, which he did accordingly

Mansergh's case

Subsequently Major Mansergh, conceiving that the notification of his appointment to the 15th Foot had been obtained by Colonel Barnes for the purpose of excluding him from active service, wrote to the Colonel expressing that view in strong language For this he was placed under arrest, and subsequently tried by court-martial on a charge of having addressed to his superior officer a letter containing offensive and insulting language He was found guilty and sentenced to be dismissed, and the proceedings having been confirmed, were sent to England and deposited with the Judge-Advocate-General Major Mansergh then applied to the Court of Queen's Bench for a rule calling on the Judge-Advocate-General to show cause why *certiorari* should not issue to bring up the record of his conviction in order that it might be quashed, on the ground that after his promotion he ceased to be within the command of the Commander-in-Chief in India, and that consequently the court-martial had no jurisdiction to try him

The Court refused the application [3]—Cockburn, C J , observing, "I quite agree that when the civil rights of a person in military service are affected by the judgment of a military tribunal in pronouncing which the tribunal has either acted without jurisdiction or has exceeded its jurisdiction, this court ought to interfere to protect these civil rights, *e g* , where the rights of life, liberty, or property are involved, although I do not know whether the latter case could occur Here, however, there was nothing of the sort, the only matter involved was the military status of the applicant—a thing which depends entirely on the Crown, seeing that every person who enters into military service engages to be entirely at the will and pleasure of the Sovereign [4] Then there is this additional fact that these proceedings originated abroad in a country the tribunals of which are not subjected to our jurisdiction " It is contended that because we have the

[1] *R* v *Surrey* JJ [1870] L R 5 Q B , 466
[2] See paras 3 *ante* and 16, 17, *infra*
[3] *Re Mansergh* (1858) 1 Best and Smith, 400.
[4] See para 5, *ante*

Ch VIII record of the proceedings in the country we have jurisdiction over it Assuming that for a moment, yet when we look at the particular nature of the case before us, we see that the military status of the applicant alone is affected, and consequently if he had just cause of exception to the act of the tribunal by which he was sentenced, he might have appealed to the Queen to reconsider the matter with the advice of her Judge-Advocate For these reasons I am of opinion that in this case we have no jurisdiction to grant a *certiorari*, besides which, *certiorari* being a discretionary writ, we most certainly ought not in the exercise of our discretion to grant it if we had the jurisdiction ''

Roberts case

17. A similar application in 1879 by Captain Roberts was equally unsuccessful He founded his application on the ground that the sentence of the court-martial dismissing him from the service was invalid, in that it simply sentenced him to be dismissed without stating the cause of dismissal

It was attempted to distinguish this case from that of Mansergh, on the ground that here civil rights were indirectly affected, as Mr Roberts would lose his rights to pension or retiring allowance, and would lose the sum he had paid for purchase But it was pointed out by the Judges that the rights referred to were purely military in their nature and dependent on military status and military regulations, and *Mansergh's case* was considered decisive against granting the application [1]

In an case

18 In a recent Canadian case[2] it was recognised that, where a court-martial has acted within its jurisdiction, neither the merits of the conviction nor the propriety of the sentence can be reviewed by the Supreme Court upon an application for either *certiorari* or *habeas corpus*

(iv) *Writ of Habeas Corpus*

Habeas Corpus when it issues

19 Any person who is detained in what he conceives to be illegal custody by order of a court-martial or other military authority can apply for a writ of *habeas corpus ad subjiciendum* This writ is the most celebrated writ in English law, being the constitutional remedy for a person wrongfully deprived of his liberty It is addressed to the person who detains another in custody, and commands him to produce and "have the body" of the prisoner before the court to ' undergo and receive ' whatever the court considers proper It issues out of the High Court of Justice, and into all parts of the King's dominions, except that by 25 & 26 Vict c 20 no writ of *habeas corpus* shall issue out of any of the courts in England into any colony or foreign dominion of the Crown where His Majesty has a lawfully established court of justice having authority to issue this writ and to ensure its due execution The person to whom it is addressed must make a "return" to the writ stating why he holds the prisoner in custody,

---

[1] *Re Roberts* ' *Times*," June 11, 1879 In *Re Tufnell* (1876) 1 K, 3 Ch Div, 164, a petition of right was presented by an army surgeon, who had been compulsorily retired on half pay, for the injury thereby sustained by him A demurrer by the Attorney General to the petition was allowed, the Vice Chancellor stating the law to be that "every officer in the Army is subject to the will of the Crown and can be removed and put on half-pay, or dealt with as the Crown, with a view to the public convenience, thinks best '

Ex parte Fegan (1920) Can Crim Cases, Vol 32, p 41 see also *R v Murphy* (1921) 2 I R 190 (referred to in para 28 *post*)

and upon consideration of such return the prisoner is either discharged, or, if the return shows sufficient cause for the detention in custody, is remanded to custody, or is admitted to bail

No retrial

20 The court upon *habeas corpus* proceedings do not retry the case, for they do not sit as a Court of Appeal to consider whether an inferior court has decided rightly or wrongly upon some point, the decision of which has been entrusted to them [1] Broadly speaking the question is whether the document under which the custodian justifies his act is a valid one [2] In illustration of this the case of Gunner Suddis[3] may be referred to He was sentenced at Gibraltar by a general court-martial to fourteen years' transportation for having received articles stolen from a warehouse A writ of *habeas corpus* was directed to the Governor of Portsmouth Prison to bring him up from custody It was held a sufficient return to the writ that the defendant was in custody under the sentence of a court of competent jurisdiction to inquire into the offence and to pass such a sentence, without setting forth the particular circumstances to warrant the sentence Lord Kenyon, C J , said, " We are not now sitting as a Court of Error to review the regularity of these proceedings, nor are we to hunt after possible objections " And Grose, J , said, "It is enough that we find such a sentence pronounced by a court of competent jurisdiction to inquire into the offence, and with the power to inflict such a sentence, as to the rest we must presume *omnia rite acta* "

Suddis case

Technical objections disregarded

21. Neither will the court give effect to technical objections to the form of a commitment warrant It will go behind the commitment and see whether there is a valid conviction [4], if so, a flaw in the commitment is immaterial, and the Army Act contains an express provision which practically precludes a prisoner from obtaining his release by *habeas corpus* on the ground of errors and informalities so long as there is a valid conviction and sentence against him Nor again will effect be given to technical errors in the return itself, which can be amended so as to show the real facts At the present date, therefore, such decisions as those in *Douglas' case*[6] and *Allen's case*[7] are no longer of importance

Re Porrett

22 Where, however, the proceedings of a court-martial were confirmed by an officer who had not the necessary authority to do so, the prisoner was discharged from custody[8], and the same result would no doubt follow if it were shown that unqualified officers sat on a court-martial

[1] See *ex parte Fogah* para 18, *ante*

[2] See *R* v *Chiswick* (*Police Superintendent*) L R [1918], 1 K P 578, as to the court's power to go behind an order of the executive, which upon its face is valid, if it is found to be practically a sham " intended to cover an illegality

[3] (1801) 1 East, 306

[4] *R* v *Lewes Prison* (*Governor*) L R , [1917] 2 K B 254

[5] A A 172 (2) (4)

[6] (1842) L R , 3 Q B 825 Douglas was released because the return stated merely that he was detained as a deserter and did not allege that he was a soldier and ought to be with his corps

[7] (1860) 30 L J Q B 38 Lieut Allen was sentenced in India to four years' imprisonment After confirmation he was removed in military custody to England, and was imprisoned in several gaols No proper written authority for his imprisonment after arrival had been sent to England, and the court felt compelled to release him He actually recovered £50 damages from the governor of one of the prisons (*Allen* v *Boyle*, "*Times*," March 4, 1861)

[8] *Re Porrett* (1844) Perry s Oriental Cases 414

Re Moore

23 In a Canadian case,[1] a storekeeper who had been convicted by court-martial on a charge of "embezzling *or* fraudulently misapplying," and imprisoned, obtained his release by *habeas corpus* from the Court of Queen's Bench at Montreal The court adjudged the commitment to be void by reason of the form of charge and finding, and ordered the prisoner to be discharged, "because the charge and conviction were in the alternative without any certainty as to any or either of the two charges in the disjunctive, and this is matter of substance"

High Court will examine regularity of proceedings only

24 As a general rule the High Court will look to see whether the inferior tribunal had jurisdiction, and whether its proceedings are upon their face regular and according to law, but it will not consider whether that tribunal has correctly decided some question of law or of fact which it was its duty to decide[2]—unless perhaps there was before it no evidence at all to support its decision [3]

Blake's case

25. Proceedings by *habeas corpus* are not, of course, restricted to cases where there has been a conviction For instance, the writ may issue where a man is detained for an unreasonable time without being brought to trial Thus in 1814 a writ was asked for on behalf of Lieutenant Blake, to be addressed to the commanding officer of the infantry barracks at Windsor The affidavit in support stated that Blake, being on leave and hearing that there were certain charges alleged against him, voluntarily surrendered himself to take his trial, that on September 21 he was placed under arrest and in close confinement, and that until the latter end of October he was not permitted to quit his room, but afterwards was allowed to take exercise On November 1, not having been furnished with any copy of the charges against him, he presented a memorial to the Commander-in-Chief, but did not receive any answer On November 16 he was officially informed that a warrant had been signed for holding a court-martial, and was furnished with a copy of the charges, which consisted among others of certain offences stated to have been committed at Windsor towards an officer of the same regiment On November 22nd his regiment was ordered on foreign service, and shortly afterwards sailed for Holland The affidavit then stated that all or many of the witnesses who might be called for the prosecution or defence had sailed with the regiment, that the laws of this realm would not permit him to be sent to a foreign country for trial, and therefore he could not be brought to trial before the return of the regiment It further alleged that, as a matter of fact, a sufficient number of officers might at any time have been conveniently assembled for the purpose of constituting a court-martial, and therefore there had been ample opportunity for conveniently assembling one between the arrest and the signing of the warrant, and also between the signing of the warrant and the sailing of the regiment

The court inquired if there was any instance of a *habeas corpus* to take a military subject out of military arrest, and were referred to the case of Serjeant Wade[4] where a rule *nisi* (*i e*, a rule calling

---

[1] *Re Moore* (1867) Simmons, p 165
[2] *R* v *Morn Hill Camp (Commandant)* L R [1917], 1 K B 176
[3] *R* v *Brixton Prison (Governor)* L R [1914], 1 K B 77
[4] 2 M & S, 429 n

on the other side to argue the question and show why the writ should not issue) had been granted The court hesitated about granting a rule *nisi*, because, upon the question whether a court-martial could be conveniently assembled, if the return should be that a court-martial could not be conveniently assembled, the court would be precluded A rule *nisi* was, however, granted, and on its coming on to be argued, an affidavit from the Judge-Advocate-General was produced, stating that proceedings were instituted for bringing Blake to trial as soon after his arrest as could conveniently be done, and that he believed Blake would have been tried before, had not the trial been postponed partly on account of the absence in the West Indies of persons alleged by Blake to be material for his defence, and partly on account of the embarkation of the regiment Thereupon the court refused the writ, Lord Ellenborough, C J , observing, "Up to November 16 the applicant seems to have thought it a fair time, and the delay since has been satisfactorily explained, it is not a wanton or oppressive delay, but arising out of the circumstances of the country We cannot lay down any general rule, but must in a very great degree give credence to people in high situations when they depose that all has been done which could conveniently and according to the course of office be done, and unless something be shown to the contrary "[1]

Re Gavin

26 Where a writ of *habeas corpus* was issued to an officer to produce a recruit who was detained as a deserter, and the officer by direction of the Horse Guards discharged the prisoner, and made no return, the court were of opinion that he ought to have returned the fact of the discharge, but would not grant an attachment for contempt [2]

No *habeas corpus* for prisoner of war

27. A prisoner of war (including an alien internee) cannot sue out a writ of *habeas corpus* [3]

Cases arising out of recent Irish troubles

28. The Irish troubles of 1920-21 gave rise to a series of cases in which the jurisdiction both of statutory courts-martial and of military courts held under martial law was challenged in the superior courts of law

Joseph Murphy's case

On December 15th, 1920, Joseph Murphy, a civilian subject to military law by virtue of the special provisions of the Defence of the Realm Consolidation Act, 1914, and the Restoration of Order in Ireland Act, 1920, was tried and convicted by general court-martial of the murder of a soldier on duty and was sentenced to death Before the sentence was executed, application was made to the Court of King's Bench in Ireland for a writ of *habeas corpus* directed to the governor of the prison in which the condemned man was interned and for a writ of *certiorari* directed to the General Officer Commanding-in-Chief in Ireland, and to the Major-General who had convened the court-martial, to bring up the record, findings, &c , of the court in order that they might be quashed on the ground that there had been an abuse of the jurisdiction of the court and a disregard of the essentials of justice and the conditions regulating the functions and duty of the court

---

[1] *Ex parte Blake* (1814) 2 M & S 428
[2] *Re Gavin* (1850) 15 Jur , 329 n
[3] *Schaffenius* v *Goldberg*, L R [1916], 1 K B 284

Ch VIII — It was alleged and not disputed that admissible evidence had been wrongly excluded by the court-martial

The Court of King's Bench held that the court-martial in the exercise of the jurisdiction which it possessed was called upon to decide questions, not only of fact, but of law, including the admissibility of evidence, that its jurisdiction was not ousted because it happened to give an erroneous decision, and that a court-martial cannot be deemed to exceed or abuse its jurisdiction merely because it misconstrues a statute or admits illegal evidence or rejects legal evidence The applications for writs of *habeas corpus* and *certiorari* were therefore refused and the court further held that the reasons upon which the decision was based would be applicable also to a writ of prohibition [1]

John Allen's case

29. On February 7th, 1921, John Allen, a civilian, was tried by a military court convened in accordance with a proclamation of martial law, and was sentenced to death for an offence which was made a capital offence under the proclamation though not punishable capitally under the ordinary law Application was therefore made for a writ of prohibition directed to the General Officer Commanding-in-Chief in Ireland, for a writ of *habeas corpus* directed to the governor of the military detention camp where the condemned man was interned and for a writ of *certiorari* to quash the proceedings on the ground that they were illegal and in excess of jurisdiction and that the military courts had no authority to sentence Allen to death for the offence for which he was tried

The Court of King's Bench in Ireland decided that there was a state of war existing which justified the application of martial law, that a government is bound when dealing with an armed insurrection to repel force by force and to put down such insurrection and restore public order, even if this involves a death sentence for an offence otherwise not punishable capitally, that while the state of war exists the superior courts have no jurisdiction to question the acts of the military authorities when martial law is imposed and the necessity for it exists, and that a military court under martial law can in some circumstances (following *ex parte Marais*[2]) act even if courts of justice in the martial law area are open For these reasons the applications for the various writs mentioned were refused [3]

Carde and Ronayne's cases

The case of *R v Allen* was followed in two similar cases which came before the Court of King's Bench in Ireland, in both cases it was held that if a state of war is shown to exist in an area placed by proclamation under martial law, the civil courts have no jurisdiction *durante bello* to interfere with the decision of a military court sitting in the martial law area [4]

Egan v Macready

On July 26th, 1921, the Master of the Rolls sitting in the Chancery Division in Ireland declined to follow the decision of the Court of King's Bench in *R v Allen* holding that as a state of war was in existence at the date of the passing of the Restoration of Order in Ireland Act, 1920, the executive powers of the

---

[1] *R v Murphy* [1921] 2 I R 190
[2] L R [1902], A C 109
[3] *R v John Allen* [1921] 2 I R 241
[4] *R (Carde) v Strickland* (1921) 2 I R 317 *R (Ronayne and Mulcahy) v Strickland* (1921) 2 I R 333

military authorities were limited by that Act and that accordingly the accused could be tried by no other military tribunal than a court-martial properly convened and held in accordance with the statute A conditional order for a writ of *habeas corpus* was made absolute and in accordance with the practice of the court made returnable for July 29th, but on that day the Crown did not produce the prisoner in view of the decision of the House of Lords in the case of *Clifford and O'Sullivan*[1] on July 28th, but subsequently released him pending the hearing of an appeal from the decision of the Master of the Rolls No appeal was in fact made [2] Ch. VIII

(v) *Actions for Damages*

Actions against members of courts martial and individual officers

30. It is a general rule of law that magistrates and others, who, acting without jurisdiction, or in excess of their jurisdiction, violate the personal rights of any person by causing his arrest, imprisonment, or otherwise, are liable to an action for damages It is now recognised[4] that the same general rule applies to officers where a person's common law rights are infringed Members of a court-martial who try a person not subject to military law, or for an act which is not an offence cognisable by them, or who pass a sentence which they have no power to pass, and the officer who confirms the proceedings, are all liable to an action at the suit of the person so aggrieved so, too, are individual officers who transgress the bounds of their lawful authority

No liability for mere errors of judgment

For mere errors of judgment in deciding points upon which it is their duty to adjudicate, members of a court-martial cannot be made responsible any more than civil judges and magistrates "Even inferior justices and those not of record cannot be called in question for an error of judgment so long as they act within the bounds of their jurisdiction In the imperfection of human nature it is better even that an individual should occasionally suffer a wrong than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who are to administer it Corruption is quite another matter, so also are neglect of duty and misconduct in it For these, I trust, there is, and always will be, some due course of punishment by public prosecution[5]" The same rule doubtless applies to individual officers exercising judicial functions [6]

On the other hand, if an act is in itself unlawful—as being done without, or in excess of, jurisdiction—*bona fides* and honesty of purpose are no excuse

Actions by civilians *Comyn* v *Sabine*

31 The plaintiff in *Comyn* v *Sabine*[7] was a master carpenter of the office of ordnance at Gibraltar, and he brought an action against Governor-General Sabine for having confirmed the sentence of a court-martial which awarded him the punishment of 500 lashes It was shown that the carpenters of the office of ordnance were not subject to military law, and the jury found the

---

[1] See para 14, *ante*
[2] *Egan* v *Macready* (1921) 1 I R 265
[3] *Crepps* v *Durden* (1777), 1 Smith, Lead Ca , 651
[4] See para 3, *ante*
[5] *Garnett* v *Ferrand* (1827) 2 Barn & Cr 611 *per* Lord Tenterden, C J.
[6] *Heddon* v *Evans* para 45, *post*
[7] (1738) cited in *Mostyn* v *Fabrigas*, para 32, *infra*

Ch VIII — Governor to be liable, as having had a share in the sentence, and gave 500*l* damages Lord Mansfield, citing the case in *Mostyn* v *Fabrigas*[1] said, "The Governor was very ably defended, but nobody thought the action would not lie"

And, where a conviction is invalid, the governor of a prison who detains the person may be liable to an action [2]

Sutherland v *Murray*

Sutherland v *Murray*[3] was an action brought by Mr Sutherland, a judge in Minorca, against General Murray for improperly suspending him from his office The General had professed himself ready to restore the judge on his making a particular apology, and on reference to the home authorities the King approved of the suspension unless the Governor's terms were complied with It was admitted that General Murray had power to suspend the judge for proper cause, yet on the proof that he had acted unreasonably and maliciously, and had misrepresented the facts in his report, the jury gave 5,000*l* damages against him

Goodes v *Wheatly*

In *Goodes* v *Lieutenant-Colonel Wheatly*,[4] the plaintiff was doing duty as constable at St James's Palace, and had occasion to desire Lieutenant-Colonel Wheatly, of the Guards, who was not in uniform, to walk on, whereupon Colonel Wheatly marched Goodes off to the guard-room by a file of grenadiers, and confined him there several hours The plaintiff was non-suited, but, it would appear, solely in consequence of a failure to prove formally his appointment as constable

Boyce v *Bayliffe*

In another case the captain of an East Indiaman, on two strange sails being descried, mustered all hands and passengers, and assigned them stations for the defence of the ship The plaintiff, one of the passengers, refused to go to his station, and was thereupon, by order of the captain, carried there and kept in irons all night It was held by Lord Ellenborough that though the captain might well have been justified originally in confining the plaintiff for his refusal to obey orders, yet he had exceeded his authority in keeping him in irons all night, and the jury gave 80*l* damages [5]

Glynn v *Houston*

In *Glynn* v *Houston*,[6] Mr Glynn, a British merchant residing at Gibraltar, recovered 50*l* damages from General Sir William Houston, the acting governor, for having caused Mr Glynn's premises to be surrounded with a detachment of troops, while a house immediately adjoining was searched for the person of a Spanish general, and for having prevented Mr Glynn from leaving his house during the search (which was unsuccessful) by placing a sentinel with fixed bayonet at the door

Actions by foreigners *Mostyn* v *Fabrigas*

32. Foreigners will be protected by our courts in the same way as Englishmen Thus, in the well-known case of *Mostyn* v *Fabrigas*,[7] a native of Minorca brought an action against General Mostyn, governor of that island, for having, without trial, imprisoned and banished him from the island, and recovered 3,000*l* damages On a bill of exceptions, the point that, where

[1] See para 32, *infra*
[2] See *Allen* v *Boyle* p 143, note 7, *ante*
[3] See (1783) 1 T R , 538
[4] (1808) 1 Campbell 231
[5] *Boyce* v *bayliffe* (1807) 1 Campbell 58
[6] (1841) 2 Man & Gr 337
[7] (1774) 1 Smith, Lead Ca , 591

the cause of action arises abroad, the courts of this country have no jurisdiction, was elaborately argued, but Lord Mansfield, delivering the judgment of the court, emphatically laid down that actions of this description may be brought in England, though the matter arises in foreign parts He also, with no less emphasis, rejected the argument that the defendant was entitled to protection from an action by reason of his character as governor In the course of the case he referred to two earlier decisions of a somewhat similar character In the first of these it appeared that Captain Gambier, by order of Admiral Boscawen, pulled down the houses of some sutlers on the coast of Nova Scotia, who supplied the sailors frequenting them with spirituous liquors, whereby their health was injured One of the sutlers (whom the captain incautiously conveyed to England upon his ship) brought an action against him and recovered 1,000*l* damages The second case, in which Admiral Palliser was sued for destroying some fishing huts erected by Canadians on the Labrador coast, was disposed of by an arbitrator's award

Madrazo v *Willes*

So, too, in a later case it was held that an English naval officer was liable in damages to a Spaniard for seizing his cargo of slaves on board a Spanish ship [1]

Acts authorised by the Government

33. A British subject, however, is not liable to actions by foreigners in respect of hostile acts done by him in the name of the Government, provided those acts are either authorised by an actual command or ratified by a subsequent approval of the Government To such acts the maxim *respondeat superior* appears to apply, and, if the Government refuses redress, there is no remedy but an appeal to arms [2] Nor, where war is actually raging, are acts of the military authorities cognisable by the ordinary courts [3]

Alien enemies

Further, in time of war, an alien enemy cannot sue in our courts unless he is within the realm by licence of the Sovereign [4]

Excessive corporal punishment, damages for

34. There are several old cases where juries gave heavy damages in respect of the unauthorised infliction of corporal punishment Thus a seaman recovered damages against Captain Tonyn, R N , for the infliction of several dozen lashes without a court-martial, the custom of the Navy only permitting a commanding officer to inflict summarily one dozen lashes [5]

A similar action was brought against Colonel Bailey, of the Middlesex Militia, for improperly flogging a private, and 600*l* damages were awarded And in an action tried in 1793 against officers of the Devon Militia for inflicting 1,000 lashes on the plaintiff, who had been found guilty of a charge of mutiny, though the only act proved against him was that he had written to the colonel a letter telling him that the men were discontented, which was not communicated to anyone else, the plaintiff recovered 500*l* or 600*l* damages [6]

[1] *Madrazo* v *Willes* (1820) 3 Barn & Ald 353 slavery being then lawful by Spanish law, but as to an English slave owner's rights, see *Forbes* v *Cochrane* (1824) 2 Barn & Cr 448
[2] See cases cited in 1 Smith, Lead Ca 648
[3] *Ex parte Marais* L R [1902], A C 109
[4] *Porter* v *Freudenberg*, L R [1915], 1 K B 857
[5] 4 Taunt , 71
[6] (1763) 4 Taunt , 70

Illegal sentence damages for *Frye* v *Ogle*

35. A well-known case as to the liability of members of a court-martial is *Frye* v *Ogle* Lieutenant Frye was brought to a court-martial at Port Royal by his captain for disobedience in refusing to assist another lieutenant in carrying an officer prisoner on board ship without a written order from the captain Part of the evidence produced against him at the court-martial consisted of depositions made by illiterate natives, whom he had never seen or heard of, and reduced into writing several days before he was brought to trial, and upon his objecting to the evidence he was brow-beaten and overruled Lieutenant Frye was sentenced to 15 years' imprisonment, and declared for ever incapable of serving His Majesty It is doubtful whether the act charged against him amounted to an offence[1], but in any case the court had only power to award two years' imprisonment On his arrival in England, his case was laid before the Privy Council and the punishment remitted by His Majesty

Some time afterwards he brought an action in the Court of Common Pleas against Sir Chaloner Ogle, the president of the court-martial, and obtained a verdict in his favour for 1,000*l* damages [2]

Barwis v *Keppel*

36 In *Barwis* v *Keppel*,[3] the plaintiff, a discharged serjeant of the Guards obtained a verdict with 70*l* damages against Major Keppel, as acting commander of his regiment, for maliciously and without any reasonable cause reducing him to the rank of private for neglect of duty during active service abroad After an argument as to the powers of a commanding officer under the Articles of War, the court intimated their view that the verdict could not stand, saying —"By the Act of Parliament to punish mutiny and desertion the King's power to make Articles of War is confined to his own dominions , when his army is out of his dominions, he acts by virtue of his prerogative and without the statute or Articles of War, and therefore you cannot argue upon either of them, for they are both to be laid out of this case, and *flagrante bello* the common law has never interfered with the army, *inter arma silent leges* " At this date an army abroad in time of war was governed by "prerogative" Articles [4] Apparently the court considered that as between soldiers, grievances arising out of disciplinary action in time of war could only be entertained by military tribunals or authorities

Abuse of powers *Wall* v *Macnamara*

37 In *Wall* v *Macnamara*,[5] the plaintiff, a captain in the African Corps, brought an action against the Lieutenant-Governor of Senegambia for imprisoning him for nine months at Gambia The defence was a justification of the imprisonment under the Mutiny Act for disobedience of orders At the trial it appeared that the imprisonment of Captain Wall, which was at first legal —namely, for leaving his post without leave from his commanding officer, though in a bad state of health—had been aggravated with many circumstances of cruelty Lord Mansfield, in sum-

---

[1] Lawrence, J , in *Warden* v *Bailey*, *infra*, thought that it did not, and that Frye's arrest was therefore illegal at the outset

[2] (1743) McArthur on Courts Martial, vol 1, p 406

[3] (1766) 2 Wilson's Rep 314

[4] See Chap II, para 28

[5] (1779) 1 T R , 536 The plaintiff in this case was hanged 20 years later for a "judicial murder" in Africa see para 54, *post*

ming up, said, "In trying the legality of acts done by military officers in the execution of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form, if their intention appears by the evidence to have been upright Thus the principal inquiry to be made by a court of justice is, *how the heart stood*, and if there appears to be nothing wrong there great latitude will be allowed for misapprehension or mistake But, on the other hand, if the heart is wrong, if cruelty, malice, and oppression appear to have occasioned or aggravated the imprisonment or other injury complained of, they shall not cover themselves with the thin veil of legal forms, nor escape under cover of a justification, the most technically regular, from that punishment which it is your province and your duty to inflict on so scandalous an abuse of public trust It is admitted that the plaintiff was to blame in leaving his post, but there was no enemy, no mutiny, no danger, his health was declining, and he trusted to the benevolence of the defendant to consider the circumstances under which he acted But supposing it to have been the defendant's duty to call him to a military account for his misconduct, what apology is there for denying him the use of the common air, in a sultry climate, and shutting him up in a gloomy prison, where there was no possibility of bringing him to trial for several months, there not being a sufficient number of officers to form a court-martial? These circumstances, independent of the direct evidence of malice, as sworn to by one of the witnesses, are sufficient for you to presume a bad, malignant motive in the defendant, which would destroy his justification, had it even been within the powers delegated to the defendant by the commission" The jury found a verdict for Captain Wall, with 1,000*l* damages

This case suggests[1] that if military authority is exercised within legal limits, but yet with excessive severity or cruelty, the abuse of the jurisdiction may amount to "excess" of jurisdiction

Assault
Grant v *Shard*

38. In *Grant* v *Shard*[2] violent language and striking a subordinate officer on duty were held actionable Grant was directed to give a military order, and it appeared that he sent two persons who failed Shard thereupon said to Grant, "What a stupid person you are," and twice struck him Although the circumstances occurred in the actual execution of military service, it was held that the action was maintainable, and a verdict was found for the plaintiff, with 20*l* damages An application was afterwards made to the Court of King's Bench to set aside the verdict, but the court, after argument, refused to disturb it, though Lord Mansfield was desirous to grant a new trial

Illegal confinement
Swinton v *Molloy*

39. Captain Molloy, of H M S "Trident", kept his purser, Swinton, in confinement for three days without inquiring into the charge against him, and then, on hearing his defence, released him The purser brought an action against Captain Molloy, and on the evidence Lord Mansfield said that such conduct on the

[1] But see para 4, *ante*, and 40, *post*
[2] (1784) 4 Taunt, 85

Ch VIII

part of the captain did not appear to have been a proper discharge of his duty, and, therefore, that his justification under the discipline of the Navy had failed him It does not appear what the verdict was [1]

Malicious prosecution

Sutton v *Johnstone*

40 We now come to the famous case of *Sutton* v *Johnstone*, already referred to as the origin of the doctrine that as between soldiers grievances arising out of military discipline will not be remedied by the civil courts [2] The plaintiff was captain of H M S "Isis," which formed part of a squadron under the command of the defendant On the 16th April, 1781, Johnstone ordered the squadron to pursue the French fleet, and signalled to Sutton to slip his cable in order to engage the enemy Sutton having failed to slip his cable, Johnstone caused him to be brought to a court-martial on the ground of having "delayed and discouraged the public service on which he was ordered," and for disobedience of orders in not slipping his cable and putting to sea The court-martial found that Sutton was justified in not immediately slipping his cable owing to the state in which his ship was, and that he did not delay the public service, and adjudged him to be honourably acquitted Upon this he brought an action against Johnstone for having maliciously and without probable cause charged him with the crime of disobedience of orders and the delay of the public service

The case was twice tried and the plaintiff recovered 5,000*l* damages on the first trial and 6,000*l* on the second A motion was then made in arrest of judgment, and upon this two points were raised, first, whether the action would lie, secondly, whether, if it did lie, the plaintiff was entitled to keep his verdict On the first point it was urged for the defendant that an inferior officer cannot maintain an action against his superior for acts "done in the course of discipline and under powers incident to his situation" The court held that an action would lie with certain exceptions, as in the cases of judges and jurymen, "all men hold their situations in this country upon the terms of submitting to have their conduct examined and measured by that standard which the law has established' *Wall* v *Macnamara* and *Mostyn* v *Fabrigas* were quoted as authorities for this, and the court had clearly no doubt "If it be meant that a commander-in-chief has a privilege to bring a subordinate officer to a court-martial for an offence he knows him to be innocent of under colour of his powers, or of the duty of his situation to bring forward inquiries into the conduct of his officers, the proposition is too monstrous to be debated" On the second point also (absence of probable cause) the court were in favour of the plaintiff, and directed the verdict to stand

On a further appeal, the Court of Exchequer Chamber[3] decided that in any case the defendant had probable cause for his action, and that therefore the plaintiff must fail They went on, however, to express an opinion on other points not necessary for the decision of the case First they dealt thus with the duty of a subordinate officer "He must not judge of the danger propriety, expediency or consequence of the order which he receives, he must

[1] *Swinton* v *Molloy* (1783) 1 T R , 537
[2] See para 3, *ante*
[3] (1786) 1 T R 493, 784

obey, nothing can excuse him but a physical impossibility" [1] Secondly, they said that the undue delay (if any) in bringing Sutton to trial was "a mere military offence It is the abuse of a military discretionary power, and the defendant has not been tried for it by court-martial "[2] Lastly (but as to this they felt very doubtful) they thought that even in the absence of probable cause the action would not lie on the ground that if superior officers abused their powers the persons aggrieved had their proper remedy under military law before military tribunals On a further appeal the House of Lords affirmed this decision,[3] apparently on the ground that Johnstone had in fact reasonable cause for his action indeed it has been stated[4] that they did not agree with the view that an action could not be sustained even in the absence of probable cause It may be noted that Lord Mansfield (who was of opinion that Sutton could in no case succeed) was the judge who tried *Wall* v *Macnamara* (para 37, *ante*) It is difficult to see the distinction between cruelty in exercising jurisdiction and malice in exercising it Possibly the fact that Macnamara acted "in cold blood," but Johnstone in the heat of battle weighed with the court in the later case Lord Mansfield also tried *Swinton* v *Molloy* (para 39, *ante*), and *More* v *Bastard* (*infra*)

More v *Bastard*

41. In 1804, Colonel More appeared as prosecutor at a court-martial, whereof Colonel Bastard was president Some contradiction between the evidence of two witnesses led the court to conclude that wilful perjury had been committed, and the president ordered Colonel More into arrest, either for having suborned one of the witnesses or for not openly disavowing him In an action for false imprisonment, Lord Mansfield said that there was no defence, and the jury awarded 300*l* damages [5]

Warden v. *Bailey*

42. *Warden* v *Bailey* is an important and somewhat complicated case The plaintiff was a militia serjeant, and his colonel ordered all non-commissioned officers of the regiment (i) to attend an evening school, and (ii) to contribute 8*d* a week towards the expenses thereof Both orders were probably unlawful The plaintiff with others was reprimanded for refusal to obey, and promised to do so in future, but on the same evening indulged in mutinous language upon the subject to other non-commissioned officers On the following day the defendant, the adjutant, had him arrested and conveyed to gaol, subsequently he was brought up before the colonel, who remanded him in custody for trial by court-martial on a charge of using mutinous language After acquittal, he sued the defendant for the imprisonment The defendant was prepared to base his defence on the ground that the arrest was for using mutinous language (*not* for refusal to obey orders), and that he had reasonable ground for believing that such language had been used, but, before he gave any evidence on the

[1] But, of course, they were considering, at any rate primarily, orders given in actual fighting
[2] This seems opposed to *Swinton* v *Molloy*, para 39, *ante*
[3] 1 Bro P C, 100
[4] *Per* Lawrence, J, at 4 Taunt, 75
[5] *More* v *Bastard* (1804), 4 Taunt, 70, McArthur, vol II, p 195 In an action brought at Calcutta in 1841, a reporter recovered nominal damages against the president of a court martial for having ordered the forcible seizure of his notes, which he had persisted in taking after being ordered to desist, *Ricketts* v *Walker*, Hough, Mil Prec 718

Ch. VIII

point, the judge non-suited the plaintiff on the ground that *Sutton* v *Johnstone* had decided that an inferior officer cannot maintain an action against a superior for imprisonment inflicted in consequence of any command whatever issued by the superior, or for anything done under colour of military authority On appeal, the court ordered a new trial to decide on what ground the plaintiff had really been arrested, and whether the defendant had probable cause for his action They pointed out that the only point actually decided in *Sutton* v *Johnstone* was that the defendant there had probable cause, further, that the imprisonment there was for disobedience in action, where instant obedience is necessary, and that therefore the inference sought to be drawn from the case was a "very wide" one [1] On the new trial it was held that insubordinate discussion of even an illegal order was a breach of discipline, and that there was probable cause for detaining the defendant in custody for trial by court-martial on a charge of using mutinous language The action therefore failed [2] The court in sending the case back for a new trial to ascertain why the plaintiff was arrested appear to have ruled in effect that the soldier's duty of obedience did not require him to obey an obviously illegal order, though by obeying it he would not injure any other person

Development of the *Sutton* v *Johnstone* doctrine

43. The doctrine enunciated in *Sutton* v *Johnstone* that the civil courts could not be invoked to redress grievances between persons both subject to military law (who had a prescribed method of obtaining redress for such grievances) was recognised in *re Mansergh* and *re Roberts* (paras 16, 17, *ante*), by Lush J, in *Dawkins* v *Paulet*[3] and in *Dawkins* v *Rokeby*[3] by ten judges, whose unanimous opinion it was that a case involving questions of military discipline and military duty alone was cognisable only by a military tribunal, and not by a court of law It was also recognised in *Marks* v *Frogley*[4] by the Court of Appeal In that case it appeared that a Volunteer battalion to which the parties belonged had been in camp with regular soldiers for a week, and during such training they were subject to the Army Act On the morning of the day on which the battalion was to return home, plaintiff was accused of theft from a comrade, thereupon the adjutant put him under arrest, and later in the day on arrival at their home railway station, ordered the three defendants to march him to the nearest police station and hand him over to the police on a charge of larceny Having been acquitted, he sued the defendants for false imprisonment, alleging that he and they had ceased to be subject to military law on leaving the camp, and that therefore the Army Act did not justify their obedience to the order given to them It was held by the Court of Appeal that they were at all material times subject to military law, and that (apart from any defence under the *Sutton* v *Johnstone* doctrine) the Army Act justified the acts complained of

Dawkins v *Rokeby*

Marks v *Frogley*

---

[1] (1811) 4 Taunt, 67

[2] (1815) 4 M & S, 400

[3] As to these cases, see paras 50, 51, *post*, see also *Keighley* v *Bell* (1866), 4 F & F 763

[4] L R [1898] 1 Q B 396, 888, and again in *R* v *Army Council*, para 7, *ante*

Present position

Fraser v Balfour.

44. In *Fraser* v *Balfour*,[1] a naval officer who had been compulsorily retired sued the First Lord of the Admiralty alleging (i) false imprisonment (*viz*, his detention in hospital "under observation for insanity"), and (ii) malice in causing him to be retired. In the courts below it was held that the action was not maintainable in view of the decisions referred to in the preceding paragraph. The House of Lords pointed out that their decision in *Dawkins* v *Rokeby* proceeded solely on the question of the privilege of witnesses, and did not affirm the wider proposition laid down in the Exchequer Chamber. They agreed that the claim for false imprisonment was misconceived, but ruled that the claim for maliciously causing the plaintiff's retirement raised a question which was still open to argument in the House of Lords, and that it must be allowed to proceed if the plaintiff put his pleadings in proper order.[2]

Heddon v Evans

45. In the recent case of *Heddon* v *Evans*[3] the cases from *Sutton* v. *Johnstone* onwards were re-examined, and the Judge came to the conclusion that the doctrine therein approved was not intended to extend to infringements of fundamental common law rights where the defendant had acted without, or in excess of, jurisdiction. Acting upon this view, he laid down two important principles: (1) that an officer is liable in an action for damages if without jurisdiction or in excess of his jurisdiction he commits an act which amounts to false imprisonment or other common law wrong, even though he purports to act in the course of military discipline, but (2) that, if his act is within his jurisdiction and is done in the course of military discipline, no action will lie on the ground only that the act was done maliciously and without reasonable and probable cause. This latter proposition was in the opinion of the Judge open to review in the House of Lords (*see Fraser* v *Balfour*, *supra*), but in no lower tribunal. Incidentally, several minor points of military law were decided, or discussed in the case.

The plaintiff, a private soldier, was put under arrest and charged before his commanding officer with (i) making a frivolous complaint, and (ii) conduct to the prejudice, &c., in writing a certain letter to the commanding officer. He was convicted of both charges and awarded 14 days' confinement to barracks in respect of which he claimed damages against the commanding officer for false imprisonment. The Judge ruled that the absence of a charge-sheet (required by s. 45 of the Army Act) did not invalidate the arrest and custody, that, though the first charge was invalid as disclosing no offence, the conviction on the second charge, if valid, would support the sentence, that the letter complained of was in law capable of being construed as a breach of discipline, and that it was open to the commanding officer to find that it did amount to such a breach, that the commanding officer was not bound to give the accused the option of having the case tried by district court-martial because the loss of "corps pay" involved in the sentence of confinement to barracks was not forfeiture of "pay" and because, even if it were, Rule of Procedure 7 would cure

[1] *Fraser* v *Balfour* (1918) 34 T L R 502, see also *Fraser* v *Hamilton* (1917) 33 T L R 431.
[2] The action did not proceed further.
[3] (1919) 35 T L R 642.

Ch VIII

his omission to offer the option Consequently, he held that the commanding officer had acted within his jurisdiction, and could not be liable, even if confinement to barracks amounted to sufficient deprivation of liberty to support a claim for false imprisonment—a point which he did not decide At a later date the commanding officer had again placed the plaintiff under arrest on a charge arising out of a letter to the General Officer Commanding, and had remanded him for trial by district court-martial The plaintiff claimed that the remand to, and confinement in, a detention barrack was illegal and without jurisdiction on the ground that there was no committal warrant, but the Judge held that, though a committal warrant should have been made out and signed, the custody could be justified under s 45 of the Army Act The plaintiff also founded a claim for damages on the ground that the commanding officer in arresting and remanding him had acted maliciously and without reasonable and probable cause The Judge, whilst finding these allegations not proved, held that even had they been proved the action could not succeed

Servants of the Crown, and tortious acts

46. The failure of the first claim in *Fraser* v *Balfour* (*supra*) illustrates the rule of law that public officers and servants of the Crown, though liable in respect of wrongful acts committed by them personally in their official capacity, are not liable in respect of wrongful acts committed by their subordinates, unless they have specifically ordered or ratified the particular act so as to make it substantially their own The ordinary rule of *respondeat superior*, under which a master is held liable for acts of his servant done within the scope of his employment, does not apply, because both senior and junior are servants of one master, the Sovereign, and their relationship to each other is not that of master and servant In the particular case the First Lord had given no orders for the detention of the plaintiff, and indeed knew nothing of it till long afterwards, assuming the detention to be unlawful, the only persons liable would be those who actually detained the plaintiff and such superiors as specifically ordered (or ratified) the detention [1]

Further, though all officers are in the employ of the Sovereign, no action in respect of their wrongful acts will lie either against the Sovereign or against the Department of State under which they work, so as to reach the public revenues [2]

The above-mentioned rules apply, of course (*inter alia*), to injuries caused through the mishandling of service vehicles If an officer or soldier driving such a vehicle by his recklessness or negligence injures a civilian, the driver may be sued, and is personally responsible for such damages as a jury may award If the driver is a person whose duty it is, according to the rules of the service, to drive the vehicle, his superior, though riding in it

---

[1] As to whether the subordinate can escape liability to a civilian by proving that he acted under orders which were not necessarily or manifestly illegal there is no clear authority, but the better opinion would seem to be that he cannot, see *per* Willes, J, in *Dawkins* v *Rokeby* (1865) 4 F & F, at p 831, and *per* Kennedy, J, in *Marks* v *Frogley*, L R [1898], 1 Q B at p 404 As to the position where the person injured is another soldier, see *ibid*, and *per* Willes, J in *Keighly* v *Bell* (1866) 4 F & F, at pp 790 805

[2] See generally as to actions of tort against public officials, &c, *Raleigh* v *Goschen*, L R (1898), 1 Ch 73, *Bainbridge* v *P M G*, L R [1906], 1 K B 178, *Roper* v *Public Works Commissioners*, L R [1915], 1 K B 45

at the time, is not responsible for the negligent driving, unless indeed he has made such negligence his own, *e g* , by ordering an excessive speed to be maintained, or by not checking a speed which he must have known to be dangerous, in which case he would presumably be liable On the other hand, if an officer entrusted with the use or control of a vehicle employs to drive it some subordinate not authorised to do so according to the rules of the service, it would appear that (apart from any defence on the ground of urgency) he employs such subordinate as his servant, and would be personally liable for his negligence

In cases of accident where no negligence can be imputed, an injured person can only appeal for compensation *ex gratia* to the department concerned, and frequently, even where negligence is admitted, this must be the only effective remedy if the driver is a "man of straw "

Servants of the Crown and contracts

47. Public officers and servants of the Crown are not liable personally upon contracts entered into by them in their official capacity,[1] the remedy being (as a rule)[2] by petition of right against the Crown, but an officer may enter into a contract in such circumstances as to raise the inference that he is pledging his own credit, as in *Samuel Bros , Ltd* , v *Whetherly*, where a Volunteer colonel was held personally responsible for uniforms supplied to the Corps [3]

In *Lascelles* v *Rathbun*[4] it was held that the commanding officer of a brigade was not personally responsible for the price of provisions, &c , supplied to the officers' mess upon the orders of the mess committee

Libel and slander

48 The following group of cases illustrates certain aspects of the law of defamation In the first place it must be remembered that if a statement is in fact true no civil[5] action for damages will lie in respect of its publication, however injurious to the plaintiff Thus, to record truly in a newspaper that a named officer has been dismissed the service by sentence of general court-martial for a named offence is not actionable [6]

Documents privileged from disclosure,

49. Secondly, certain documents are by reason of their nature "privileged from production," *i e* , the officer who holds them for some Department of State cannot be compelled—and indeed ought not to be allowed—to produce them in court In *Home* v *Bentinck*[7] the plaintiff brought an action against the president of a court of inquiry for libel in publishing the court's report by communicating it to the commander-in-chief It was held that the officer subpœnaed to produce at the trial the report and proceedings of the court was not at liberty to disclose them—as being State documents, and further, that office copies of them which the plaintiff held must not be admitted In *Dickson* v *Wilton*[8] the action was brought by an officer against his colonel in respect of letters written to the latter's superior and reflecting

[1] *Hosier Bros* v *Derby (Lord), Secretary of State for War*, L R [1918], 2 K B 671
[2] But see *Graham* v *Public Works Commissioners*, L R [1901], 2 K B 781
[3] L R [1907], 1 K B 709 L R [1908], 1 K B 184 , *c f National Bank of Scotland* v *Shaw* [1913] S C 133
[4] (1919) 35 T L R 347
[5] In the case of a criminal prosecution for publishing a libel, the truth of the statement is not a defence unless it was for the public benefit that it should be published.
[6] *C f Olwer* v *Bentinck* (1811) 3 Taunt 456
[7] (1820) 2 Broderip & Bingham 130.
[8] (1859) 1 F & F 419.

Ch. VIII upon the plaintiff The plaintiff in fact succeeded, but in *Dawkins* v *Lord Rokeby*[1] the court said distinctly that the Judge in *Dickson's case* was wrong in compelling, or even allowing, the Secretary for War to produce the letters in question, and in the case then before them they reaffirmed the principle that the proceedings of a court of inquiry ought not to be produced [2]

Clearly, if a plaintiff cannot put before the court the document of which he complains, or even a copy (if he has one), he cannot succeed [3]

50. Thirdly, the defence of "privilege" must be considered In the case of some statements the law regards the occasion on which they are made as "privileged," either absolutely, or to a qualified extent If the privilege is "absolute," no action will lie even if the statement is not only false but also made maliciously It is a recognised rule of law that "whatever is said, however false or injurious to the character or interests of a complainant, by judges upon the bench , by counsel at the bar in pleading causes, by witnesses giving evidence is absolutely privileged "[4] In *Jekyll* v *Moore*[5] it was held that a rider appended by a court-martial to their judgment of acquittal, and reflecting on the prosecutor's conduct, would not support an action The plaintiff brought an action for libel against the president of a court-martial which had "most fully and honourably" acquitted a Colonel Stewart, and had appended to their finding the following remarks —"The court cannot pass without observation the malicious and groundless accusations that have been produced by Captain Jekyll against an officer whose character has, during a long period of service, been so irreproachable as Colonel Stewart's, and the court do unanimously declare that the conduct of Captain Jekyll in endeavouring falsely to calumniate the character of his commanding officer is most highly injurious to the good of the service " The court decided that no action could be maintained, the Chief Justice observing, "If it appear that the charges are absolutely without foundation, is the president of the court-martial to remain perfectly silent on the conduct of the prosecutor, or can it be any offence for him to state that the charge is groundless and malicious? It seems to me the words complained of in the case form part of the judgment of acquittal, and consequently no action can be maintained upon it " In *Dawkins* v *Lord Rokeby*[6] it was definitely laid down by the House of Lords that a duly constituted military court of inquiry must for these purposes be regarded as being upon the same footing as a court of law, and that oral and written statements made by an officer in the course of a military inquiry in relation to the

Dawkins v *Rokely*

[1] (1873) L R 8 Q B 255, as to the principle upon which such privilege is based, see *Asiatic Petroleum Co , Ltd* v *Anglo Persian Oil Co , Ltd* , L R [1916], 1 K B 822 In *Anthony* v *Anthony* [1919] 35 T L R 559 privilege was claimed for medical history sheets See also K R 572

[2] See also *Chatterton* v *Secretary of State for India*, L R [1895], 2 Q B 189

[3] See, *e g* , *Hovell* v *Holland*, *Times*," May 6, 1920, an action by an officer against the president of a military court of inquiry for libel alleged to be contained in the report of such court The plaintiff abandoned the action upon a statement being made vindicating his character, but it was admitted that the action must have failed since the report could not be admitted in evidence

[4] *Munster* v *Lamb* (1883), L R , 11 Q B D 588, 606

[5] (1806) 2 Bos & P , 341

[6] (1873) L R 8 Q B 255, (1875) L R 7 H L 744

conduct of an officer and with reference to the subject of that inquiry, enjoy "absolute" privilege The same principle will *a fortiori* apply to courts-martial

Qualified privilege

51 If a false and defamatory statement is made on an occasion to which only "qualified" privilege attaches the plaintiff may possibly succeed, but in order to succeed he must prove that the statement was made maliciously and without reasonable and probable cause As regards civilians, this is undoubtedly the position, but in the case of soldiers it would appear that, in cases arising out of the exercise and performance of military authority and duty, a subordinate officer has no legal redress (except perhaps in the House of Lords)[1] against his superior, notwithstanding that the latter's statements are made maliciously and without reasonable and probable cause In *Dickson* v *Wilton*[2] the lieutenant-colonel actually commanding a militia regiment sued the colonel of the regiment in respect of letters written to his immediate superior (Viscount Combermere) containing charges against the plaintiff, and also in respect of a conversation with a Member of Parliament as to a question to be put in the House with reference to such charges and to the plaintiff's dismissal Lord Campbell directed the jury that *prima facie* the occasions were privileged, but that the privilege would be lost if the defendant had acted from other motives than a sense of duty, and the jury found a verdict for the plaintiff with damages In *Dickson* v *Combermere*[3] an action by the same plaintiff, and arising out of the same facts, not however for libel but for conspiring to procure the plaintiff's dismissal by false charges, Cockburn, C J , told the jury to find for the plaintiff, if in their opinion the charges were made maliciously and without probable cause They found, however, for the defendant

Dawkins v. *Paulet*

The direction to the jury in *Dickson* v *Wilton*, *supra*, was dissented from in *Dawkins* v *Paulet* [4] In that case an action for libel was brought in respect of a report made to the adjutant-general by the plaintiff's superior officer It was held (before any evidence was given) that the plaintiff must fail even if he proved malice, for that no action would lie by one officer against another for an act done in the ordinary course of his duty as such officer, even if done maliciously and without reasonable and probable cause Cockburn, C J , however, took the opposite view Reference may here be made incidentally to another action brought by the same Colonel Dawkins, in which he sued three officers for conspiring to make false statements to the commander-in-chief. It appeared that the defendants had formed a military court of inquiry to consider the plaintiff's professional conduct, and that the statement complained of was their report Upon the admitted facts, it was held that the plaintiff must fail, but the court seemed to think that the defen-

---

[1] See *Fraser* v *Balfour*, para 44, *ante*

[2] (1859) 1 F & F , 419 In *Mitchell* v *Kerr*, Rowe 537, decided by the Court of King's Bench in Ireland in 1801, the defendant had written two libellous letters to the commanding officer of a regiment which the plaintiff was about to enter At the trial the jury were directed that, if they thought the letters were written merely for the purpose of bringing the plaintiff to a court martial, the action would not lie, and they found a verdict for the defendant, which the Court of King's Bench refused to disturb

[3] (1863) 3 F & F 527

[4] (1869) L R 5 Q B 94 , see also the first case of *Dawkins* v *Rokeby* (1865) 4 F &F 841

Ch. VIII

dants would have been liable if there had been any conspiracy or confederation between them beforehand to present an unfavourable report irrespective of the evidence [1]

Fairman v Ives

52. The distinction between cases where there is "qualified privilege" and cases where there is no privilege is illustrated by the two following decisions In *Fairman* v *Ives*[2] a civilian to whom an officer owed money wrote his version of the matter to the Secretary of State for War in order to try to get payment Although the Secretary had no real authority to order payment it was held that the communication was privileged, and that, even if the statements were false, the officer could only recover damages on proof that they were made maliciously and without probable cause On the other hand, where a naval officer acting as Government agent on board a hired transport wrote to Lloyd's imputing incapacity to the master of the transport, it was held that he ought to have written any complaints to his own employers, the Admiralty, and not to Lloyd's, and that therefore his letter enjoyed no privilege, and the jury finding his statements to be untrue awarded damages against him [3]

Adam v Ward

The plaintiff, an army officer, having been placed on half pay, made in a speech in Parliament accusations against his former brigadier, charging him with having reported unfairly upon officers under his command The brigadier having referred these charges to the Army Council, the defendant as secretary to and by directions of the Council, wrote to the brigadier vindicating his character and reflecting upon the plaintiff, further, in accordance with his instructions he sent copies of the letter to the press In an action for libel by the plaintiff, it was held that the occasion of the publication was privileged, that there was no evidence of malice, and that, having regard to the public way in which the plaintiff made his charges, no undue publicity had been given to the reply [4]

(vi) *Liability to Criminal Proceedings*

Liability to criminal proceedings for murder

53. There are several authorities which show that where the death of a person is caused by some act of an officer done without jurisdiction, the officer is criminally responsible Thus on the Devon Militia case[5] being cited in *Warden* v *Bailey*,[6] Heath, J, expressed his opinion that, if the plaintiff in that action had died under the punishment inflicted by order of the court-martial, all the members of the court would have been liable to be hanged for murder

Case of *Governor Wall*, 1802

54. In the well-known case of *Governor Wall*[7] (plaintiff in the action already noticed of *Wall* v *Macnamara*), the penalty of death was actually inflicted on the governor for a crime resembling in its nature and circumstances the conduct towards himself in respect of which he recovered damages [8] This crime was the

---

[1] *Dawkins* v *Saxe Weimar* (1876) L R, 1 Q B D, 499
[2] *Fairman* v *Ives* (1822) 5 Barn & Ald, 642, but this decision has been criticised, see *Hebditch* v *McIlwaine* L R [1894], 2 Q B 54
[3] *Harwood* v *Green* (1827) 3 C & P 141
[4] *Adam* v *Ward* L R [1917], A C 309
[5] Para 34, *ante*
[6] 4 Taunt at p 77
[7] *R* v *Wall* (1802) 28 State Trials 51
[8] See para 37, *ante*

murder of Serjeant Armstrong, of the African Corps, in 1782, by inflicting on him 800 lashes with such cruelty as to cause his death

The governor appears to have been arrested on the charge shortly after his return to England, but to have absconded and kept out of the way for nearly 20 years, as he was not tried till 1802 The circumstances out of which the charge arose were as follows —In July, 1782, the accused was in command of the garrison at Goree, an island on the coast of Africa, and about to leave for home The men of the garrison had some pecuniary compensation due to them in respect of their having been put on reduced rations, and the paymaster responsible for meeting their demands was to leave with the governor On the day before their departure, a number of men, headed by Armstrong, twice proceeded to the house of the paymaster to obtain a settlement of their accounts According to the evidence for the prosecution, there was no appearance of any mutiny, and no disrespectful or disorderly conduct on the part of the men, who returned to barracks when ordered to do so by Wall In the afternoon Wall ordered a parade, and by his order 800 lashes were inflicted on Armstrong by black men, not with the ordinary cat, but with a species of rope It was stated that the accused stood by urging the black men to increased severity Armstrong died shortly afterwards in hospital For the defence some evidence was given that the behaviour of the men, and in particular of Armstrong, had been mutinous, and that a sort of drum-head court-martial had been held which ordered the punishment, and that the death of Armstrong was accelerated by drinking spirits in hospital

Chief Baron Macdonald directed the jury that if there was no mutiny and no court-martial, and the punishment of 800 lashes with such an unusual instrument was ordered by the prisoner, there was certainly ground to infer malice, and pointed out that the governor in his report on his return made no mention of the existence of any mutinous spirit in the garrison The jury found the prisoner guilty, and he was hanged at Tyburn

Case of *Sir Thomas Picton*, 1806

55. General Sir Thomas Picton was tried in 1806 for having, while Governor of Trinidad, ordered the infliction of torture on a female from whom it was desired to obtain evidence in support of a prosecution for a robbery committed in her master's house The general's defence was that the occurrence took place in the ordinary course of judicial proceedings, over which he presided as governor, and that torture was allowed in such cases by the law of the island The case was tried twice, and was again elaborately argued on the special verdict found at the second trial, but judgment was never prayed It appears, however, to have been thought at the time that had the opinion of the court been delivered, judgment would have been given against General Picton, though the jury found that by the law of Spain torture existed in Trinidad at the time of the cession of the island to Great Britain, and that no malice existed in the mind of the defendant, save so far as might be inferred from the acts complained of, if found to be illegal [1]

[1] *R* v *Picton* (1812) 30 State Trials 226 995 (note)

Case of *Governor Eyre*, 1868

56. During some disturbances in Jamaica in 1865, the Governor, Mr Eyre, proclaimed martial law in certain parts of the island A man named Gordon, having been arrested in a locality excepted from the proclamation, was removed by the governor's order to a place where martial law prevailed and handed over to Colonel Nelson, the military commander, with instructions to consider the evidence with a view to a court-martial Gordon was convicted and sentenced to death for treason and complicity with persons engaged in rebellion in the proclaimed district, but on a date prior to the proclamation Nelson confirmed the proceedings, the governor concurred, and Gordon was executed On their return to England both Eyre and Nelson were charged with murder, but in each case the grand jury threw out the bill [1]

Criminal liability for offences committed out of the realm

57 With respect to criminal liability for oppression and similar offences committed out of the realm it was enacted by 11 Will III, c 12, that any governor or commander-in-chief of any colony beyond the seas guilty of oppression to any of His Majesty's subjects, or of any other crime within their respective governments or commands, might be tried and punished by the Court of King's Bench in England, or by special commissioners And the statute 42 Geo III, c 85, makes a similar provision for the trial and punishment of persons employed in the public service out of Great Britain in any similar military office or capacity [2] It was under this Act that General Picton and Governor Eyre were charged

Case of *Ensign Maxwell*, 1807

58. A mistaken impression of duty will not excuse an officer if he, without being justified by other circumstances, orders his men to fire, and some one is thereby killed, as is shown by the following case In 1807, Ensign Maxwell, of the Lanarkshire Militia, was tried before the High Court of Justiciary in Scotland for the murder of Cottier, a French prisoner of war at Greenlaw, by improperly ordering a sentinel to fire into the room where Cottier and other prisoners were confined Ensign Maxwell had the military charge of over 300 prisoners, confined in a building of no great strength The prisoners were of a turbulent character, and to prevent their escape an order was given that all lights in the prison should be put out at 9 o'clock, and that if this was not done at the second call the guard was to fire upon the prisoners, who were often warned of this order Ensign Maxwell having observed one night, on which there had been some disorder among the prisoners, a light burning beyond the appointed hour, twice ordered it to be put out, and, not being obeyed, directed the sentry to fire, but the musket merely snapped Ensign Maxwell repeated the order, the sentry fired again, and Cottier received his mortal wound At this time there was no symptom of disorder in the prison, and the prisoners were all in bed

The general instructions issued from the adjutant-general's office for the conduct of the troops guarding the prison contained no such order as that upon which Ensign Maxwell had acted, and it appeared to be a mere verbal one which had from time to

[1] *R* v *Eyre* (1868) Finlason s Report

[2] There are also statutes providing for the tr al in England of persons guilty of extortion, &c ,in India , *c f* A.A 170 (3)

time in hearing of the officers been repeated by the corporal to the sentries on mounting guard, and had never been countermanded by those officers, who were also senior to Ensign Maxwell The Lord Justice Clerk laid it down that Ensign Maxwell could only defend himself by proving specific orders, which he was bound to obey without discretion, and which called upon him to do what he did, and the jury found him guilty of the minor offence of culpable homicide, with a recommendation to mercy He was sentenced to nine months' imprisonment [1]

R v *Thomas*

59. In *R* v *Thomas*[2] the prisoner, a sentinel on board H M S "Achille", had been told by the man whom he relieved to keep off all boats unless they carried officers in uniform, or unless the officer on deck allowed them to approach, and he received a musket, three blank cartridges, and three ball cartridges The boats pressed, upon which he repeatedly called to them to keep off, but one of them persisted and came close under the ship, and he then fired at a man in the boat and killed him The jury found that he fired under the mistaken impression that it was his duty, but the judges were unanimous that it was murder, although they thought it a proper case for a pardon Further, they were of opinion that if the act had been necessary for the preservation of the ship, as if the deceased had been stirring up a mutiny, the sentinel would have been justified

How far specific commands can excuse subordinate

60 In the two preceding cases the prisoner had not in fact received specific orders to act as he did How far a subordinate could plead the specific commands of a superior officer—such commands being not obviously improper or contrary to law—as justifying an injury inflicted on a civilian, is somewhat doubtful In most cases the fact of the orders having been given would no doubt prove the innocent intent of the subordinate, and lead in practice to his acquittal on a criminal charge [3]

Execution of sentences, &c

61 With respect to the question how far defect in the jurisdiction or procedure of the court by whom a sentence is given, or want of authority, irregularity, or excess in the person by whom the sentence is executed, may render the court or person executing the sentence criminally responsible, there is but little to be found in the books There appears, however, to be authority for the following propositions —

(i) If, first, the court which passed the sentence had no colour of jurisdiction in the matter, all its proceedings are a mere nullity, and both the court and the officer who executed the sentence are mere wrong-doers, and in the case of an execution the officer may perhaps in strictness of law be guilty of murder as a principal, and the members of the court may be guilty of a misdemeanour, and also as accessories to the murder [4]

(ii) If, secondly, the court had no jurisdiction, but it acted under colour of a writ or commission, such as might lawfully be issued, then although the writ or commission be irregular and so the sentence erroneous and voidable, it seems that it is not a nullity, and that neither the

[1] *R* v *Maxwell* (1809) Buchanan, Part II, p 3
[2] (1815) Russell on "Crimes," 8th Ed , p 774
[3] See *R* v *Trainer* (1864) 4 F & F 105, *Keighly* v *Bell* (1866) 4 I & F 763, *Dawkins* v *Rokeby* (1865) 4 F & F 806
[4] Hale, Pleas of the Crown, i 497, 501 Steph Dig Crim Law (6th Ed), Art 218

Ch. VIII

court nor the officers who execute the sentence can be treated as mere wrong-doers, though the court may be guilty of a misprision [1] If, again, the court had jurisdiction, but passed an erroneous sentence, neither the judge nor an officer who innocently executes the sentence is criminally liable [2]

(iii) The sentence must be executed by the proper officer, and if any person who is not duly authorised executes it he is a wrong-doer [3]

(iv) The execution must pursue the judgment, subject to any lawful alteration by the Crown, for if a man is beheaded who ought to have been hanged, the officer is a wrong-doer [4]

There appears to be no authority for applying the doctrine of trespass *ab initio* to the case of irregular execution of a sentence, and it would seem that the officer would be liable only for so much of his acts as is in excess of his authority Malice (in the popular sense of the word) in the officer appears to be wholly immaterial, so long as he keeps within the limits of his authority, for he is bound to execute the sentence, but if he grossly exceeds the measure of the sentence which he is authorised to inflict, and if he so barbarously flog a man sentenced to flogging as by plain excess to cause his death, he will be a wrong-doer as to the excess [5]

(vii) *Protection of Persons Acting under the Army Act and other Acts*

Protection of persons acting under statute

62. It remains only to notice that officers are to a certain extent protected against actions by s 170 of the Army Act, and by the Public Authorities Protection Act, 1893 The general effect of these enactments is that where legal proceedings are brought against an officer for any act done in pursuance, or execution, or intended execution of his duties, or for any alleged neglect or default in the execution thereof, then—

(i) the proceedings must be begun within six months,

(ii) judgment for the defendant carries solicitor and client" costs,

(iii) there are special provisions as to tendering amends and payment into court, which affect the question of costs,

(iv) the proceedings must be brought in a 'superior'' court

[1] Hale i 497-509, Hawkins, Bk i ch 28, s 6
[2] Hale i 501
[3] Hale i 501, Coke, Inst i 128
[4] Coke Inst iii 52, 211 Hale i 501
[5] Hawkins, Bk i ch 29, s 5, and see *Governor Wall's case supra*

CHAPTER IX

HISTORY OF THE MILITARY FORCES OF THE CROWN

Object of chapter.

1 The object of this chapter is to give a short summary of the history of the military forces, and principally of those in England For details the authorities cited in the notes must be consulted[1]

Two periods in history of forces

2. The history of the forces may be divided into two main periods the one prior, and the other subsequent, to the Restoration of Charles the Second in 1660 It was not until after 1660 that a Standing Army was raised, and the Militia organised under Act of Parliament Before 1660 the organisation of the forces was much less systematic, although it rested on laws which have come down to the present time, and therefore deserve notice

1 General Sketch of History

First Period —General and Feudal Levies

General liability to service in early times

3 Before the Norman Conquest, all freemen between the ages of 15 and 60 who were capable of bearing arms were bound to go forth to the host (*fyrd*), or general levy, at the king's summons *Fyrd-fare* was one of the three liabilities of all owners of land in England [2] Those guilty of neglecting it were subjected to a very heavy penalty called *fyrd-wite*, which might extend even to the forfeiture of the whole of their land The levy of each shire took the field, down to the Norman Conquest, under its alderman or military chief of the shire, and after the Conquest under the sheriff [3]

Double aspect of this service

4 This general levy of all able-bodied[4] men in each county had a double aspect As a civil force it was known as the *posse comitatus*, which the sheriff was entitled to call on to arrest criminals and suppress riots, and the obligation to serve in it was closely connected with the obligation attaching to every man of keeping watch and ward, and of following the hue and cry, which was directed against criminals [5] In its other aspect it was a military force, and was called out, under the sheriff or some other officer

[1] See Clode, Mil Forces which contains many original authorities, chiefly for the period subsequent to 1660 For the earlier period many extracts from and references to original authorities are contained in Grose Mil Antiquities, and in Scott's British Army The powers of the Crown for the defence of the realm are enumerated and discussed in the Ship Money Case (see especially St John's argument), Howell's State Trials, iii 825, summarised in Clode, Mil Forces, i 354, 355 The constitution of the general levy and the feudal army and the incidence of feudal tenure are described in the ordinary histories, such as Hallam's Middle Ages, and Constitutional History, Lingard's History, Taswell Langmead's Constitutional History (1st edn), Stubbs, Constit Hist, and the articles on "Army" in the "Encyclopædia

consulted

[2] Afterwards called the *trinoda necessitas*, the other two liabilities being to maintain fortifications and to repair bridges In some cases the age mentioned is 16 (Stubbs, Constit Hist i 102 &c)

[3] See Stubbs, Constit Hist i 209, 469

[4] Stubbs, Select Charters, 370–3, Stubbs, Constit Hist, i 209, 633, ii 220, Grose, Mil Antiquities, i 9, 13 Edw I (Stat Winton), st 2, c 6, 3 & 4 Edw VI, c 5, 1 Mar sess 2, c 12, 1 Eliz c 16

[5] It was known as the *ban* or *fyrd* or expedition, Stubbs, Constit Hist, i 81, 209, 494, 633 See Commissions in Rymer's Fœdera

Ch. IX

of the Crown, to defend the realm in civil war or against foreign foes The force was liable to serve only in the kingdom, and, except in case of invasion, only in its own county Sometimes it was called out in all the counties, at other times, in particular counties only, as, for instance, in the northern counties, to resist the Scots, or in the midland counties, to resist the Welsh The general levy was repeatedly called out by the Norman and Angevin kings (1066 to 1204) for the suppression of internal rebellion or of border warfare against the Welsh and Scots It was unsuitable for warfare beyond the seas [1] But it apparently served as a mode of obtaining troops down, at any rate, to the fourteenth century [2]

Organisation of general levy

5. The general levy was organised by divers ordinances and statutes, which determined the arms, and in the case of the more wealthy, the horses which each man was to provide, in accordance with the amount of his land and goods The sheriffs, mayors, and justices, as well as the constables annually appointed for the purpose in each hundred, were to enforce the obligation to serve and provide arms, and twice every year were to inquire into the arms provided, or, as it was termed, to hold "views of armour" Writs were often addressed by the king to the sheriffs and others to array or summon before them the men liable to service (whom from being sworn to keep arms were called *jurati ad arma*), and to punish defaulters, and the writ often directed such arrayers, or other persons named in it, to lead the force on active service [3]

Lieutenants in counties

6. In the time of Edward VI lieutenants were appointed in the counties to array, or lead, or both, and after the reign of Mary, such lieutenants, now commonly known as lords lieutenant, were usually appointed for those purposes [4]

Right of purveyance.

7 Closely connected with the general levy was the Crown's prerogative of purveyance, which enabled the Crown to enforce the supply of carriages, carpenters, smiths, and other artificers, as well as of victuals, for military purposes [5]

Thegns

8. Even before the Norman Conquest the general levy took long to raise and was difficult to keep together, especially when operating outside the boundary of its own petty kingdom For a more trustworthy, better-armed, and more permanent force, the old English kings relied on their military dependents, to whom they had granted land on the condition of military service These

---

[1] It was summoned by William II to Hastings in 1094 to cross for a campaign in France but was dismissed

[2] See Statutes, 1 Edw 3, cc 7, 15, 18 Edw 3, st 2, c 7

[3] Hen II, Assize of Arms, Stubbs, Select Charters, 159, and the statutes 13 Edw I (Stat Winton) c 6, 34 Edw I, st 2 in common editions, 2 Edw III, c 6, 5 Hen IV, c 3, 3 Hen VIII, c 3, 33 Hen VIII, cc 5, 9, 4 & 5 Phil and Mary, c 2 See also Acts referred to in the next note See further, Grose, Mil Antiquities, 1 2, 9, 74–96, Clode, Mil Forces, 1 16, 345–57, Stubbs, Select Charters, 281, 343, 370–3, Stubbs, Constit Hist, 1 526–7, 632, 634, II 293, Writs in Rymer's Fœdera and Palgrave's Parliamentary Writs

[4] See Acts 3 & 4 Edw VI, c 5, s 13, 1 Mar sess 2, c 12, s 12, 4 & 5 Phil and Mary, c 3, 1 Eliz c 16 Clode, Mil Forces, i 32, Scott s British Army, 1 329, 348, Grose, Mil Antiquities, 1 79 Strype (Ecclesiastical Memorials II 278) says that lieutenants were first appointed in 3 Edw VI (1549), and were appointed annually They are spoken of by Camden (Britannia, 1 clxvii, clxxxix), as appointed in troublesome times, and by Holinshed (Chronicles 1 155), as appointed in time of necessity They were also appointed for several counties An abstract of the authority given to a lieutenant by his commission is to be found in I odge's Illustrations of British History, ii 325, see also 419 to 426, see also Scott s British Army, I 348 After 1660, they became statutory officers appointed for the militia, see below, para 98

[5] Stubbs, Select Charters p 359, and divers writs in Rymer's Fœdera, Stubbs, Constit Hist, II 564, Clode, Mil Forces, 1 347 Grose, Mil Antiquities, 1 86 The Crown's right of purveyance was restrained by many Acts, and ultimately abolished by 12 Cha II, c 24

warriors were originally known as *gesiths*, but from the ninth century onward that name is superseded by *thegn* Alfred and his successors, under the stress of their Danish wars, incorporated in the thegnhood all the men of substance in the realm, whatever their origin, wealthy yeomen and merchants no less than members of ancient noble families [1]

Feudal levy

9 The Norman Conquest in 1066 changed the condition of the upper ranks of the military force by substituting a wholly feudalized military aristocracy for the semifeudal thegnhood The whole of England was carved out by William I into a number of military fiefs held from the Crown Some were small, but many were very large—earldoms and baronies—the holders of which cut up their vast domains into smaller military fiefs or knights-fees dependent upon themselves The holder of a military fief might therefore be either a tenant in chief holding directly from the Crown, or a sub-tenant holding under some great earl or baron All alike were bound to attend the king at their own expense, on horseback and in armour, with their retainers, who might be either mounted or on foot [2] After 1289[3] grants of land could only bind the holder to render service to the king or other superior lord, and not to the grantor of the land, and consequently the number of the retainers of the inferior lords gradually diminished Some of the great earls and barons had an establishment of domestic knights not holding lands and entirely dependent on them

The period of feudal service was limited by custom to forty days in each year, a term too short for foreign expeditions, and consequently the forces so raised were often induced by high pay to continue to serve as mercenaries (see below, para 24) Though the earlier kings successfully demanded service abroad as well as service at home, the obligation to serve abroad was challenged at an early date (1198), and as time passed the feudal tenants displayed increasing reluctance to serve out of the kingdom and at length refused to do so [4] The knights who, on horseback and in a coat of mail, formed the most prominent feature of warfare in the Middle Ages served under the feudal levy The infantry were either the retainers of those knights, or raised from the general levy or by contract (see below, para 24) The lancers and archers, however raised, were taken chiefly from the middle classes and highly paid [5]

Composition in lieu of personal service

10 Personal service formed the basis alike of the feudal and of the general levy, but the obligation to serve in the general levy rested on every man as a citizen, or as it was termed "on every "man within the allegiance of the king" The feudal levy was dependent on homage or on tenure under some feudal lord, whether

---

[1] Stubbs, Constit Hist, i 172, 210

[2] Grose, Mil Antiquities, i 8, 120, Scott's British Army, i 119, 138

[3] By the statute known as "Quia Emptores" (18 Edw I, c 1), which, while authorising the sale of lands, provided that the purchaser of land (called in the Act the feoffee) should hold it of the chief or superior lord and not of the vendor (called in the Act the feoffor), and should render to the chief or superior lord the same services which the vendor rendered before the sale

[4] Stubbs, Constit Hist i pp 284 ff, ii pp 293 The feudal levy appears to have been frequently summoned for service beyond the seas down to 1300, but fell into disuse before 1400 In 1198, Bishops Hugh, of Lincoln, and Herbert, of Salisbury, and in 1213 the northern barons, refused foreign service as not obligatory under their tenure, and it was opposed more seriously by the Earls of Norfolk and Hereford in 1296, 1297

[5] Hallam, Const Hist, ii 129, Stubbs, Constit Hist ii 297

Ch. IX

the king or some great earl or baron Obviously there must always have been many feudal tenants unable to render personal service, and the calling out under the general levy of the whole population capable of bearing arms can but very rarely have been desirable or possible [1] Service by deputy, or payment in lieu of personal service, and the calling out of a quota only, were accordingly allowed from very early times [2]

In case of feudal levy

11. In the case of the feudal levy, we must first notice the clergy, who held their lands by the tenure known as *Frankalmoign*, and who, as a rule, performed their military service by deputy or paid a composition,[3] though cases of military prelates are well known in history Women also, and infants, and other feudal tenants who were unable to render personal service, either found substitutes or paid a composition[4], and the payment of a composition in lieu of service was at an early date[5] extended from those who were unable to those who were unwilling to serve in person

Scutage or Escuage

12. Henry I appears to have been the first to require a number of knights, instead of serving in person for forty days, to equip and maintain a knight in service for a longer period and Henry II began (about 1156) to levy a money composition for personal service, under the name of Scutage or Escuage [6] This composition was probably levied at first only by agreement between the king and his subjects, but it subsequently became an abuse and gave rise to remonstrances as a tax levied by royal authority only, and from 1215 until the end of the reign of Edward II (1327) it was levied only under assessment by Parliament [7] With the decay of feudalism the tax fell into disuse[8], and it was ultimately, together with tenure by knight service, abolished during the Commonwealth, and finally extinguished on the Restoration in 1660 [9]

In case of general levy, quota and contributions to expenses,

13 Similarly, in the case of the general levy, the practice arose of calling on a certain quota only from each county to serve in person, and of requiring those not so called on to supply with arms and victuals, and to defray the expenses of those who served in person [10] This developed into a sort of tax on the county or township, not under the authority of Parliament, and continued

[1] Stubbs, Constit Hist, ii 290

[2] As early as Henry II

[3] Grose, Mil Antiquities, i 5, Scott's British Army, i 138, 248 See, however, writs requiring personal service in Rymer's Fœdera, one is printed by Grose, Mil Antiquities, i 5

[4] Grose, Mil Antiquities, i 6, 7

[5] As early as Henry I

[6] Stubbs, Select Charters, 281, 343, 364, Constit Hist, i 623, 626, 632, ii 291, Grose, Mil Antiquities, i 7, 8, Scott's British Army, i 119, 138, 245 Escuage is in Latin *Scutagium*, from *scutum*, a name given to a fief held on military service

[7] *I e*, "the common council of the realm" The Great Charter granted by John in 1215 required this, the omission of the requirement from later charters did not at first alter the practice Stubbs, Constit Hist, i 573, Grose, Mil Antiquities i 7, Coke, Inst, i 72 b, 74 b, note 37, Stubbs, Select Charters, 293, 343, 364

[8] Coke, Inst, i 74 b, note 37

[9] By Act 12 Cha II, c 24, together with other feudal incidents Excise duties on beer were granted to the Crown as an equivalent

[10] Stubbs, Constit Hist, ii 297 Stubbs, Select Charters, 359 During the great French wars, 1338 to 1453, the main part of the armies led by Edward III and his successors were mercenaries (see below, paragraphs 24, 25) But some of them were still raised under commissions of array (see 1 Edw 3, cc 7, 15, 18 Edw 3, c 7)

in the form of a liability on the part of the county to pay a part of the expenses of the militia [1]

Mode of calling out feudal levy

14. Both the feudal and the general levy when summoned for war were summoned by writ from the Crown

These writs did not always distinguish between those liable to serve under the feudal levy and those liable under the general levy, and those who served under the claim of purveyance[2], though strictly in the case of the feudal levy, a special summons ought to have been issued to each baron, bishop, and abbot, and served by the sheriff, while those of lower rank were summoned by a general proclamation of the sheriff made in obedience to the royal writ [3] The writs followed the latter practice as to the quota, and directed the commissioners under them to "elect" a number of men, that is, virtually to press them to join the army for general service These writs in the reign of Edward I became known as "commissions of array"[4]

Questions as to legality of commissions for purpose of foreign service

15 So far as these commissions were to raise a force for the defence of the realm against invasion, they were perfectly legal, but even if they were always legal in form, they were used, not merely for the legal purpose of raising troops to resist invasion, or to invade Scotland (which might be treated as resisting invasion), but also for the purpose of raising troops for foreign service They threw on the counties the burden of finding soldiers for and paying the expenses of foreign wars, and thus indirectly taxed them without consent of Parliament, a practice which—after the rise of Parliament at any rate—was unconstitutional

Resistance of Parliament

16 This grievance was accordingly resisted by Parliament, and, by a series of Acts beginning in 1327, it was provided that men should not be required to serve out of their counties except in the case of invasion, that men-at-arms, hoblers, and archers chosen to serve out of England should be paid by the Crown after leaving their counties, and that no man should be constrained to find men-at-arms, hoblers, or archers, unless bound by feudal service, or under the authority of Parliament [5]

Impressment during Wars of the Roses and in time of Tudors

17 During the Wars of the Roses and the reigns of the Tudors troops were raised in the most irregular manner The greater part of the real fighting was done by volunteers hired on private account by rival barons, and by retainers gathered under the custom of "livery and maintenance," under which great men gave their badge and livery to their smaller neighbours, and undertook to champion their quarrels, the receiver, on the other hand, agreeing to come out in arms to aid his protector whenever the

---

[1] Part of this was "coat and conduct money," said to have begun in the reign of Queen Elizabeth, with a promise of repayment by the Crown, and formed a subject of dispute between Charles I and the Parliament Scott's British Army, i 448, Clode, Mil Forces, i 21, Cobbett, Parl Hist ii 549, 562, 642, 651, 655

[2] This confusion began as early as Henry III

[3] Grose, Mil Antiquities, i 65, Stubbs, Constit Hist, ii 298, Stubbs, Select Charters, 281

[4] Stubbs, Constit Hist, ii 297 Hallam, Const Hist, ii 133, states the earliest commission of array as of 1324 and the last of 1557 But see Stubbs, Select Charters, 359, and Constit Hist, ii 297, and the commissions of musters of Elizabeth's reign, Grose, Mil Antiquities, i 79

[5] Stubbs, Select Charters, 359, Constit Hist, ii 297, 417, 421, 568, iii 285–7, Lingard iv ch 2, Acts 1 Edw III, st 2, cc 5, 7, 15, 18 Edw III, st 2, c 7, 25 Edw III, st 5, c 8, 4 Hen IV, c 13 The form of commissions of array was settled in Parliament in 5 Hen IV, A D 1404 Stubbs, Constit Hist, iii 281 "Hobler" was a light cavalry soldier, Grose, Mil Antiquities, i 106, Scott's British Army, ii 22, 329 For cases of armies raised at the charge of counties, see Sir R Cotton's paper, printed in Grose, Mil Antiquities, i 74, and the Ship Money Case in Howell's State Trials, iii 825

Ch IX latter took the field During these wars constitutional rights were ignored and forgotten, and not only were commissions of array continued, but the practice of impressing soldiers under them became so common, that impressment was assumed to be the right of the Crown[1], while certain Acts in the time of Henry VIII and of Philip and Mary increased and enforced the liability to provide horses and arms in proportion to property,[2] and to practise archery,[3] and another Act of Philip and Mary imposed a penalty for not attending musters of commissioners authorised to muster men and levy the ablest for the wars[4], and we learn from the Acts in Elizabeth's reign[5] as well as from Shakespeare,[6] that impressment was then commonly considered to be one of the prerogatives of the Crown [7]

Repeal of Armour Acts in reign of Jas I

18. In 1604, the first Parliament of James I repealed the above-mentioned Acts of Henry VIII and of Philip and Mary[8] as regards the provision of armour and horses and as that repeal was held to revive the older Acts respecting the provision of armour, those Acts were finally repealed in 1624, the last year of the reign of James I [9]

Commissions of musters and trained bands

19 The liability to serve in the general levy, however, continued, and was still enforced by means of commissions of array, which gradually developed into a rather different form under the title of Commissions of Musters [10] These commissions directed the commissioners to register and muster all persons liable to provide horses, arms, or soldiers, and to select a convenient number of such persons to serve in person at the charge of their counties for the service and defence of the Crown, who were to be sorted into bands, and trained and exercised at the charge of the different parishes in the county These commissions and this description of training appeared to have assumed at the end of the sixteenth and the beginning of the seventeenth century a quasi-permanent form under lieutenants of counties or other commissioners, and the bands trained under them became known as trained or train bands, and were mustered annually At the same time there

[1] Stubbs, Constit Hist, iii 285, Rymer's Fœdera, Hallam, Const Hist, ii 130 See 1 Edw III, st 2, c 15

[2] 33 Hen VIII, cc 5, 9, 4 & 5 Phil and Mar c 2 The last Act repealed the old Act, except 33 Hen VIII c 9, as to providing arms It also required cities and towns to provide arms at the common charge Compare Stubbs, Select Charters, 154

[3] 3 Hen VIII, c 3, 33 Hen VIII, c 9, containing an order to practise archery, with a prohibition of unlawful games, as bowles, tennis, coytinge, &c

[4] 4 & 5 Phil and Mar, c 3 This assumed the right to muster and impress

[5] 5 Eliz c 5, s 24, 35 Eliz c 4, 43 Eliz cc 3, 9

[6] Shakespeare, Hen IV, Part I, Act 4, sc 2, Falstaff says "I have misused the king's press damnably, I have got in exchange of 150 soldiers 300 and odd pounds I press me none but good householders, yeomen's sons, inquire me out contracted bachelors, such as had been asked twice on the banns, such a commodity of warm slaves as had as lief hear the devil as a drum, such as fear the report of a culverin worse than a struck deer, or a hurt wild fowl * * * and they have bought out their services, and now my whole charge consists of * * * such as indeed were never soldiers, but discarded unjust serving men, younger sons to younger brothers, revolted tapsters, and ostlers trade fallen, the cankers of a calm world and long peace, ten times more dishonourably ragged than an old faced ancient, and such have I to fill up the rooms of them that have bought out their services, that you would think I had 150 tattered prodigals lately come from swine keeping * * * Nay, and the villains march wide betwixt the legs, as if they had gyves on, for indeed, I had the most of them out of prison"

[7] Hallam, Const Hist, ii 130, 131, Clode, Mil Forces, i 17, Grose, Mil Antiquities, i 97, Rushworth, Historical Collections, i 152

[8] 33 Hen VIII, c 5, 4 & 5 Phil and Mar, c 2, repealed by 1 James I, c 25, s 7 See Hallam, Const Hist, ii 133

[9] By 21 Jas I, c 28 See Scott's British Army i 394

[10] These musters are distinct from the musters of troops in pay

existed, side by side with the trained bands, and in more or less connection with them, voluntary bodies, such as the Honourable Artillery Company in London, and similar bodies elsewhere, which doubtless owed their origin to the fact of its being fashionable to possess military acquirements [1]

Commissions of musters, a grievance under Charles I

20. During the reign of Charles I, the commissions of musters were used for the purpose of exacting contributions in money and arms from the counties, and so taxing them without the consent of Parliament These exactions were felt to be grievances, and complained of in Parliament, and, together with commissions for trying persons by martial law in time of peace and the practice of billeting, were, in 1628, declared to be illegal by the Petition of Right [2] The exactions nevertheless continued, and, together with the impressment of soldiers and the powers of the lieutenants of counties, formed the subject of further complaints in the Parliament of 1640 [3]

Impressment declared illegal by Long Parliament

21. In the Long Parliament in the same year, Charles I, though at first claiming the power of impressment as the ancient and undoubted prerogative of the Crown, assented to an Act declaring impressment illegal [4] This Act, after reciting rebellions in Ireland, which would endanger not only that kingdom, but also the kingdom of England, unless "a course be taken for the preventing thereof, and for the raising and pressing of men for those services," and also reciting that by the laws of the realm none of His Majesty's subjects ought to be impressed or compelled to serve out of his country, except in case of necessity or invasion, or except they be otherwise bound by the tenure of their lands, gave statutory authority to impress soldiers for service in Ireland

Trained bands or militia under Charles I

22. The Parliaments of Charles I, while protesting against the exactions enforced by the lieutenants of counties and the illegality of impressment, did not complain of the mustering of the trained bands, and the value of the trained bands, or militia as they now began to be called, and the necessity for exercising them, and providing them with arms and ammunition, were recognised on many occasions by the Long Parliament [5] Parliament, however, was extremely unwilling to leave the command of the militia under the control of the Crown exercised through the lieutenants of counties, and this question was one of the principal matters in dispute at the time of the rupture between Charles I and his Parliament [6]

---

[1] Grose, Mil Antiquities, i 79, ii 324 Raikes, in his History of Honourable Artillery Company, i 28–143, mentions the organisation of the trained bands in 1605, and that they were used to suppress riots Provisions were made for storing and repairing the arms, Rymer, A D 1612, Cobbett, Parl Hist, ii 782, 783, 850, 934, Clode, Mil Forces, i 29 Camden speaks of the commission to the lieutenant as a permanent commission of array, the former seems practically to have superseded the other See also the commissions given to lieutenants Lodge's Illustrations of British History, ii 325 The commission there mentioned gives the lieutenant powers similar to those of the commission of musters and also power to use martial law, and to make a provost-marshal See also Scott's British Army, i 326–8, 379, 394, 402–407 An abstract of the commission issued before the Spanish Armada is printed in Scott's British Army, i 345 See also Commissions in Rymer

[2] 3 Cha I, c 1

[3] As to complaints in Parliament, in addition to the complaints as to ship-money, Cobbett, Parl Hist, ii 233–5, 549, 561, 642, 652–5

[4] 16 Cha I, c 28 As to previous proceedings in Parliament, see Cobbett, Parl Hist., ii 968, 977–981, 1087

[5] Cobbett, Parl Hist, ii 655 See also 782–783, 849, 934

[6] Cobbett, Parl Hist, ii 1069, 1243 Hallam, Const Hist, ii 133–8 Gardiner, History of England, x 95–110, 186–193

Troops raised irregularly during Civil War

23. The mode in which troops were raised during the Civil War and the Commonwealth was necessarily irregular, and need not be noticed here

Other classes of soldiers

24. Before passing to the second period after the Restoration in 1660 a short mention must be made of three other classes of soldiers raised in the earlier period, and of the mode of enforcing the service of soldiers —

Crown grantees

(i) Holders of offices, pensions, lordships, or lands from the Crown were, at the end of the fifteenth century, made liable to serve at home or abroad, on pain of forfeiture [1]

Criminals and debtors

(ii) Sometimes also criminals were pardoned, or debtors released, on condition of serving as soldiers [2]

Mercenaries

(iii) The third and most important class was that of men who received pay for their services, who were termed "mercenaries," or "stipendiaries," terms which, though originally like the term "soldiers"[3] meaning those who were paid for their services, came at an early period to mean those who adopted arms as a profession, and served solely for pay The convenience of employing mercenaries is obvious, having regard to the limitations on the service of the general levy and of the feudal levy mentioned above, and from the date of the Conquest in 1066 mercenaries formed part of the forces of the Crown The distinction, however, between these troops and those raised under the feudal or general levy was not always a wide one, as men raised under those levies were often induced by liberal payment to serve beyond the seas, or for more than 40 days, and doubtless often fell into the class of mercenaries

Raising of mercenaries by indentures or contracts

25 Mercenaries were usually raised by an indenture or contract between the king and some person of high position who was able by his influence or wealth to obtain soldiers The men so raised were at first chiefly foreigners, and as their employment in England was not only strongly objected to, but was rendered less necessary by the liability of the inhabitants of the realm to service at home, they were almost entirely employed on foreign service After the raising of men compulsorily under commissions of array was, as before mentioned, restrained by Parliament in the reign of Edward III, the practice of raising troops by indentures became more common, in fact, after the beginning of the reign of Henry V, the larger part of the forces of the Crown were so raised [4]

Enlistment to serve the Crown

26. At first the soldiers so raised were enlisted to serve the officer who raised them, but after 1491 (7 Henry VII), if not before, they were enlisted to serve the king,[5] and as early as the time of Charles I enlistment was carried on under beating orders issued by

---

[1] By 11 Hen VII, c 18, 19 Hen VII, c 1, Clode, Mil Forces, i 337, 350

[2] Grose, Mil Antiquities, i 73, Scott's British Army, i 282

[3] Soldier being derived from "*solidus*" "*solde*' or pay, "*soldato*" in Italian meaning a hired man For *conductitii*, or hired men, mentioned also in Ducange (the *condottieri* of Italy), there seems to be no English equivalent

[4] Grose, Mil Antiquities, i 57-77, Hallam, Const Hist, ii 130, Stubbs, Constit Hist, iii 557, Magna Carta of King John, Art 41, Stubbs, Select Charters, 294 In Rymer's Fœdera, there are contracts between Hen I and Earl of Flanders, for supplying troops See also Rymer, A D 1284, 1295, Grose, Mil Antiquities, i 188, Scott's British Army, i 264, 279

[5] See preamble to 18 Hen VI, cc 18, 19, 7 Hen VII, c 1, 3 Hen VIII, c 5, and remarks on these Acts in "*The Case of Soldiers*," Coke's Reports, Part VI, 27*a*,

the Crown [1] The mode of raising troops by contract with an individual, sometimes for a sum of money, sometimes on condition of the contractor having the appointment of the officers of the force raised, continued,[2] notwithstanding the change of enlistment from a contract to serve the officer to a contract to serve the Crown, and notwithstanding that the establishment of a standing army altered the practice of enlisting for a particular war to that of enlisting for continuous service Enlistment, however, was strictly regimental, that is, for service in the particular regiment with which the recruiting officer was connected

Enforcement of obligation to serve.

27 The obligation to serve (except in the case of a breach of that obligation by desertion in the field) was not enforced in military courts, but by civil penalties, in the case of the general levy by fine, seizure of property, and imprisonment, and in the case of the feudal levy by fine and forfeiture of the fief held on condition of rendering military service Indeed, the Crown derived an income from distraining owners of fiefs to assume knighthood [3] Moreover, the high-handed proceedings of fine and imprisonment which we find, even after the reign of Queen Elizabeth, exercised in other cases, were doubtless exercised for the purpose of compelling persons to serve

In case of mercenaries

28. In the case of mercenaries, these powers were insufficient and, therefore, a soldier deserting from the captain with whom he contracted to serve, and who was under an indenture with the Crown to provide a certain number of soldiers, was in 1439 declared by Parliament to be punishable as a felon, that is, in a civil court,[4] and at a later date this enactment was extended to soldiers who had contracted to serve the Crown [5]

Punishment of desertion after Revolution

29. The punishment of desertion in a civil court became practically unnecessary after the Revolution, when the Mutiny Acts passed annually by Parliament provided a more speedy punishment by means of a military court [6]

Second Period—Standing Army

Changes in military system on the Restoration in 1660

30. At the Restoration in 1660, considerable changes took place in the military system of the country Knight service, with the feudal levy and its incidents, including Escuage, was finally

[1] So called from the expression at the beginning of the order, "to raise troops by beat of drum," which was derived from the actual use of the drum See Clode, Mil Forces, ii 580–584

[2] Clode, Mil Forces, ii 6, 581

[3] Grose, Mil Antiquities, i 3, 8, Stubbs, Constit Hist, ii 294, Hallam, Middle Ages, i 170, Scott's British Army, i 119, 122 245, Cobbett, Parl Hist, ii 549, 642

[4] 18 Hen VI, c 19 *Every felony at that time involved capital punishment and forfeiture of personal property*

[5] 7 H n VII, c 1, 3 Hen VIII, c 5, see also 2 & 3 Edw VI, c 2, revived by 4 & 5 Phil and Mar, c 3, s 8 The Acts also provided for the punishment of certain frauds, as regards pay, &c

[6] The above mentioned Acts, 7 H n VII, c 1, and 3 Hen VIII, c 5, were determined to be in force by the *Case of Soldiers*, Coke's Reports Part v, 27*a*, and were put in execution by James II, *Rex* v *Dale*, 2 Shower's K B, 511, Howell's State Trials, xii 262, note 7, but, being in practice rendered useless by the Annual Mutiny Acts, were repealed as obsolete by the Statute Law Revision Act, 1863 Grose, Mil Antiquities, i 65, writing before that repeal, observes that if the Mutiny Act were at any time to expire, the soldier would be punishable for desertion in a civil court under the above-mentioned Acts See also Hale, Pleas of the Crown, i 670–80, Blackstone's Commentaries, iv 102, Clode, Mil Forces, i 350 Macaulay, in his History (iii 43), says that the Acts put in force by James II were obsolete, and that the construction put upon them by the judges was considered by respectable jurists as unsound It appears, however, from the report of the case that the illegality, if any, was in regard to the place of execution of the soldier convicted, and not in the fact of his prosecution

Ch. IX — abolished[1], the organisation of the general levy, of which the trained bands formed part, into the militia was completed under the authority of Parliament and at the same time the king laid the foundation of the present standing army

No standing army before Restoration

31. Before the Restoration there had been no standing army Armies for particular wars had indeed been raised and paid for by Parliament, but were not kept on foot as standing armies after the conclusion of the wars for which they were raised, mainly, perhaps, on account of the cost[2] A few troops were maintained in certain garrisons, and small corps of serjeants-at-arms,[3] yeomen of the guard,[4] and gentlemen pensioners[5] existed, but these corps were kept up rather as personal attendants on the king than for operations in the field[6] The only other corps of a permanent character were the trained bands, and the Honourable Artillery Company of London, and similar associations, which were in effect either part of the general levy, or voluntary associations, and not in the nature of a standing army[7]

Maintenance of standing army after Restoration

32. The army raised by the Parliament during the Civil War was disbanded under Acts of Parliament[8] passed on the Restoration in 1660, but under a section in those Acts Charles II was enabled to keep up not only the garrisons in certain fortified places, but also one or two of the regiments which had aided in his restoration[9] Moreover, he subsequently raised several other regiments by voluntary enlistment, and paid them out of the liberal grants made to him for life by Parliament These regiments were maintained during his reign and that of his successor, James II, and their numbers were gradually increased, not merely on the occurrence or in anticipation of foreign war, but on other occasions[10]

Maintenance of standing army in time of peace, without consent of Parliament, declared illegal by Bill of Rights

33. The maintenance of these troops, however, formed the subject of frequent remonstrances in Parliament,[11] and the increase of their numbers by James II was one of the causes which led to the Revolution of 1688 At that time, while the opponents of the Court party during the previous reigns had just escaped from the evils and the dangers of a standing army, the Court party had not forgotten how keenly they had felt them during the Commonwealth Both parties therefore joined in procuring the declaration in the Bill of Rights[12], " that the raising or keeping a standing army within " the Kingdom in time of peace *unless it be with the consent of* " *Parliament* is against law ", a declaration annually repeated, up

---

[1] By 12 Cha II, c 24
[2] Grose, Mil Antiquities, i 61, Scott's British Army, i 328
[3] Now a purely civil body Grose, Mil Antiquities, i 61, 173–175
[4] Established by Hen VII in 1485, Hallam, Const Hist, ii 131, Grose, Mil Antiquities, i 61, 175–177
Established in 1509 by Hen VIII Grose, Mil Antiquities, i 61, 113–120
[6] Grose, Mil Antiquities, i 61
[7] Hallam, Const Hist, ii 131–133
[8] 12 Cha II, cc 9, 10, 15 20, 27, 28
[9] For instance, General Monk's regiment raised at Coldstream, afterwards the Coldstream Guards which, together with other regiments, was disbanded and reformed on the same day Grose, Mil Antiquities, i 61, 98 Mackinnon's History of Coldstream Guards The territorial titles of other regiments, as 10th North Lincoln, 15th York, East Riding, arose similarly, no doubt, from the districts in which they were first raised
[10] As, for instance, when the garrison of Tangier was brought to England on the abandonment of that settlement Grose, Mil Antiquities, i 61, 98, Macaulay, History of England, i 293, 294 See also Clode, Mil Forces, i ch iv
[11] Taswell Langmead, Constitutional History, 497, 609, Clode, Mil Forces, i ch iv, 31 Cha II c 1
[12] 1 Will & Mar, sess 2, c 2 (1689) It will be observed that this Act is a declaration of old law, not an enactment of new

to 1878 in the preamble to the Mutiny Act, and since then in the preamble to the annual Act bringing the Army Act into force

Control of Parliament since the Bill of Rights

34. Notwithstanding the insular position of England, the course of events since 1689 has never been such that the nation has been unwilling to acquiesce in the necessity for keeping up a standing army, and such a force has accordingly been maintained without intermission since the passing of the Bill of Rights But the raising, government, and payment of the army have always been expressly sanctioned by Parliament, and only for a period of twelve months at a time, so that it is a statutory, and not a prerogative force, and the Crown is under the necessity of asking annually for the consent of Parliament to its maintenance

As respects number of troops

35 The number of troops to be maintained is voted with the annual Army Estimates This number (but not any included in supplementary estimates voted after the annual Act), is mentioned in the preamble to the annual Act,[1] and any unauthorised augmentation of such number has been always resisted by Parliament[2], indeed Parliamentary authority has been invoked to enable the Crown to accept the services of Volunteers [3] Any excess of forces above the number named in the preamble to the annual Act does not, however, affect the application to those forces of the Act enacting military law [4] The provision of the Bill of Rights prevents the introduction of foreign troops into the kingdom without the consent of Parliament [5]

2 Raising, Government, and Payment of Army since 1660

Raising, &c, of army since 1660

36 A short statement will now be given of the manner in which the army has been raised, governed, and paid from the time of the Restoration until the present day

Compulsory service replaced by system of bounties

37. The final abolition of impressment in 1640 has been already mentioned, and with the notable exception of the measures taken for raising man power during the Great War, compulsory service in the army in the usual sense of the term has been unknown in this country At different times Acts have been passed authorising the impressment of certain persons of blemished character, or unsettled mode of life,[6] but for the greater part of the period enlist-

---

[1] Formerly the Annual Mutiny Act, subsequently the Army (Annual) Act, and now the Army and Air Force (Annual) Act The first Act in which the numbers were mentioned was 12 Ann c 13, which regulated the number and discipline of the forces continued on foot after the conclusion of the peace of Utrecht

[2] Clode, Mil Forces, i 85–89

[3] See below, para 126, *et seq* See also s 3 of the Reserve Forces and Militia Act, 1898

[4] See Army and Air Force (Annual) Act, s 2 (3,) p 417 The number of the Marines was not mentioned in the preamble to the Marine Mutiny Act, and is not mentioned in the Army and Air Force (Annual) Act, possibly because they partly belong to the Navy, whose numbers are not limited

[5] Clode, Mil Forces, i 89

[6] Provisions for the release from custody of criminals pardoned on condition of enlisting were contained in the Mutiny Act of 1702 (1 Ann stat 2 c 20, s 50), and repeated in subsequent Acts to 1711 The impressment of persons having no settled mode of living was allowed by Acts passed between 1703 and 1711 (2 & 3 Ann c 13, 3 & 4 Ann c 10, 4 & 5 Ann c 21, 6 Ann cc 17, 48, 7 Ann c 2, 10 Ann c 12, in the Record Edition of the Statutes), and again by Acts of 1744 (17 Geo II, cc 15, 26), 1745 (18 Geo II, c 10), 1756 (29 Geo II, c 4), 1757 (30 Geo II, c 8), 1778 (18 Geo III, c 53), and 1779 (19 Geo III, c 10) In 1758, the Court of King's Bench discharged a man improperly pressed under the Act of 1757, *Rex* v *Kessel* Burr i 637, and Grose, Mil Antiquities, i 98, note (*t*) records the bad results of the Act of 1779 Provisions were made for the release of insolvent debtors from custody on condition of enlisting or finding persons to serve in their places in 1696 (7 & 8 Will III, c 12, s 14), 1702 (1 Ann c 19), and 1703 (2 and 3 Ann c 10) See also 1 Geo III, c 17, s 57 See Clode, Mil Forces, ii 8–19, 48–55, 587, Reports on Recruiting, Parliamentary Papers, 1861, Vol xv, and 1867, Vol xv, Appendix by Mr Clode

Ch. IX

ment has been entirely voluntary, recruits having been induced to enlist by means of sums called bounties, paid to them on their enlistment, which in time of war rose to a considerable amount [1] The period of the Great War must be regarded as exceptional (See paras 48–54)

Competition for recruits between army and militia in 18th century

38. During the wars of the greater part of the eighteenth century recruits were wanted for the militia as well as for the army, so that difficulties constantly arose in consequence of competition between the officers recruiting for the two forces These difficulties were intensified by the use of the ballot for the purpose of raising the militia, inasmuch as parishes, in order to avoid the ballot by obtaining volunteers, and persons drawn in the ballot for service, in order to obtain substitutes, paid high prices to the very men who would otherwise have enlisted in the army

Contracts to raise troops subsequently to the Revolution in 1688

39 In time of war, since the Revolution in 1688, the old system of contract has upon occasion been reverted to, and troops have been raised by an agreement between the Crown and some nobleman or gentleman, who has undertaken to raise a corps on condition of receiving the nomination of all or some of the officers [2]

System of recruiting by beating orders

40. Even in time of peace, the mode of raising troops down to 1783 was by a species of contract between the Crown and the colonel, who received from the Crown a "beating order", enabling him to raise recruits, and was held responsible for enlisting sufficient recruits to raise and keep up the regiment to its proper numbers The sums for recruiting expenses and for pay and clothing were issued to him in gross , and, subject to certain limitations as to the amount of bounties, he and his officers made their own bargains with the recruits [3]

Mode of defraying expenses of recruiting

41. The sums for recruiting expenses in each regiment were carried to a fund called the stock purse, the accounts of which were made up annually, and the surplus (if any) was handed to the captains of the companies The commission to a major or colonel appointed him also to be a captain of the regiment, so that he had a company of which he shared the profits, while it was commanded by a captain-lieutenant The balances, however, were seldom large , and when vacancies became numerous from losses on service or other causes the cost of recruiting exceeded the allowance, and the officers were liable to heavy expenses, from which they were not infrequently relieved by extra allowances One survival of this system was the extra allowance made to the senior colonel and senior major [4]

Pecuniary interest of officers in system

42 Under the above system the officers had a pecuniary interest in keeping down the expenses of recruiting, both by obtaining men cheaply, and by prolonging the service of men enlisted, and so avoiding the necessity of obtaining recruits in their places Fraudulent re-enlistment defrauded the captain, and as early as 1689 this offence was by the Mutiny Act made punishable with death [5] At the same time the system held out great temptations to frauds in mustering and drawing pay for non-effective men as effective,

[1] For the history of enlistment since 1660, see Clode, Mil Forces, ii ch xv and the Parliamentary Papers mentioned in note 6 on p 17

[2] This system was known as that of "raising men for rank,' see Clode, Mil Forces, ii 5 This system was last resorted to in 1854, in the Crimean War

[3] Clode, Mil Forces, i 74, 105, ii 2–6

[4] Clode, Mil Forces ii chap xv , and App note (WW), p 568

[5] 1 Will & Mar , sess 2, c 4, s 1 , Clode, Mil Forces, ii 3

which, though restrained by provisions of the Mutiny Act, continued to prevail until the pecuniary interest of officers in the pay of the men ceased [1]

43. The above system was abolished in 1783,[2] and recruiting has ceased to be a matter of pecuniary interest to the officer, and is carried on by recruiting officers acting under the Director of Recruiting and Organisation in accordance with orders of the Army Council,[3] and the expenses are paid directly by the Crown Of late years the payment of bounties has been generally discontinued, but the power to issue them in times of emergency is retained, and was exercised during the Great War [4] Ordinarily a small pecuniary reward is given to recruiters and recruiting agents for each recruit raised and approved

Abolition of system, 1783

44. The term of service, after it ceased on the introduction of the standing army to be for a particular war only, has varied continually As a general rule, until the year 1847, the term of service of men enlisted in time of peace was for life, but whenever the exigencies of war required additional troops, recourse was had to enlistment for a limited term of years [5]

Term of service

45 In 1847 was passed the Army Service Act, which, as amended in 1849, limited first engagements to ten years for the infantry and twelve for the cavalry or artillery, but allowed re-engagements for such further periods as would make up a total service of 21 or 24 years, as the case might be, and a soldier, with the approval of the military authorities, might continue his service after the 21 or 24 years, until he gave three months' notice of his wish to be discharged [6] During the Crimean War (1855) and Indian Mutiny (1858) power was given temporarily to the Crown to enlist and re-engage for shorter periods, and also to re-engage men in the cavalry and artillery for a period making up 24 years' service [7]

Army Service Act, 1847

46. By the Army Enlistment Act, 1867,[8] first engagements were to be for 12 years in the infantry as well as in the cavalry and artillery, with power to re-engage for such a period as would make up 21 years' service, whether in the infantry, the cavalry, or the artillery, and the provision as to a soldier continuing in the service after 21 years, until he gave three months' notice of his wish to be discharged, was re-enacted

Army Enlistment Act, 1867

47. These provisions continued until the Army Enlistment Act 1870,[9] when the system known as the short service system was introduced for the purpose of securing a body of reserves

Army Enlistment Act, 1870, and Reserves.

---

[1] Clode, Mil Forces, ii 8–10

[2] By 23 Geo III, c 50, known as "Burke's Act"

[3] Clode, Mil Forces, ii 10, 20, 55 The Enlistment Act, 1870, 33 & 34 Vict c 67, conferred statutory power on the Secretary of State to issue orders This was re enacted in A A 93, and the power was transferred to the Army Council by the A A Act, 1909

[4] See A O 283/1914

[5] Under several Acts in the time of Anne and Geo II, and also under the Acts for impressment before referred to, the term of service was for a limited term of years After 1829 men were enlisted for life only, and this continued until 1847

[6] 10 & 11 Vict c 37, 12 & 13 Vict c 73 The power of soldiers in the cavalry and artillery to re engage for 12 years, making a total of 24, was repealed by the Act of 1849 S 1 of the first Act limited the first engagement to a maximum of 10 and 12 years respectively, but the words in the schedules as to the mode of filling up the attestation paper were construed to prevent an enlistment for any shorter period than the above terms See the preamble to 18 & 19 Vict c 4

[7] 18 & 19 Vict c 4, continued by 21 & 22 Vict c 55

[8] 30 and 31 Vict c 34

[9] 33 & 34 Vict c 67 The Act is now repealed the provisions re-enacted in the Army Act are stated in Ch X

Ch. IX — The Army Reserve had been established in 1867 to consist of men enlisted from soldiers serving, or having served, in the army, and to be a separate body with their own officers The Act of 1870 practically altered its character, and the Reserve Forces Act, 1882, has made corresponding alterations in the law The Territorial and Reserve Forces Act of 1907[1] created a new branch of the Army Reserve, called the Special Reserve (re-named Militia in 1921), into which men who have not previously served in the regular forces can be enlisted It was under this Act that the present Supplementary Reserve was formed in 1924

The Militia Reserve was also established in 1867, but ceased to be raised after 1901, and in 1921 the Acts under which it was raised[2] were repealed [3]

Raising of the armies for the Great War. 1914—18

48. At the commencement of the Great War in 1914 the existing short service system was modified, and, in addition to recruiting for the normal periods of engagements, men were enlisted into the regular army for " the duration of the war " These men formed what were called the " new armies "

In the following year the National Registration Act, 1915,[4] provided for the compulsory registration of all persons between the ages of 15 and 65 years who were not members of the forces, and from this register a military register was compiled of men between the ages of 18 and 40 years who were subsequently canvassed with a view to their voluntary enlistment

The next step was the introduction by Lord Derby (then Director-General of Recruiting) of a scheme under which men were attested, classified in " groups " according to age and marital state, transferred to Class B Army Reserve, and allowed to return home until the " group " to which they belonged was mobilized as a whole

Conscription

49. In view of the colossal nature of the struggle it became evident that the voluntary system was inadequate, and conscription was introduced in 1916 by the passing of successive Military Service Acts [5] Under those Acts as finally passed, all male British subjects who were resident in Great Britain and were between the ages of 18 and 51, and medical practitioners up to the age of 56 years, were liable to compulsory military service They were deemed to "have been duly enlisted in His Majesty's regular forces for general service with the colours or in the reserve for the period of the war, and to have been forthwith transferred to the reserve " Unless they were excepted under the terms of the Acts, they were called up for service in groups as in the case of recruits under the Derby scheme

The calling up of conscripts was suspended in November, 1918, and the Acts expired on 31st August, 1921

Transfer of soldiers during the Great War

50 By virtue of the Army (Transfers) Act, 1915, and the Military Service Act, 1916 (Session 2)[6], which expired at the termination of the war, soldiers could be transferred compulsorily to any corps, whether regular or territorial

---

[1] 7 Edw VII c 9

[2] Reserve Forces Act, 1867, 30 & 31 Vict c 110, Militia Reserve Act, 1867, 30 & 31 Vict c 111, amended by 33 & 34 Vict c 67, 34 & 35 Vict c 86, Mutiny Act, 1878, s 107 42 & 43 Vict c 32, s 5

[3] See 11 & 12 Geo V, c 37

[4] 5 & 6 Geo V, c 60

[5] 5 & 6 Geo V, c 104, 6 & 7 Geo V, c 15, also 7 Geo V, c 12, 7 & 8 Geo V, c 28 7 & 8 Geo V, c 66, and 8 Geo V c 5

[6] See 5 & 6 Geo V, c 43, and 6 & 7 Geo V, c 15, s 14

Volunteer Force and Women's Corps

51. In addition to the augmentation of the regular and territorial forces, a new Volunteer Force was raised during the war for home service [1]

In 1917 women were enrolled into the Women's Army Auxiliary Corps (later known as Queen Mary's Army Auxiliary Corps) in order to release serving soldiers for purely military duties The Corps was not raised under statute, but the enrolment of members was a matter of contract between each member and the Army Council The Corps, which was employed both at home and abroad, ceased to exist on 30th April, 1920

Class Z Army Reserve

52. To provide for a possible outbreak of hostilities in the period between the armistice of November, 1918, and the ratification of peace in 1920, a new class (Z) of the Army Reserve was formed in 1919,[2] and to it were transferred all men (both volunteers and conscripts) released from service with the colours They were liable only to recall in the case of urgent military necessity Class Z was abolished in March, 1920, the men being automatically discharged from the army

Armies of Occupation

53 To provide for the armies of occupation, the normal short service system was modified, and men were voluntarily enlisted or re-enlisted for engagements ranging between 1, 2, 3 and 4 years with the colours and no reserve service

Resumption of the pre war recruiting system

54 In January, 1919, the normal short service enlistment system (referred to in para 47) was restored, and is still in operation

Defence Force of 1921

55 On 31st March, 1921, a state of emergency was proclaimed under the Emergency Powers Act, 1920,[3] owing to a dispute in the coal mining industry which was of such a serious nature as to constitute a threat to the life of the community The Army Reserve was called out by proclamation in April, and a new force called the Defence Force was raised Men were voluntarily enlisted into the regular army for a special period of 90 days (or less) The force was disbanded in July, 1921

Government of army since 1660

56. The government of the army since 1660 is dealt with in Chapter II, it may, however, be observed here that when the army became a constitutional army, that is, dependent on the consent of Parliament for its maintenance, the obligation to serve was allowed to be enforced by courts-martial with military procedure, and not merely as before by the civil courts The power to govern the army, as mentioned above, is annually given by Parliament, but when given is exercised, as in all branches of His Majesty's service, by the Crown alone The manner in which that power is exercised is constitutionally subject, like the exercise of other prerogatives, to the advice of the ministers of the Crown, of whom the one particularly responsible for the army is the Secretary of State for War

Finance of the army.

57. With respect to the payment of the army, the annual sanction of the army by Parliament removes the old difficulties, as Parliament grants the money for its maintenance But the existence of a standing army rendered necessary a permanent machinery for administering that money The history and nature

[1] See para 133, as to the Territorial Force, see para 134, *et seq*
[2] Under 6 & 7 Geo. V, c 15, s 12
[3] 10 & 11 Geo V, c 55 (see p 906).

Ch IX

of that machinery is hardly within the scope of the present work, and therefore a brief statement only can be made [1]

Grant of money by Parliament

58. In the case of the army, as in that of the civil departments of Government, Parliament grants the necessary money on estimates submitted by the Crown, and the money granted is expended by the Crown, subject to control and audit on the part of Parliament [2]

Issue of pay

59 The pay of the soldiers of each regiment was formerly issued to the colonel by the Paymaster-General (a civil officer, and often a member of Parliament), and his subordinates, who were civilians It is now practically issued by the Paymaster-General and disbursed through company, &c , commanders, each of whom renders an account of issues of pay to the regimental paymasters, who keep an account for each individual soldier

Clothing

60 The clothing of each regiment used to be supplied by the colonel, according to a pattern selected by a clothing board, and was paid for by him out of his allowance for "off-reckonings", but since 1854 the clothing has been supplied direct by the clothing department

Military stores

61. The money granted for military stores was formerly expended by the civil part of the Board of Ordnance, a department which dates back before the Restoration, and of which the chief was the Master-General of the Ordnance, often a Cabinet Minister

Barracks.

62. The money granted for barracks, after being for a time expended under a special barrack department, which was at first of a purely military character, and afterwards partly civil, was eventually transferred to the Board of Ordnance

Provisions and transport

63 The money granted for provisions and transport was expended through the Commissariat, who were civilians and officials of the Commissioners of the Treasury From 1704 to 1836 there were other civil officers, called Controllers of Army Accounts, whose duty it was to examine and check army accounts and contracts, and to report to the Treasury on frauds and abuses One of them was sometimes present with the army Their office was in 1836 merged in the Board of Audit

Army extra ordinaries

64 For many years, besides the expenditure of the sums which were voted by Parliament upon estimates, there were expended large sums known as "army extraordinaries," which began with extraordinary expenses which could not be foreseen when the estimates were submitted to Parliament, but the system became an abuse, and was ultimately abolished in 1836 While it existed, the money was expended at first entirely by military officers, but during the nineteenth century partly by military officers and partly through the Commissariat or other civil officers

Secretary at War

65 The office of Secretary at War dates from the reign of Charles II and began as that of a private secretary to the Sovereign in military matters This officer afterwards usually held a seat in Parliament as one of the Ministry His position and duties were vague, but he undoubtedly was a civil officer, and had, especially after 1783 (Burke's Act), great control over the financial and other civil administration of the army, after 1783 he was

[1] For a fuller account, see Clode, Mil Forces, chs VI, VII, XXI, XXIII, on which the following summary is founded

[2] For early instances of this control, see Forster's Life of Sir J Eliot, i 158

responsible for the estimates of military expenditure submitted to Parliament, but he had no direct control over the artillery or engineers, or over the *matériel* of the force He was, however, subordinate to the Cabinet, and especially to the third Secretary of State, when that office was created [1] The duties of the office of Secretary at War were taken over by the Secretary of State in 1855, and the office was abolished in 1863 [2]

Commander-in-Chief and Judge Advocate-General

66. By the side of the civilian officers above-mentioned there was the purely military administration, which remained under the direction of the Sovereign as Commander-in-Chief, assisted by a board of general officers, till the establishment of the office of the General Commanding-in-Chief in 1793 [3] The administration of military law was, however, checked by the Judge-Advocate-General, a Privy Councillor, and usually a member of Parliament and one of the ministers of the day, who advised the Sovereign on the legality of the proceedings of courts-martial [4] The office of Judge-Advocate-General, having ceased to be paid, was, in 1892, made non-political, and was, from that date down to 1905, held by the President of the Probate, Divorce, and Admiralty Division In that year, on a new appointment being made to the office, the position of the Judge-Advocate-General was considerably altered He is now a permanent official under the orders of, and acting as legal adviser to, the Secretary of State, he is no longer a Privy Councillor, nor does he advise the Crown directly

The office of Commander-in-Chief ceased to exist in the early part of 1904, and the Patent creating the Army Council (February, 1904) [5] transferred to that body among other powers the powers theretofore exercised by the Commander-in-Chief under the Royal Prerogative

Secretary of State for War.

67. At the end of the eighteenth century, a third Secretaryship of State [6] was created, the holder of which was to have a general superintendence of the army and the colonies During the peace after 1815, when the army was less important, and the colonies grew more important, the colonial part of the work absorbed most of the Secretary of State's attention The outbreak of the Crimean War again called greater attention to the army, and in 1854 a new Secretary of State was created, and shortly afterwards the whole civil administration of the army was placed in his hands The powers and duties of the Board of Ordnance and of the Secretary at War were transferred to him, and the commissariat officials, and also the Paymaster-General, so far as

---

[1] See para 67 below, and Clode, Mil Forces, chaps IV, XXI

[2] 26 & 27 Vict, c 12

[3] See Clode, Mil Forces, chap XXVI The Sovereign was Commander in Chief, unless the office was granted away The Duke of Marlborough, in Queen Anne's reign, was appointed Commander-in-Chief, and commissioned officers by his own authority The Duke of Cambridge was appointed Commander in Chief in 1887, but had no power under the Patent to issue commissions, and neither Lord Wolseley, who succeeded the Duke of Cambridge as Commander in Chief in 1895, nor Lord Roberts, who succeeded to the office in 1901, had power to issue commissions In India there is a Commander in Chief, but without power to commission officers, except temporarily, until the King's pleasure is taken

[4] Clode, Mil Forces, chap XXVII

[5] See para 68 below

[6] All the Secretaries of State, now seven in number, have equal powers, so that, though in practice different Secretaries of State administer different departments, technically there is no distinction between them A third Secretary of State had been created in 1768, but the office was abolished in 1782 by 22 Geo III, c 82 It was, however, revived in 1794, Sir Erskine May, Constitutional History, III 360, Clode, Mil Forces, II 320

Ch IX — concerned the army, were also placed under his orders[1] In 1858 the commissariat officials were made military officers subject to the direction of the general commanding the force to which they were attached But whether the officials engaged in the administration and discipline of the army are civil or military, the Secretary of State for War, a member of one of the Houses of Parliament and a Cabinet Minister, is responsible for the acts of all of them, and is the constitutional and responsible adviser of the Crown in all questions connected with the army The ultimate responsibility of the Secretary of State was in no way affected by the reorganisation of the War Office and creation of the Army Council in 1904

In 1870 the transfer of the officers who exercised the military administrative functions from the Horse Guards to the War Office brought every branch of army administration under the direct and immediate control of the Secretary of State The actual army administration was divided between the officer Commanding-in-Chief, the Surveyor-General of Ordnance, and the Financial Secretary In 1888[2] the Commander-in-Chief became solely responsible to the Secretary of State not only for the efficiency of the men but also of the *materiel*, the responsibility for all accounts, contracts, and manufactures remaining with the Financial Secretary This concentration of military responsibility in the Commander-in-Chief was abolished in 1895[3] and divided between (1) the Commander-in-Chief, who retained the responsibility for general command over the military forces at home and abroad, and the general supervision of the military departments of the War Office, (2) the Adjutant-General, who was responsible for the discipline and training of the troops, and for recruiting and discharging, (3) the Quartermaster-General, who had direct charge of the food, forage, quarters, fuel, and transport of the army, and of the pay department, (4) the Inspector-General of Fortifications, who had charge of barracks, fortifications, &c, and of the engineer services, and (5) the Director-General of Ordnance, who issued demands for, inspected, and had custody of warlike stores and equipment, dealt with patterns and inventions, and administered the Army Ordnance Department and Corps Each of these five officers was directly responsible for his department to the Secretary of State

A further change was made in 1901,[4] when the Military Department was divided into four, instead of five, departments, the Adjutant-General being made subordinate to the Commander-in-Chief, while the Inspector-General of Fortifications, the Quartermaster-General, and the Director-General of Ordnance remained in the same position as under the Order of 1899

Army Council 1904-1914.

68. The question of the organisation of the army and the War Office again came to the front on the conclusion of the war in South Africa, and in 1904 (following the lines of the report

[1] See 18 & 19 Vict cc 10 11, 26 & 27 Vict c 12

[2] Orders in Council of 29th December, 1887, and 21st February, 1888

[3] Order in Council of 21st November, 1895 An Order in Council of the 7th March, 1899, superseded the Order of 1895, but substantially reproduced its provisions, except that the direction of Army Factories was transferred to the Ordnance Branch, subject to the financial control of the Financial Secretary

[4] Order in Council of 4th November, 1901

of the War Office (Reconstitution) Committee[1]) the administration of the army was placed in the hands of an Army Council, created by Letters Patent of the 6th February, 1904 These Letters Patent vested in that Council all the prerogative powers of the Crown in relation to the army which had theretofore been exercised by the Secretary of State, the Commander-in-Chief, and other principal officials, and by the Army (Annual) Act of 1909 there were transferred to the Army Council all the powers of the Commander-in-Chief and the Adjutant-General under the Army Act, and various other statutory duties set out in detail in the second schedule to the Act of 1909

The Council originally consisted of seven members, viz the Secretary of State, four Military Members (the Chief of the General Staff, the Adjutant-General, the Quartermaster-General, and the Master-General of Ordnance), a Finance Member and a Civil Member

The Secretary of State remained responsible to the Crown and Parliament for all the business of the Council, while under him the business was divided up as follows —The Military Members were responsible for the administration of so much of the business relating to army organisation, disposition, personnel, armament and maintenance as was assigned to them or any one of them by the Secretary of State, the Finance Member was charged with army finance, and the Civil Member was responsible for the non-effective votes The Secretary of State could assign any other business either to the Finance Member or the Civil Member The Finance Member was assisted by an Assistant Financial Secretary who allowed and paid all moneys for army services, audited all cash expenditure, and prepared the accounts of that expenditure for Parliament [2]

In addition to the above officials, there was an Inspector-General of the Home Forces, and an Inspector-General of the Overseas Forces, who acted under the orders of the Army Council, to whom they were charged with reporting as to the training and efficiency of the troops, the readiness and fitness of the army for war, and generally on the practical results of the policy of the Council The Home and Overseas Inspectorates were amalgamated in 1914 into a single appointment held by an officer designated the Inspector-General of the Forces, this appointment lapsed the same year

Army Council 1914–18

69 During the period of the Great War the Army Council was temporarily increased The additions were as follows —(1) the Deputy Chief of the Imperial General Staff, from December, 1915, to September, 1922; (2) the Director-General of Military Aeronautics from February, 1916, to 1918, when the Air Ministry was formed, (3) the Permanent Military Representative at the Supreme War Council, Versailles, in February, 1918, who ceased to be a member shortly afterwards, his name being omitted from the Letters Patent of 20th April, 1918, (4) the Director-General of Movements and Railways from February, 1917, to May, 1919, (5) the Surveyor-General of Supply, from May, 1917, to April, 1921. (This latter post had been anticipated in December, 1914

[1] Parliamentary Papers, 1904 Cd 1968
[2] Orders in Council of 10th August, 1904

Ch IX (to August, 1915), by the appointment of an additional Civilian Member to supervise army contracts) The first three of these appointments were Military Members, and the last two Civilian Members

During this period the allocation of duties among the members of the Council was frequently varied The most important change was in 1916, when by Order in Council of 27th January, the Chief of the Imperial General Staff was entrusted with the responsibility for issuing the orders of the Government in regard to military operations This arrangement was terminated in February, 1918 From July to December, 1916, and from April, 1918, to January, 1919, the Under-Secretary of State acted as the deputy of the Secretary of State in all matters affecting administration He also became Vice-President of the Army Council, an arrangement which still continues, and the title of Civil Member lapsed

Changes in 1920

70. In June, 1920, the Secretary of the War Office and the Joint Secretary of the War Office (formerly Assistant Financial Secretary) were appointed members of the Army Council The former is still a member (as well as Secretary) of the Council under the title of Permanent Under-Secretary of State for War, but the other appointment lapsed in March, 1924

The present Army Council

71. The Council at present consists of the Secretary of State for War (President), the Under-Secretary of State for War (Vice-President), four Military Members, viz —the Chief of the Imperial General Staff (First Military Member), the Adjutant-General (Second Military Member), the Quartermaster-General (Third Military Member), and the Master-General of the Ordnance (Fourth Military Member), the Financial Secretary of the War Office (Finance Member), and the Permanent Under-Secretary of State for War, who is also the Secretary of the Council

By the Order in Council of 21st March, 1924, the Under-Secretary of State is responsible to the Secretary of State for the administration of the Territorial Army Associations and War Department lands The four Military Members are responsible to the Secretary of State for the administration of so much of the business relating to the organisation, disposition, personnel, armament and maintenance of the army as is assigned to them, or each of them, by the Secretary of State The Finance Member is responsible to the Secretary of State for the finance of the army, and the Permanent Under-Secretary of State is responsible to the Secretary of State for the preparation of all official communications of the Council, and for the interior economy of the War Office, he is also responsible as Accounting Officer of Army Votes, Funds and Accounts, for the control of expenditure and for advising the Secretary of State and the administrative officers at the War Office and in commands on all questions of army expenditure The Under-Secretary of State, the Finance Member and the Permanent Under-Secretary of State may also have other business assigned to them by the Secretary of State

Ministries of Munitions, Pensions, National Service and Air

72. During the Great War, three new ministries, viz, the Ministry of Munitions of War, the Ministry of Pensions and the Air Ministry, were created out of the War Office (and Admiralty), while another, the Ministry of National Service, added to its

existing duties in 1917, by taking over from the Adjutant-General's Department the task of obtaining men for the army

The Ministry of Munitions was established in June, 1915,[1] to deal with all matters relating to the supply of munitions for the purposes of the war The branches of the War Office which had previously dealt with the supply of munitions were transferred to the new Ministry In 1921[2] the Ministry ceased to exist and the War Office resumed responsibility for the duties which had previously been transferred

The Ministry of Pensions was created in December, 1916,[3] and in February, 1917, took over the duties relating to disability pensions previously discharged by the Lords of the Admiralty, the Army Council and the Chelsea Commissioners In 1921[4] the duties of the Ministry in regard to disability pensions incurred in times of peace were re-transferred to the Departments from which they had been taken in 1917, but the Ministry still exists to deal with disability pensions payable in respect of the Great War or former wars

The Air Ministry was created in 1918 In February, 1917,[5] an Air Board was created, on which the Director-General of Military Aeronautics had a seat The Admiralty and Ministry of Munitions were also represented The Board was responsible for design and for the allocation of aircraft between the naval and military wings of the air service The continued growth of this Department led to the Air Force (Constitution) Act, 1917,[6] which provided for the establishment of a Ministry for Air and an Air Council, under a Secretary of State The Council was established on 3rd January, 1918, by Order in Council, and the new Royal Air Force, in which were amalgamated the Royal Naval Air Service and the Royal Flying Corps, came formally into being on 1st April, 1918

The Ministry of National Service was formed in August, 1917,[7] to prepare estimates of available man power and to deal with man power requirements of the army and vital industries By an Order in Council of 23rd October, 1917, the business of recruiting was transferred from the War Office to the Ministry It was re-transferred to the War Office in January, 1919

Audit of military accounts

73. The audit of military accounts has remained independent of the Secretary of State, and is now conducted on behalf of the House of Commons by the Audit Department under the Comptroller-General of the Receipt and Issue of His Majesty's Exchequer and the Auditor-General of the Public Accounts, commonly called the Comptroller and Auditor-General

3 Militia

General Sketch of History

Preliminary remarks.

74. It must be borne in mind that paras 75–124 of this chapter relate to the old militia, which, until 1908, was raised under the

[1] 5 & 6 Geo V, c 51.
[2] 11 Geo V, c 8
[3] 6 & 7 Geo V, c 65
[4] 10 & 11 Geo V, c 23
[5] 6 & 7 Geo V, c 68
[6] 7 & 8 Geo V, c 51
[7] 7 Geo V, c 6 (which became spent on 31st August, 1922)

Ch. IX

Militia Acts, which were repealed in 1921 by the Territorial Army and Militia Act of that year [1]

By the same enactment the title of "Militia" was given to the Special Reserve, which can be raised under the Territorial and Reserve Forces Act, 1907 [2]

Periods of history of militia

75. The history of the old militia, since the Restoration in 1660, divides itself into five periods (1) from 1660 to 1757, (2) from 1757 to 1815, (3) from 1815 to 1852, during which the militia was practically in abeyance, (4) from 1852 to 1908, during which the volunteer militia existed, and (5) from 1908 to 1921, during which no militia was raised

General and local militia

76. The militia, as it existed in 1907, was the general or regular militia, as distinguished from the local militia which was established at the beginning of the last century At the beginning of the nineteenth century also several Acts were passed relating to forces other than the regulars and militia, which will require notice [3]

First period Organisation of militia on Restoration in 1660

77. The command of the trained bands, or militia, and the disposal of their arms, and the appointment and removal of the lieutenants of counties had, as before mentioned, formed one of the principal subjects of dispute between Charles I and the Long Parliament, in the course of which the name "militia" came into general use [4] On the Restoration, therefore, it was necessary that these questions should be dealt with, and a Bill for settling the militia was introduced into the Commons in the Parliament by which Charles II was recalled, but met with great opposition, "because there was martial law provided in it" [5] Consequently, though the feudal levy was abolished, Parliament was dissolved before any militia Bill could be passed In the next Parliament the question was at once taken into consideration, and an Act was passed [6] to legalise for a year the training of "the militia and land forces" under the lieutenants of counties, to whom Charles II had in the meanwhile issued commissions

Acts passed 1662-1745

78. In the following year (1662) an Act was passed "for ordering the forces in the several counties in the kingdom", and by this Act, as amended by an Act passed in 1663, the militia was at length organised, and the trained bands, except in the City of

[1] 11 & 12 Geo V, c 37

[2] See para 125

[3] As to these Acts and the local militia, see para 115, *et seq*

[4] See above, para 22 "Militia" seems to have been used as early as 1590, see Scott's British Army, i 448 (note), Bacon's Essays, and Raikes' History of the Honourable Artillery Compy, i 106, 110, and it is constantly used in the reports of the proceedings in Parliament in 1640 and 1641, Cobbett, Parl Hist, ii, though Whitelocke, in 1641, speaks of it as "this new word, this hard word", *ibid*, ii 1078, Rushworth, Historical Collections, iii pt i 525, Clode, Mil Forces, i 31 (note)

[5] Comm Journ Cobbett, Parl Hist, iv 145

[6] 13 Chs. II, stat. 1, c 6 The preamble refers to the pending Bill for the militia

London, were ordered to be discontinued [1] Further provision was made for the new force by Acts of the subsequent reigns,[2] and it was called out in 1690 on the occasion of the French invasion, and again during the rebellions of 1715 and 1745 [3]

Second period Reorganisation of militia after rebellion of 1745

79. The rebellion of 1745 brought into notice the general inefficiency of the force, and in 1756 attention was called by a panic as to a French invasion, and by the introduction of Hanoverian troops, for which the apprehended invasion had been made an excuse, to the necessity of strengthening the national defensive forces Accordingly, in 1757 (rather against the will of the Ministers, and only for a period of five years) an Act was passed by which the force was reorganised on nearly the same basis as that on which the balloted militia rested in the 19th century [4] Opposition arose in several counties to the execution of this Act, and difficulty was experienced in obtaining officers[5], and several Acts were subsequently passed for the purpose of enforcing the execution of the law Progress was, however, made, and the force was embodied in the year 1759 [6]

Consolidation of Militia Acts

80 The Acts relating to the militia were consolidated in 1761,[7] and again in 1786, when the greater number of the regiments had been raised,[8] and the utility of the force was emphatically recognised by Parliament in the preamble to the consolidating Act [9] The Acts were again consolidated in 1802, after the peace of Amiens, by 42 Geo III, c 90, which was subsequently amended [10]

[1] 14 Cha II, c 3, 15 Cha II, c 4 As to the discontinuance of the trained bands in fact, see Clode, Mil Forces, i 86 The old power to enlist and levy the trained bands in the City of London continued unaltered (being saved by the various Militia Acts) until 1794, when an Act was passed (34 Geo III, c 81), for the organisation of a militia force in the City This Act (as amended by 35 Geo III, c 27) was subsequently repealed by 36 Geo III, c 92, and that Act, as amended by 39 Geo III, c 82 (see also 42 Geo III, c 90, s 153), was in its turn repealed by 1 Geo IV, c 100, which is still partly in force (see 11 & 12 Geo V, c 37, sched 2) As to the use of the term "trained bands" in the above Acts, see Raikes' History of the Honourable Artillery Company, ii 146

[2] 7 & 8 Will III, c 16, which, after being re enacted by 9 Will III, c 31, 11 Will III, c 14, 12 Will III, c 8 was made perpetual, 1 Ann stat 2, c 15, 4 & 5 Ann c 10, 6 Ann c 28, 10 Ann c 33, 1 Geo I, stat 2, c 14, 9 Geo I, c 8, 19 Geo II, c 2

[3] See preamble to 2 Will & Mar, sess 2, c 12, and 7 Geo II, c 23 Lord Mahon, Hist of England, iii 398–422

[4] 30 Geo II, c 25, amended by 31 Geo II, c 26, 32 Geo II c 20, 33 Geo II, cc 22, 24 See Clode, Mil Forces, i 39–42, Cobbett, Parl Hist, xv 782, Lord Mahon, History of England, iv 143

[5] Clode, Mil Forces, i 39, Lord Mahon, History of England, iv 134

[6] Clode, Mil Forces, i 40

[7] By 2 Geo III, c 20, which was at first enacted for seven years only, but was made perpetual by 9 Geo III, c 42 It was amended by 4 Geo III, c 17, 5 Geo III, cc 34, 36, 6 Geo III c 30, 7 Geo III, cc 15, 17, 9 Geo III, c 42 11 Geo III, c 32, 16 Geo III, c 3, 18 Geo III, cc 14, 59, 19 Geo III, cc 72, 76, 20 Geo III, cc 8, 44, 21 Geo III, cc 7, 18, 22 Geo III, cc 6, 62, 24 Geo III, sess 1, c 13

[8] In the circular of 30th April, 1833 (printed in Clode's Militia Act, 1875), the regiments are described as having been raised as follows 47 before the peace of 1763, 22 between the peace of 1763 and the peace of 1783, and 21 for the revolutionary war This circular announced their precedence as settled by lot

[9] See Clode, Mil Forces, i 43 The Act of 1786 (26 Geo III, c 107) was amended by 33 Geo III, c 8, 34 Geo III, cc 16, 47, 35 Geo III, c 83, 38 Geo III, c 55, 39 Geo III, cc 90, 106, 39 & 40 Geo III, c 1, 42 Geo III, c 12 In addition to these Acts, several Acts were passed relating to the supplementary militia, *i e*, an addition to the militia above the quota, and also Acts relating to the militia of particular localities which had separate militia corps, namely—

(1) The City of London, 34 Geo III, c 81, and 35 Geo III, c 27, which were consolidated by 38 Geo III, c 92, and that Act as amended by 39 Geo III, c 82, was saved in 1802 by 42 Geo III, c 90, s 153, but was repealed in 1820 by 1 Geo IV, c 100

(2) The Militia in the Stannaries, known as the "Regiment of Miners," 38 Geo III, c 74, and 42 Geo III, c 72, the latter of which recites that a great length of time had elapsed since any commission had issued to the Warden of the Stannaries to array, arm, and exercise the miners See Militia Act, 1882, s 49

The separate Militia of the Tower Hamlets (37 Geo III, cc 25, 75) was merged in the Militia of the County of London by the Local Government Act, 1888, s 91

[10] See especially 43 Geo III, c 50, 51 Geo III, c 118, 15 & 16 Vict. c 50, 23 & 24 Vict c 120.

Ch. IX

Between 1802 and the peace in 1815, numerous additional Acts were passed with respect to the militia, some of which were of a permanent character, but the greater number were temporary measures, and had reference either to the relations between the militia and the other forces then raised under certain special Acts, or to enlisting men for the militia by beat of drum, or to enlistment from the militia into the army [1] Except in the years 1830 and 1831,[2] a ballot for the militia does not seem ever to have been actually held since 1810 [3] A motion in Parliament in 1813 to suspend the ballot was defeated, and in 1814, on a motion in relation to the disembodiment of the militia, reference was made to the hardship of keeping balloted men away from their families [4]

Third period, 1815-1852

81. After the peace of 1815 the militia was allowed practically to fall into abeyance, although the permanent staff were maintained The first step was to allow the annual training to be suspended by Order in Council [5] Then, from 1829 to 1865, an Act was passed annually suspending all proceedings for raising the militia by ballot, unless ordered by Order in Council, and the Act of that year was annually continued by the Expiring Laws Continuance Act[6] until 1921, when it was repealed with the remaining Militia Acts

Fourth period Reorganisation of the militia in 1852

82 In 1848 some excitement was felt with respect to the military position of the country in consequence of the great increase of armaments on the Continent, particularly in France The subject was mentioned in Parliament, and the Prime Minister (Lord John Russell), in making his financial statement in 1848, expressed his intention of introducing a Bill for re-establishing the militia Nothing, however, was done until 1852, when he proposed to reorganise the local militia, but this proposal was rejected by the House of Commons, in favour of an amendment (proposed by Lord Palmerston) to reorganise the regular militia This vote led to a change of Ministry, and the next Ministry, of Lord Derby, introduced a Bill for reorganising the regular militia, which was ultimately passed into law,[7] and thereafter the militia was, down to 1908, raised by voluntary enlistment The militia law was amended from time to time between 1852 and 1875 by Acts, some portions of which applied to the volunteer militia, and others only to the force when raised by ballot [8]

---

[1] See 43 Geo III, c 10 c 19, c 47 c 50, c 100 44 Geo III c 54 c 16, c 56, 45 Geo III, c 31, 46 Geo III, c 91, c 140 47 Geo III, ss 2, c 57, c 71, 49 Geo III, c 4, c 53, 50 Geo III, cc 24, 25, 51 Geo III, c 17, c 20, c 118 c 128, 53 Geo III, c 81, 54 Geo III, c 11, 55 Geo III, c 65, c 168 As to these Acts, their reasons and effect, see Clode, Mil Forces, i 287 Besides the above, there were Acts relating to Scotland and Ireland

[2] See note 6 below

[3] See Mr Clode's evidence and App XVII to report of Mr Stanley's Militia Committee, 1876 (Parliamentary Paper, 1877, C —1654)

[4] Clode Mil Forces, i 290–299, Annual Register, 1813, p 207

[5] First, by a temporary Act, in 1816 (56 Geo III, c 64), and in 1817 by a permanent Act (57 Geo III, c 57), under which orders for suspension were made in almost every year

[6] 10 Geo IV, c 10 Orders in Council directing a ballot were made and put in force in 1830 and 1831 (Clode, Mil Forces, i 47, Parliamentary Papers, 1834, vol 42, 103, Life and Struggles of William Lovett, p 65, Hansard (1832), x 376) The Act of 1865 was 28 & 29 Vict c 46 The number of the permanent staff was reduced by the Act of 1829, and again in 1835 by 5 & 6 Will IV, c 37, which also provided for the militia stores of a county being transferred to the Ordnance Department

[7] 15 & 16 Vict, c 50 See Hansard's Parliamentary Debates for the years 1848 and 1852, Clode, Mil Forces, i 46, 305–307

[8] See 16 & 17 Vict, cc 116, 133 (England) 17 & 18 Vict, c 13, c 105 (England), c 106 (Scotland), c 107 (Ireland), 18 & 19 Vict, c 19 (Ireland), c 100, 22 & 23 Vict, c 38, 23 & 24 Vict, c 94, c 120 (England), 32 & 33 Vict, c 13, 33 & 34 Vict., c 68, 34 & 35 Vict., c. 86, 36 & 37 Vict., c 68.

83. In 1875 the enactments which related to the volunteer militia, and also those which related to the organisation, command, government, and service of the force, whether raised by ballot or by voluntary enlistment, were consolidated by the Militia Voluntary Enlistment Act, 1875 (38 & 39 Vict , c 69), which was subsequently replaced by the Militia Act, 1882 (45 & 46 Vict , c 49) Both of these Acts left unrepealed those enactments which related solely to the raising of men by ballot Militia Act, 1875

Raising of the Militia

84 The Act of 1662 followed the old law by requiring owners of property to furnish horses, horsemen, foot soldiers, and arms, as specified in the Act, in proportion to the value of their property, and the liability of persons of small property was to be discharged out of a rate levied in the parish for foot soldiers and arms The Act, though not expressly recognising volunteers, enacted that a person liable should not be obliged to serve in person, but might provide an approved substitute Raising of the militia, Act of 1662

85. In 1757 the mode of raising the men was entirely changed, a liability on the part of the county and parish to provide men being substituted for a liability on the part of individuals A certain number of men specified in the Act (usually known as the quota) were to be raised in each county, subject to certain powers of re-adjustment by the Privy Council Lists of all men between the ages of eighteen and fifty in every parish in each county (except those expressly exempted) were to be sent to the lord lieutenant and the deputy lieutenants, who were to hold meetings, and apportion the quota of the county among the different sub-divisions, and again sub-divide the quota of each sub-division among the parishes in proportion to their populations, and then choose men by lot from each parish list up to the number apportioned to that parish Every man so chosen had to serve for three years, or to provide a substitute, and vacancies were to be filled from time to time by a like process of ballot, which was to be repeated every three years The above was practically the ballot system as it existed immediately before the repeal of the Acts in 1921, although it had been frequently modified in details Thus, the age of men liable to serve was altered from time to time, and was, under the Act of 1860,[1] fixed between 18 and 30 Exemptions also were added, as, for instance, the exemption of a poor man with more than one child [2] On the other hand, the term of service was extended from three years to five Alteration in mode of raising men in 1757

86 In 1761 the raising of the militia was made compulsory by the imposition on counties of an annual fine for not raising the quota [3] This fine was at first 5*l* for each man deficient, at one period it was as high as 60*l*, and later 10*l* per man Fine for not raising quota

---

[1] 23 & 24 Vict c 120

[2] 42 Geo III, c 90, s 43 At first Protestants alone were capable of serving, this restriction was abolished in 1797 for the supplementary militia (37 Geo III, c 22), and in 1802 for the regular militia

[3] 2 Geo III, c 20, and amending Acts This was re-enacted in 1769 (9 Geo III, c 42, which Act states that militia had not been raised in some counties), and again on the consolidation of 1786 (26 Geo III, c 107, s 116, &c), and at the beginning of the nineteenth century, 42 Geo III, c 90, s 158, c 91, s 150 (as to Scotland)

Volunteers recognised by Act of 1758

87. Besides the substitutes allowed after 1662, the Act of 1758 enabled a parish to offer volunteers, and if they were accepted, to escape to that extent the liability to a ballot If a volunteer so accepted failed to appear and be sworn and enrolled, the parish was bound to find another, or to pay out of the rates a fine of 10*l* [1] The Act of 1758 further empowered captains, on the embodiment of the militia, to augment their companies by volunteers, and this and the amending Acts enabled lords lieutenant of counties to accept, first, single volunteers, and then whole companies of volunteers with their officers [2] At the end of the 18th century these volunteers developed into a separate force under separate Acts

Changes in system during nineteenth century

88 In 1810 the enlistment in the militia of volunteers by beat of drum as supernumeraries, to a number exceeding the regular quota, was authorised, and the ballot was only to be resorted to in case of a deficiency [3] The militia was thus a force raised by ballot with the subsidiary aid of voluntary enlistment In 1852, however, the system was changed, and the militia became a force of voluntarily enlisted men, with the ballot in reserve, as the Act of that year empowered the Crown in England to resort to the ballot, in case the quota in any county was not raised by voluntary enlistment, and also in case of invasion or imminent danger In 1854 Acts were passed which provided for the raising of militiamen both in Scotland and Ireland by voluntary enlistment [4]

The militia when last raised consisted entirely of men voluntarily enlisted under the directions of the Secretary of State for War, and the suspension of the enactments as to the ballot was annually continued until 1921 (see para 81)

Numbers of the militia

89 In 1662 the number of men to be raised was not limited, except so far as it depended on the wealth and number of the persons liable to furnish or contribute to furnish men and horses

Quotas under various Acts since 1757

90 In 1757 the number to be raised was limited by the Act which fixed the quota to be raised by each county The quota was altered from time to time, and in 1797 an addition to the quota, called the supplementary militia, was made, to last during the war, but it was soon merged in the regular militia [5] Under the Act of 1802 the Privy Council were to fix the quota every ten years, guided by the proportion between the number of men liable to serve (as appearing from the lists) and the quota fixed by the Act, and the Crown had power to increase the quota in time of invasion or rebellion The Acts from 1852 to 1860, reorganising the militia, fixed the total number to be raised, with power to the

[1] 31 Geo II, c 26, s 17 A parish might practically discharge its liability to provide militiamen by paying the fine for non attendance of a volunteer, which under 31 Geo II, c. 26, as stated in the text, was 10*l* per head, and in 1761 and subsequently, parishes were authorised to give bounties out of the rates to volunteers, this led also to half of the current price of a volunteer being paid out of the rates to a balloted man or a substitute, 2 Geo III, c 20, ss 45, 47, 42 Geo III, c 90 ss 42, 122

[2] 2 Geo III, c 20, s 120, 18 Geo III c 59 s 8, 9 Geo III, c 76, these provisions were not re-enacted in the consolidation of 1786, but the power was renewed temporarily by 34 Geo III, c 16, which developed the volunteers as a separate force See Clode, Mil Forces, i 80, and below, para 126, *et seq*

[3] Clode, Mil Forces, i 290–299 Only 797 men were actually raised by ballot, and there were 14,156 substitutes for balloted men See App XVII to report of Mr Stanley's Committee on the Militia, 1876 (Parliamentary Paper, 1877 C —1654)

[4] 17 & 18 Vict, cc. 106, 107

[5] 37 Geo III, c 3, amended by 37 Geo III, c 22, and 38 Geo III, cc. 17, 18, 19, 55, merged in the general militia by 39 Geo III, c 106.

Crown to increase it in case of actual invasion or imminent danger thereof [1]

Numbers under Act of 1871

91. The Act of 1871 (re-enacted in the Militia Act, 1882) directed that the numbers of the militia should be such as should from time to time be provided by Parliament,[2] and such provision was in effect made by a vote of the sum required for the pay of a specified number of men, and the application of such sum by the Appropriation Act of each year The quotas (which were only required in the event of a ballot) were to be fixed by the Privy Council[3], the last quota was fixed in 1852

Conditions of service

92 Under the Act of 1662 militiamen were liable to be called out for training and exercise, and also in the case of invasion, insurrection, or rebellion

Annual training

93. In 1757 the service of the militia was placed nearly in the position in which it remained until 1870, that is to say, the force was to be annually trained and exercised for a limited time, while in case of actual invasion or imminent danger thereof, or in case of rebellion, the Crown could order the force, or any part of it, to be drawn out and embodied The period for the annual training was originally fixed in the Act, but afterwards left to be determined by the Crown, it was not to be less than 21, nor more than 56 days, and the Crown could dispense with it entirely In 1860 a preliminary training was required from every militiaman on his first entering the force [4]

Power to Embody

94 The power of embodying the force in cases other than those before mentioned, after having been conferred on the Crown at various times by temporary measures,[5] was ultimately permanently enacted In 1854 (the Crimean War) the Queen was authorised to embody the militia whenever a state of war existed between Her Majesty and any foreign power[6], but in 1870 the old provisions were superseded by the enactments authorising the embodiment in case of imminent national danger or great emergency, which were re-enacted in 1882, and remained in force until the repeal of the Militia Acts in 1921 [7] After 1757 the law required that the cause of embodiment should be communicated to Parliament if sitting, or declared in Council and notified by proclamation if Parliament was not sitting, and that, thereupon, Parliament, if adjourned or prorogued, should meet within a limited time, which under the Act of 1882 was 10 days

Militia liable to serve only in United Kingdom.

95. The militia was liable to serve in any part of the kingdom, but not out of it, and under this rule the English militia were originally not liable to serve in Scotland or Ireland, but later the

[1] 15 & 16 Vict, c 50, 17 & 18 Vict, cc 106 107, 23 & 24 Vict, c 94, ss 20 & 21

[2] 34 & 35 Vict, c 86, ss 6, 7, 9, re enacted by 45 & 46 Vict, c 49, s 3

[3] 45 & 46 Vict, c 49, s 37

[4] 23 & 24 Vict, c 4, s 14, c 120, s 19, 34 & 35 Vict, c 86, s 8, 45 & 46 Vict, c 49, s 14

[5] In 1776, with a view to the suppression of the rebellion in America, embodiment was authorised in case of rebellion in Great Britain or any territories or dominions thereunto belonging, by 16 Geo III, c 3, in 1815 on "the prospect of a war with France," by 55 Geo III, c 77 (see Clode, Mil Forces, i 48), in 1857 and 1858, on the occasion of the Indian Mutiny, 20 & 21 Vict, c 82, 21 & 22 Vict, cc 4, 86

[6] 17 & 18 Vict, c 13 As to the effect of this on the men already enlisted, see Clode, Mil. Forces, i 46

[7] 33 & 34 Vict, c 68, which did not apply to any man already enlisted, without his consent The authority in this Act to raise additional militia in case of imminent national danger or great emergency was not re-enacted on the repeal of the Act in 1875, having been rendered unnecessary by the Act of 1871, declaring that the number of the force shall be such as may from time to time be provided by Parliament The Act of 1882 was 45 & 46 Vict, c. 19, s 18

Ch IX

militia was required to serve in any part of the United Kingdom [1] This was first provided in 1811,[2] subject to certain restrictions, and then in 1859[3] without those restrictions, which were entirely repealed by the Act of 1875 In 1859 a power was given to the Sovereign to accept voluntary offers by the militia to serve in the Channel Islands and the Isle of Man, this was extended by the Act of 1875 to service in Malta and Gibraltar, and as so extended was re-enacted in 1882 [4] A further extension to any part of the world was made in 1898 At the same time the Crown was authorised to employ militiamen volunteering to serve for not more than one year, whether an order embodying the militia was in force at the time or not [5]

Term of service

96. A fixed term of service was first provided in 1757, and was then limited to three years, but afterwards increased to five years in the case of balloted men In 1873 power was given to enlist volunteer militiamen to serve for any period not exceeding six years, and to re-enlist men for a further period not exceeding six years

Command of Militia

Command of militia Act of 1661

97. The Act of 1661, temporarily legalising the militia under Charles II, referred to the dispute with Charles I as to the command of the militia, first by its title, in which it was described as "An Act declaring the sole right of the militia to be in the king, and for the present ordering and disposing the same", and also by its preamble, which was expressed as follows "Forasmuch as within all His Majesty's realmes and dominions the sole supreme government, command, and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength is, and by the lawes of England ever was, the undoubted right of His Majesty and his royall predecessors, Kings and Queenes of England, and that both or either of the Houses of Parliament cannot nor ought to pretend to the same, nor can nor lawfully may raise or leavy any warr, offensive or defensive, against His Majesty, his heires, or lawful successors" [7]

---

[1] 45 & 46 Vict, c 49, s 12, re enacting 38 & 39 Vict c 69, s 49 The oath for balloted men in 51 Geo III, c 118, s 1, and for volunteer militiamen in 38 & 39 Vict, c 69, s 31, specified the area of service, but this being inconsistent with the provisions for volunteer service in Gibraltar, Malta, &c, was omitted by 45 & 46 Vict c 49, s 13 After 1757 the English militia were liable to serve in Scotland

[2] 51 Geo III, cc 118, 128, 51 Geo III, c 114 (Regiment of Miners), 53 Geo III, c 132 (Tower Hamlets), 54 Geo III, c 10 See Clode, Mil Forces, i 301, 302, as to the opposition to the Acts The principle had been adopted in temporary Acts, as in 1798, when some English regiments volunteered to serve in Ireland, and Acts were passed by the Parliament of Great Britain to enable His Majesty to accept the offer, and by the Parliament of Ireland to provide for the government of the forces so employed (38 Geo III, c 66, continued by 39 Geo III, c 5, 39 & 40 Geo III, cc 9, 15, 38 Geo III (I), c 46, 39 Geo III (I), c 64, ss 13, 14) And again, in 1799 and 1804 and the following years, when some of the Irish regiments volunteered to serve in Great Britain, and Acts were passed to enable His Majesty to accept the offers (39 Geo III (I), c 31, 44 Geo III, c 32, continued by 46 Geo III, c 31, 47 Geo III, sess 1, c 6)

[3] 22 & 23 Vict c 38, ss 1, 2

[4] 22 & 23 Vict c 38, s 4, 38 & 39 Vict, c 69, s 50, 45 & 46 Vict c 49, s 12 A similar power had been given temporarily at the time of war in 1813 (54 Geo III, cc 1, 17), in 1855 (18 & 19 Vict, c 1), and in 1858 (21 & 22 Vict c 85) In these cases, however, the number was limited to three fourths of each regiment, though the area of service extended in the first case to Europe, and in the second and third cases to any place out of the United Kingdom

[5] Reserve Forces and Militia Act, 1898

[6] 36 & 37 Vict, c 68, s 1 (which used the old term "enrol") re-enacted in 1875, 38 & 39 Vict, c 69, s 32, and in 1882, 45 & 46 Vict, c 49, s 8 (2)

[7] 13 Cha II, stat 1, c 6 This preamble, which in terms goes beyond the title of the Act, and includes forces besides the militia, is still unrepealed The rest of the Act was repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict c 125)

Powers of Lords Lieutenant under Act of 1662

98. The Act of 1662,[1] which reorganised the militia, while recognising by a preamble in identical terms the right of the Crown, practically took it away It required the king under statutory power to issue Commissions of Lieutenancy for the different counties in England, and conferred on the lieutenants so appointed the chief powers in relation to the militia They were empowered to commission the officers, raise the men, form the regiments, muster and exercise them, and in case of insurrection or invasion, to lead the forces as well within their counties as in any other counties in England The result of the chief powers being vested in the lieutenants of counties was that the militia was regarded as a counterpoise of the standing army,[2] and as a constitutional force under the control of Parliament rather than of the Crown, and for this reason was not made subject to military law [3]

Powers of Crown

99. A power was indeed reserved to the king to appoint and remove the officers, and to give directions to the lieutenants as to arraying and dealing with the forces But the Act of 1757[4] limited this, leaving to the Crown only the power to approve and dismiss deputy lieutenants and to dismiss officers, while the local character of the force was intensified by requiring the lieutenants of counties and deputy lieutenants and officers to be qualified by the possession of landed property in their counties On the other hand, the king was empowered to place the force, when embodied, but not during the annual training, under the command of a general officer, and had also power to appoint former officers and soldiers of the army to be adjutants and serjeants

Changes in 1852 and subsequently

100. The command of the militia remained in the same position until 1852, with the exception that ex-officers of the army and navy were permitted to serve without the property qualification After the revival, however, of the militia in 1852, a change was made The property qualification of the officers was reduced, and, after a further reduction in 1854, was entirely abolished in 1869, so that the officers ceased to be necessarily connected with the county or with the landed interest [5] Moreover, by the Act of 1852 and subsequent Acts, much larger powers were conferred on the Crown, both as to the qualifications and training of the officers, and as to other matters concerning the militia[6], but any detailed notice of these powers is rendered unnecessary by the complete transfer of the powers of the lieutenants of counties to the Crown by the Act of 1871 [7]

---

[1] 14 Cha II c 3

[2] Clode, Mil Forces, i 36 37

[3] See exemption from the Mutiny Act, 1 Will and Mar, c 5, s 7 The pay was appropriated by Act of Parliament and not by warrant, and the estimates originated with a Committee of the House of Commons Moreover, only one month's pay and therefore one month's service could be obtained without coming to Parliament The preamble to the Act of 1802 laid stress on the force being under the command of officers having landed property

[4] 30 Geo II, c 25

[5] 15 & 16 Vict, c 50, ss 1-4, 17 & 18 Vict, c 105, s 31, c 106, ss 6-11 (Scotland), c 107, ss 5-7 (Ireland), 18 & 19 Vict, c 100 (which made the qualifications uniform throughout the United Kingdom), 32 & 33 Vict, c 13

[6] As to appointment of officers, training and bounties to and pay of men while not embodied, 15 & 16 Vict c 50, 17 & 18 Vict, cc 13, 105, 106, 107 As to discharge of militiamen, 16 & 17 Vict, c 13, s 9, 17 & 18 Vict, c 105, s 42, c 106, s 61, c 107, s 25 As to place and time of training, 22 & 23 Vict, c 38, s 8 As to placing the force during training under the command of general officers, and attaching officers of regulars to the force during training, 32 & 33 Vict c 13, ss 1, 2

[7] 34 & 35 Vict, c 86, s 6, repeated in 38 & 39 Vict, c 69, s 21, and re-enacted by 45 & 46 Vict, c 49, ss 4-6 as to general militia and 3rd sch as to local militia

Powers of Lord Lieutenant re-vested in Crown by Act of 1871

101. In 1871 it was determined to combine the regular and auxiliary forces in one organisation in connection with different territorial districts In furtherance of this scheme an Act was passed, by which the command of the auxiliary forces with all the powers of the lieutenants of counties and those of the Lord Lieutenant in Ireland in relation to any of such forces (except those relating to the raising of the militia by ballot), were re-vested in the Crown, and declared to be exercisable through a Secretary of State, or any officers to whom Her Majesty, with the advice of a Secretary of State, might delegate such command and powers The same Act also provided that the officers of the auxiliary forces should hold commissions from Her Majesty in the same manner as the officers of the regular forces, but a limited right of recommending persons for first commissions was reserved to the lieutenants of counties

Status of militia officers

102. Up to 1882 it was provided by statute that militia officers should rank with officers of the regular forces as the youngest of their rank[1], after that date militia officers were not only commissioned like officers of the regular forces, but were always subject to military law, with power to sit on courts-martial for the trial of offenders belonging to the regular forces, and *vice versâ* [2]

Provisions of Act of 1881

103 The Army Act, to remove all doubt as to the power of command, declared that Her Majesty might make regulations as to the persons to exercise command over any part of Her forces, including the militia [3] The Militia Act, 1875, and the Regulation of the Forces Act, 1881 (re-enacted in 1882), also gave Her Majesty complete power to provide for the formation of militiamen into regiments or other military bodies, the formation of them into corps, and the distribution of the men among the corps, and generally for the government of the force [4]

Militia not subject to Mutiny Act at all till 1757

104 The Act of 1662 authorised lieutenants of counties to imprison mutineers and soldiers not doing their duties, and to inflict small fines or twenty days' imprisonment as a punishment, but it was not till 1757 that the force was made, when embodied, subject to the Mutiny Act and Articles of War Except during embodiment, the men were subject only to civil fines for drunkenness, disobedience, absence, &c In 1761, however, the Mutiny Act was applied to the militia when out for training as well as when embodied Men, however, who failed to appear were only liable to a fine till 1786, when they became liable in case of embodiment to be tried for desertion under the Mutiny Act [5]

Militia brought more under military law since 1852

105 After 1852 the militia was by degrees brought more completely under military law Thus, in 1854, men who failed to appear at the annual training were declared deserters, and made liable to a fine of 10*l* [6] In 1875, militiamen during their preliminary training were made subject to the Mutiny Act by the Mutiny Act of that year, and under a subsequent Act of the same year if

---

[1] 38 & 39 Vict c 69, s 21 This was provided by the Act of 1757, but omitted from 45 & 46 Vict c 49, as rank is a matter for regulation by the Sovereign

[2] A A, 50, 175, 178

[3] A A 71

[4] 38 & 39 Vict, c 69, s 86, 44 & 45 Vict, c 57, s 4, re enacted in 45 & 46 Vict, c 49, s 54

[5] 2 Geo III, c 20, s 99, 26 Geo III, c 107, s 98

[6] 17 & 18 Vict, c 105, s 45, c 106, s 58, c 107, s 28

they failed to appear at the preliminary training were made triable as deserters [1] Militia officers were made at all times subject to military law by the Mutiny Act of 1877 [2] The old exemption of militiamen from capital punishment during annual training was omitted from the later Acts as unnecessary, because desertion and suchlike military offences are not capitally punishable, except on active service [3]

Expense of Militia and Supplemental Provisions

Payment of expenses of militia

106 The expense of the militia was in 1662 divided between individuals (owners of property), counties, and parishes on the one hand, and the Crown on the other, the former provided equipments, horses, ammunition, &c, and pay for the annual training, while the Crown supplied pay in case of embodiment [4]

Act of 1757

107. In 1757 a different principle was adopted, and a separate Act was passed authorising the issue from the Exchequer and application of a sum for the pay, clothing, and expenses of the militia, and this Act was continued annually till 1874 The passing of this Act, for long merely a formal matter became entirely meaningless after the militia were placed under the command of the Crown in 1871, and it was accordingly provided in 1874 that the pay and clothing of the militia should be regulated by Royal Warrant, orders and regulations in the same manner as the pay and clothing of the regular forces [5]

Storage of arms, &c, a local charge till 1871

108 The storage of the arms, clothing and equipments of the militia was in 1757 made a charge on the parishes, but in 1786 was transferred to the counties, and provision was then made for the permanent staff residing on the spot and taking care of the arms After the change of system in 1871,[6] the counties were relieved from this, as well as other charges connected with the militia, and by Acts passed in 1872 and 1873 provision was made for the purchase of lands and the erection of barracks at the public expense, and the counties were authorised to transfer their storehouses to the Crown, or to sell them [7] Although the authority for raising militia under the Militia Acts was repealed in 1921, the portions of the Acts relating to existing storehouses were left unrepealed

Billeting

109 From 1757 onwards the officers and men were allowed during the annual training and during embodiment to be billeted like the regular forces and the permanent staff might be billeted at all times

---

[1] 38 & 39 Vict, c 7, s 2 38 & 39 Vict, c 69, s 59

[2] 40 & 41 Vict, c 7, s 2

[3] At one time militia deserters might be sentenced to serve in the regular forces, 39 Geo III, c 106, 49 Geo III, c 90, s 127, repealed in 1875, and 43 Geo III, c 50, s 5 only repealed in 1882

[4] Individuals were liable to advance one month's pay, and the Act provided that until this month's advance was repaid no further advance was to be required This led to a difficulty in calling out the militia, which was removed by a temporary Act, 2 Will & Mar, sess 2, c 12 re enacted almost annually during the reigns of Will & Mar, and Anne Similar provisions were again made in 1715, 1 Geo I, stat 2, c 14, revived in 1723, 9 Geo I, c 8, s 6, and again in 1733, 7 Geo II, c 23, and in 1745, 19 Geo II, c 2 The money raised by the county was known as "trophy money"

[5] 37 & 38 Vict c 29 See also 38 & 39 Vict, c 69, s 86 The then existing Acts were 31 & 32 Vict, c 76, 32 & 33 Vict, c 66, and 36 & 37 Vict, c 84 which had been annually continued by the Expiring Laws Continuance Act, and were to have effect as a Royal Warrant until a new Warrant was made

[6] By 34 & 35 Vict, c 86

[7] 35 & 36 Vict, c 68, 36 & 37 Vict, c 68, s 8 36 & 37 Vict, c. 84.

Relief of families of militiamen

110. Various enactments were made for relieving out of the poor rates families of militiamen when embodied or out for training, but this system, on the reform of the Poor Law in 1834, was abolished by the Poor Law Amendment Act of that year [1]

Enlistment of militiamen into the army

111. *When every parish was obliged to raise a certain number of militiamen, the discharge of a militiaman or his enlistment into the army necessarily threw on the parish the burden of providing another man* The power of discharge was therefore jealously watched, and the enlistment of a militiaman into the army was either prohibited, or very much restricted At the same time individuals desirous to find substitutes, and parishes desirous to avoid a ballot, although forbidden to enlist men by beat of drum, competed for recruits with the recruiting officers of the regular army, and thus in time of war the bounty for recruits was raised to a very high sum [2]

Act of 1795

112. In 1795 a change of policy took place, and subject to certain limitations, the enlistment of militiamen in the army was encouraged, and, in order to replace militiamen so enlisting, militia officers were authorised to enlist men by beat of drum [3]

Acts of 1852 and 1854

113. Long after this, however, and even after the change of system in 1852, the old prohibition against the enlistment of militiamen in the army remained in force, although with a voluntarily enlisted militia the reason had disappeared On the breaking out of war in 1854 prosecutions were instituted against militiamen who had enlisted in the army, and legislation was required to enable the Secretary at War to relieve from punishment the men who had so enlisted [4]

Act of 1875

114 Further legislation authorised enlistment in the army, and by the Act of 1875 the enlistment of volunteer militiamen in the army was, as well as their discharge from the militia, placed entirely under the direction of the Secretary of State for War [5]

Local Militia

Acts for raising forces to meet apprehended French invasion, 1796–1812

115. At the end of the eighteenth and beginning of the last century various Acts were passed for raising forces to resist the threatened French invasion, which were based on the liability of every man to aid in the defence of the realm, either by personal service or by contributions [6]

---

[1] See 43 Geo III c 47 which consolidated the old enactments, and was repealed by 4 & 5 Will IV, c 76 s 60 and by 38 & 39 Vict, c 69, s 98

[2] The ballot had this a bad effect on enlistment for the army See Clode, Mil Forces i 289

[3] In 1795, 35 Geo III c 83 Such enlistment was also authorised by the Acts relating to the supplementary militia, 39 Geo III, c 106, 39 & 40 Geo III, c 1 The Consolidation Act of 1802 (42 Geo III, c 90) prohibited the enlistment, but authority to enlist men was given by a series of Acts from 1805 to 1813 45 Geo III, c 31, 46 Geo III, c 124, 47 Geo III, sess 2, c 57, 48 Geo III, c 64, 49 Geo III, c 4, 49 Geo III, c 53, s 32, 51 Geo III, cc 20, 30, 53 Geo III, c 81, 54 Geo III, cc 1, 38

[4] 17 & 18 Vict, c 105, s 42, c 106, s 61, c 107, s 25

[5] 23 & 24 Vict, c 94, s 17, 38 & 39 Vict c 69, ss 75, 76

[6] 37 Geo III, cc 4, 24, and as to Scotland, cc 5, 39 In 1797 a force of provisional cavalry was to be raised as an augmentation to the militia under 37 Geo III, cc 6, 23, 139, 38 Geo III cc 51, 94, 39 Geo III, c 23 As to returns of men, provisions, &c, 38 Geo III, c 27, 43 Geo III, c 55 An army of reserve was provided by 43 Geo III, cc 82, 100, 123, and 44 Geo III, c 56, and as to Scotland, 43 Geo III, cc 83, 124, 44 Geo III, c 66, and as to Ireland, 43 Geo III, c 85, 44 Geo III, c 74, and as to the City of London, 43 Geo III, c 101, 44 Geo III, c 96, the first of which recites that the City, notwithstanding their exemption from the liability to provide men for military service, have offered to raise the force mentioned in the Act A levy *en masse* was provided for by 43 Geo III, c 96, amended

116. They were superseded in 1808 by Acts establishing a local militia in England and Scotland These Acts were amended in the following years,[1] and were finally consolidated in 1812 [2] Acts establishing local militia

117. The local militia was in effect the old general levy, as the Acts provided for the raising of a force in each county by ballot, in the same manner as under the general Militia Acts, from among men between the ages of 18 and 30 The number in each county, including any effective yeomanry and volunteers in the county, was to be equal to six times the quota fixed for the regular militia of the county, but after 1871 was to consist of such number of men as might from time to time be provided by Parliament [3] A man when drawn in the ballot had to serve for four years without any power to find a substitute, and without receiving any bounty With some exceptions (such as men with previous service, or men with more than two children) there were no exemptions from liability to serve Parishes could provide volunteers and pay them bounties out of the rates The counties were liable to an annual fine of 15*l* for each man short of the quota Account of local militia

118 The force was to be annually trained, and could be called out for the suppression of riots, and preliminary training could be required The force could be embodied in case of invasion or the appearance of an enemy on the coast, and in case of rebellion, Parliament was to meet within fourteen days after the order for embodiment [4] As regards command, officers, and discipline, the local militia was almost precisely in the same position as the general militia,[5] and the force whenever called out was subject to military law The property qualification of officers was abolished by 32 and 33 Vict , c 13 The expenses were to be paid by the Crown, and the storage of arms, which was formerly a county charge, was later also borne by the Crown [6] Training, command, and embodiment

119 The force was actually raised by ballot and called out for annual training until the peace of 1815 [7] In 1813 parts of the local militia were authorised to volunteer for service out of their counties with the object of guarding French prisoners [8] After that peace the King in Council was authorised [9] to suspend the ballot for and enrolment of the local militia, and the force was never raised again Orders in Council were made annually under the Act up to the year 1832,[10] when they seem to have Not raised after 1815.

---

by c 120 The first Act recites that it is expedient "to enable His Majesty more effectually "to exercise his ancient and undoubted prerogative of requiring the military service of all his "liege subjects in case of an invasion of the realm by a foreign enemy," extended to the City of London by 49 Geo III, c 125 The foregoing Acts were repealed in 1806 by 46 Geo III, cc 51, 63, 90, 144, and the Training Act (46 Geo III c 90) was passed, which was only repealed in 1872 by the Statute Law Revision Act (35 & 36 Vict , c 63), but was never put in force

[1] 48 Geo III, c 111, and as to Scotland, c 150, amended by 49 Geo III, cc 40, 48, 82, 129 and 50 Geo III, c 25 See Clode, Mil Forces, i 325-332

[2] 52 Geo III, c 38, and as to Scotland, c 68 See also the Amendment Acts, 52 Geo III, c 116, 53 Geo III, cc 28, 29, and 45 & 46 Vict , c 49, 3rd sched

[3] 34 & 35 Vict , c 86, ss 7, 8, 19, re-enacted by 45 & 46 Vict , c 49, 3rd sched

[4] The Act of 1870 (33 & 34 Vict , c 68), which allowed the militia to be embodied in case of imminent national danger or great emergency, was repealed by 38 & 39 Vict , c 69, as if it had not applied to the local militia

[5] See above, para 97, *et seq* , and Militia Act, 1882 (45 & 46 Vict c 49, 3rd sched) The Army Act applied to the local as well as to the general militia until 1921

[6] It appears to have been transferred to the Crown, as in the case of the general militia, by 35 & 36 Vict , c 68

[7] Annual training is mentioned in the Annual Register, 1811, p 32

[8] 54 Geo III, c 19, Annual Register, 1813, p 205

[9] By 56 Geo III, c 38

[10] Clode, Mil Forces, i 333, in which 1836 appears to be a misprint for 1832

Ch. IX

been discontinued, and the Act authorising the suspension was repealed as obsolete in 1873 [1] In 1921 the Acts which still remained in force regarding the local militia were repealed, together with those concerning the general militia

Militia in Scotland and Ireland

Militia of Scotland before and under Act of 1802

120. The early Acts above mentioned relate only to the militia of England The militia of Scotland was not organised by an Act of the Parliament of Great Britain until 1797, though before that time corps of Fencibles were raised and embodied [2] In that year an Act was passed,[3] which, as subsequently amended,[4] provided for raising a force of militia during the war, by ballot among men between the ages of 19 and 30 In 1802 these Acts were replaced by an Act[5] providing for the organisation of the militia on a basis similar to that on which the militia of England was organised by the Consolidation Act passed in that year [6]

Militia of Ireland First Act

121. The militia of Ireland was first organised in 1715,[7] when His Majesty and the Chief Governor were empowered to issue to Protestants commissions of lieutenancy and array for counties and cities, empowering them to arm and train all protestants between the ages of 16 and 60, who were bound to appear or find substitutes, and in case of insurrection, rebellion, or invasion to serve in any part of the Kingdom His Majesty and the Chief Governor were empowered to commission officers and approve of deputy lieutenants, but the command of the force was vested in the lieutenants of counties Mutiny, non-appearance, and neglect of duty were punishable by fine or imprisonment, and the force was not made subject to military law

Amending Acts

122. The Act of 1715 was amended in 1719[8] and again in 1745[9] and, as so amended, was continued from time to time until 1777, when it was replaced by an Act[10] which seems to have contemplated the raising of men by ballot, though in point of fact it made no provision for raising men otherwise than by voluntary enlistment, and did not fix any term of service This Act, being found insufficient, was repealed in 1793 and replaced by an Act[11] which provided for raising a force of militia according to quotas fixed in the Act, by ballot among men between the ages of 18 and 45, to serve for four years Governors of counties were authorised to array and train the force, and to appoint deputies, subject to the approval of the Lord Lieutenant, and His Majesty was empowered to appoint a commandant for each county, who was authorised to appoint officers, having property qualifications, subject to the approval of the Lord Lieutenant The force might be embodied in case of invasion, &c , and was, during training and

---

[1] By the Statute Law Revision Act, s 73, (36 & 37 Vict , c 91)
[2] See preamble to 18 Geo III, c 59, s 4
[3] 37 Geo III, c 103
[4] 38 Geo III, cc 12, 44, 39 Geo III, c 62, 41 Geo III (U K), c 67
[5] 42 Geo III, c 91
[6] 42 Geo III, c 90
[7] 2 Geo I (I), c 9
[8] 6 Geo I (I), c 3
[9] 19 Geo II (I), c 9
[10] 17 & 18 Geo III (I), c 13
[11] 33 Geo III (I), c 22

embodiment, subject to the Mutiny Act. The raising of the force was made compulsory by clauses imposing a fine of 5*l* a year on each county for each man deficient, and enlistment in the army was prohibited This Act of 1793 was amended in 1795,[1] and again in every succeeding year till the Union of Ireland with Great Britain in 1801

Acts after Union

123 For some years after the Union the force continued to be raised and governed under the ante-Union Acts, as amended by several Acts passed by the Parliament of the United Kingdom,[2] which encouraged voluntary enlistment by means of bounties to be advanced by the Treasury and repaid by the counties Finally, all the Acts were consolidated in 1809 by an Act[3] which fixed the establishment of each regiment, and provided for raising the men by means of ballot, but gave power to the Lord Lieutenant to authorise the raising of men by voluntary enlistment by means of bounties advanced by the Treasury and repaid by the counties, and also to suspend the raising of any regiment The Acts since 1852 have been noticed before

Legislation of 1907 *and* 1921

Legislation of 1907 as to militia

124. Under the reorganisation of the forces which took place in 1908 consequent upon the passing of the Territorial and Reserve Forces Act, 1907, the militia (as authorised by the Militia Acts) ceased to be raised in the United Kingdom The greater number of the existing battalions were in 1908 converted into units of the Special Reserve and the remainder were disbanded

Repeal of Militia Acts

125 The Territorial Army and Militia Act of 1921[4] repealed all the Acts relating to the militia (both general and local), except the portions relating to existing militia storehouses, lieutenancy matters and the City of London trophy tax

Under the same enactment the title of the Special Reserve (a portion of the Army Reserve raised under the Territorial and Reserve Forces Act, 1907[5]) was altered to " militia "[6]

4 Yeomanry and Volunteers

General Sketch of History

Early volunteer corps

126 It has been mentioned before that volunteers were accepted in aid of the ballot for the militia, first as individuals, and then as separate companies, but these separate companies formed, in fact, part of the militia[7] Besides the above, volunteer corps were raised independently of any Act, some of them were known as Fencibles, and were chiefly raised in Scotland Enactments were passed, however, to prevent the officers vacating their seats in Parliament by the acceptance of commissions, and to regulate their rank with officers of the militia[8]

---

[1] 35 Geo III (I), c 8
[2] 41 Geo III (U K), c 6, 42 Geo III, c 109, 43 Geo III, cc 2, 33
[3] 49 Geo III, c 120
[4] 11 & 12 Geo V, c 37
[5] 7 Edw VII, c 9, Pt III
[6] This "militia" is of course entirely different, and must be carefully distinguished, from the militia of which an account has been given in the preceding paragraphs
[7] See 18 Geo III c 59, 19 Geo III, c 76, 34 Geo III, c 16
[8] 18 Geo III, c 59, 35 Geo III, c 83, s 10

Acts of 1794 and 1802

127 In 1794 an Act was passed to provide that any corps of volunteers which had been raised by officers commissioned by the King, or the lieutenant of the county, or by other persons authorised by the King, and which in case of invasion or of riot should assemble and march, should receive the same pay as the regular forces, and be subject to military discipline, such volunteers were to be exempted from liability to serve in the militia [1] These corps, it will be observed, were distinct from the militia This Act expired at the peace of Amiens, but in 1802 another Act was passed authorising the raising of yeomanry and volunteer corps [2] The eagerness to volunteer and the energy with which military preparations were taken up throughout the country for the purpose of resisting the threatened invasion of the French under Napoleon are well known, and upwards of 400,000 men were enrolled [3] The men so enrolled were exempted not only from the regular militia, but also from the other forces which, as before mentioned, were organised at this period,[4] and the allegation was made that by reason of this exemption the volunteers were a disadvantage as interfering with the efficiency of the other forces

Act of 1804.

128. In 1804 an Act was passed in the face of considerable opposition for consolidating and amending the Acts relating to the yeomanry and volunteers, and this was the Act under which, as amended by subsequent Acts, the yeomanry in Great Britain were raised and served down to 1901 [5]

Position of yeomanry up to 1901.

129. Before the Act of 1901, mentioned in paragraph 130, came into operation, the yeomanry of Great Britain were in fact volunteer cavalry, and consisted of corps whose services had been offered to and accepted by the Sovereign, whether under the law existing before the Act of 1804,[6] or subsequently under the powers conferred by that Act

The number of the yeomanry was unlimited and enlistment voluntary They did not rank as effective unless trained for a certain number of days in each year Originally, under the Act of 1804, they were liable in case of invasion, or the appearance of any enemy in force on the coast of Great Britain to assemble for military service in any part of Great Britain, but under the National Defence Act, 1888,[7] they were made liable to be called out for actual military service in any part of Great Britain whenever an order embodying the militia was in force, and the existing machinery for embodying and disembodying the militia was applied to the yeomanry They were also able, under certain circumstances, to assemble voluntarily for improvement in military exercise, or to act for the suppression of riots [8] Under an Act of 1884,[9] orders and regulations could be made as to the pay and pensions

[1] 34 Geo III, c 31, 38 Geo III, cc 27, 51
[2] 42 Geo III, c 66, amended by 43 Geo III, c 121, 44 Geo III, c 18
[3] Stanhope's Life of Pitt, iv 77 ch xxxvi, Clode, Mil Forces, i 313, 314
[4] See above, para 115 As to the relation of these volunteers to the other forces, see Clode, Mil Forces, i 312
[5] 44 Geo III, c 54, amended by 46 Geo III, cc 125, 140, 56 Geo III, c 39, 57 Geo III cc 41, 44, 7 Geo IV c 58, 51 & 52 Vict, c 31, s 2 The Act of 1804 was repealed as to volunteers in Great Britain by the Volunteer Act of 1863
[6] 44 Geo III, c 54 s 3
[7] 51 & 52 Vict, c 41
[8] 44 Geo III, c 54 ss 5, 22, 23 & 46, 56 Geo III, c 39
[9] 47 & 48 Vict c 55 s 2

of the yeomanry Unlike the volunteers, the yeomanry were, even before 1901, subject to military law when being trained or exercised alone

The Act of 1804 did not apply to Ireland, but provision was made for the formation of a yeomanry corps in that country by an Act of 1802 [1] This Act differed from the English Act in providing for a yeomanry on a different footing to the yeomanry of Great Britain, and consisting of troops voluntarily enrolled for the protection of property and the preservation of peace in their locality, and not liable to be called out compulsorily

The position of the yeomanry under the old system, as regards subjection to military law, was as follows —If a corps of yeomanry was called out on actual military service, or was being trained or exercised, whether it had been called out or assembled voluntarily, and whether it was serving alone or with any portion of the regular forces or of the militia when subject to military law, every member of that corps was subject to military law Individual members of a corps of yeomanry were also subject to military law when they were attached to or acting with any regular forces, or when they were serving in aid of the civil power [2]

Position of yeomanry after 1901

130. But, under an Act of 1901,[3] the previous character of the yeomanry as a body of volunteer cavalry was radically changed, and the position of members of the yeomanry was in the main assimilated to that of members of the general militia The Act of 1901 applied only to members of the yeomanry receiving commissions or enlisting after the 16th August, 1901, and in order to quiet certain doubts which had arisen, an Act of the following year expressly applied to the yeomanry sections three and four of the Militia Act, 1882, relating to maintenance and government [4] These two Acts applied to Ireland equally with the rest of the United Kingdom, with the result that a force of yeomanry could be raised in Ireland on the same footing as that in Great Britain, and two regiments of yeomanry were raised in Ireland

The power of the Crown to raise yeomanry does not appear to have been subject to any restriction as to numbers

Revival of volunteers in 1859

131. After the peace of 1814 the foot volunteers fell almost entirely into abeyance, but in 1859, in consequence of a panic respecting the hostile tone of the French army and government and the defenceless state of the country, they were revived, chiefly as rifle volunteers, but partly as light horse, artillery, and engineers, with the addition later of army service corps and medical volunteer units The old Act was soon found unsuitable for the organisation of the new force, and was replaced by an Act of 1863, which was again amended in 1869, 1881, 1895, 1897 and 1900 [5]

[1] 42 Geo III, c 68
[2] A A (1921 reprint), s 176 (7), 44 Geo III, c 54, ss 22, 23
[3] 1 Edw VII, c 14
[4] 2 Edw VII, c 39
[5] The 1st Middlesex and 1st Devonshire rifle volunteers existed some years before 1859 The Honourable Artillery Company also never ceased to exist The Act of 1863 is 26 & 27 Vict, c 65, of 1869, 32 & 33 Vict, c 81, of 1881, 44 & 45 Vict, c 57, of 1895, 58 & 59 Vict, c 23, of 1897, 60 & 61 Vict, c 47, of 1900 63 & 64 Vict c 39

Legislation of 1907, 1916 *and* 1921

Legislation of 1907 as to volunteers, and repeal of Yeomanry Acts

132. Under the reorganisation of 1908 consequent upon the passing of the Territorial and Reserve Forces Act, 1907,[1] the yeomanry ceased to be raised as such, and the existing yeomanry units were transferred to the Territorial Force, with the exception of the two Irish regiments, which were disbanded and reformed into Special Reserve units The yeomanry, however, though absorbed into the Territorial Force, retained their old title, *i e*, continued to be known as "Yeomanry" The Yeomanry Acts were finally repealed in 1921 [2]

The existing units of volunteers were at the same time transferred to the Territorial Force

The Volunteer Force during the Great War

133. A volunteer force was raised during the Great War for home defence From 1914 to 1916 a body termed Volunteer Training Corps was raised and administered privately with the recognition of the War Office, but in 1916 the War Office authorised the raising of volunteer units under the Act of 1863, and the existing corps thereafter came under the control of the War Office A new Act[3] was passed in 1916 which gave effect to agreements on the part of members of the force to undergo training or to perform military duties (or both), and rendered such members subject to military law From May, 1918, men granted exemption certificates under the Military Service Acts were liable to serve in the volunteer force as a condition of exemption from compulsory service in the army [4]

The force, which consisted of artillery, engineers, infantry, army service corps and medical personnel, was disbanded at the end of the war The Act of 1916 expired in 1921, but the Acts of 1863 to 1900 still remain in force

5 The Territorial Army

General Sketch of History

Creation of the Territorial Force

134. The Territorial Force was created in April, 1908, under the authority of the Territorial and Reserve Forces Act, 1907,[5] which enacts that the force shall consist of such numbers as may from time to time be provided by Parliament In 1921, the designation of the force was altered to Territorial Army

County Associations

135. County Associations were established under the Act of 1907 to raise and administer (but not to command) the force [6] The Auxiliary Air Force and Air Force Reserve Act, 1924,[7] modified the Act of 1907, and permits, *inter alia*, the formation of County Joint Associations to perform the duties of Associations under the Act of 1907, both as regards the Territorial Army and the Auxiliary Air Force

[1] 7 Edw VII, c 9
[2] 11 & 12 Geo V, c 37
[3] 6 & 7 Geo V, c 62
[4] See 8 Geo V, c 5, s 4 (6)
[5] 7 Edw VII, c 9
[6] See para 43 of Chap XI and T R F Act, 1907, ss 1–5
[7] 14 & 15 Geo V, c 15

136. The original Territorial Force was intended for home service only, but although the Act of 1907[1] stipulates that the force shall not be ordered to go out of the United Kingdom, it provides that members may offer to serve in any place outside the United Kingdom

Area of service of Territorial Force

137. During the Great War nearly all of the units of the Territorial Force volunteered for service overseas, and under the Military Service Act, 1916,[2] any individual members of the force who had not accepted the Imperial service obligation, automatically became army reservists

Force employed abroad during the Great War

138. In 1920 the force was reorganised, and since then only members who are willing to accept the liability to serve overseas are accepted It is, however, provided in the Imperial service agreement that, before the agreement becomes effective, an Act of Parliament authorising the despatch of the Territorial Army overseas must be passed [3]

Area of service of Territorial Army

6 Billeting, Impressment of Carriages, &c

Billeting

139 The practice of billeting has at times been of great importance in English history

Billeting

In early times troops were quartered under an order from the king, or some officer authorised by him, such as the High Harbinger, directed to the civil magistrate of the district, requiring him to provide quarters and provisions This right to quarter was probably connected with the right of purveyance, and as the need of quartering only arose in time of war, the exercise of the right could not be complained of by those who were liable to serve in person or provide soldiers, arms, and provisions [4]

Billeting in early times

140 But, like the right of purveyance, the right to quarter was no doubt abused and led to oppression, and when it came to be enforced to provide quarters for soldiers returning from the wars and without employment, or (as in the reign of Charles I) to punish towns which had displeased the Court by returning unacceptable candidates to Parliament or otherwise,[5] the abuse became intolerable, and billeting was consequently declared to be illegal by the Petition of Right [6]

Abuse of the practice, and declaration of illegality thereof by Petition of Right

141. The practice nevertheless continued, though not without remonstrance, during the reign of Charles II,[7] until 1679, when it was again declared to be illegal by an Act in which Parliament provided money for disbanding the troops, and, on condition of the disbandment, granted an indemnity for past illegal quarterings This declaration of illegality, as well as that in the Petition of Right, is still in force [8]

Billeting under Charles II

---

[1] S 13
[2] 5 & 6 Geo V, c 104, sched 1
[3] For details as to the constitution and conditions of embodiment of the T A , see Chap XI
[4] Scott's British Army, ii 451, and Commissions in Rymer The word "billet" is a diminution of "bill," a note, and is not derived from "bil," Latin *billus*, a stick used by slaves, nor from its derivative "billet," a wedge of gold or a log of wood, the size of which was fixed by the Acts 27 Edw III, stat 2, c 14, and 43 Eliz , c 14, to be 3 ft 4 in by 7½ in (Wedgwood's Etym Dict) The French word is derived from the English (Littré) The word in relation to the quartering of troops is used by Shakespeare, Othello, Act ii, Sc 3
[5] See Forster's Life of Sir John Eliot, ii 57, 96, 378, note
[6] 3 Cha I, c 1
[7] Clode, Mil Forces, i 80, 81
[8] 31 Cha II, c 1

Billeting under James II

142 James II, however, again violated the law, and issued orders for billeting,[1] which gave rise to one of the complaints against him mentioned in the Bill of Rights,[2] after which the practice of billeting, except under statutory authority, was discontinued. The prevalence of the practice of billeting in the reigns of Charles II and James II arose from the necessity of providing quarters for the troops they maintained in time of peace, and the complaints of the illegality of the practice were intensified by those troops being maintained without the consent of Parliament

Billeting first authorised by Parliament in Mutiny Act, 1689

143 When a standing army was, as before mentioned, authorised by Parliament after the Revolution, it became necessary to make legal provision for the accommodation of the army, as the barrack accommodation was insufficient, and accordingly, in the year 1689, the second Mutiny Act[3] authorised billeting That Act, while affirming the illegality of billeting, as declared by the Petition of Right and the Act of Charles II, recited that there was "occasion for the marching of many regiments, troops, and companies in several parts of this kingdom towards the sea-coasts and otherwise," and empowered the constables and other chief officers and magistrates of cities, boroughs, towns, and villages, and other places, and no others, to quarter and billet officers and soldiers in "inns, livery stables, alehouses, victualling houses, and all houses selling brandy, strong waters, cyder, or metheglin, by retaile, to be dranke in their houses, and noe other, and in noe private houses whatsoever"

Billeting under Army Act

144 The power thus conferred was subsequently re-enacted in every Mutiny Act, and was embodied in Part III of the Army Discipline and Regulation Act, 1879, now replaced by Part III of the Army Act As the Army Act is only in operation by virtue of an Act passed annually, billeting continues illegal except to the extent expressly allowed by the Army Act, and so long only as that Act is kept in operation [4] The Army and Air Force (Annual) Act specifies the prices to be paid for billeting

Billeting illegal except so far as expressly authorised

145 The recital above quoted indicated that billeting was to be only of troops on the march, and the doubt which hence arose as to the power to billet the guards in Westminster led to the insertion in the Mutiny Act of 1707 of a special enactment, authorising them to be so billeted This enactment was annually re-enacted until 1879 [5] In other parts of the country, however, troops were frequently billeted after they had arrived at their destination, under colour of a presumption that they were still on the march, and that the route authorising them to be billeted was still in force

Billeting in private houses illegal

146. From the time when billeting was first authorised by the Mutiny Act down to the year 1909, when important changes were made (*see* para 152), no alteration in principle, and but little in detail, was made in the law as regards England That law never allowed billeting in private houses, though before the Revolution both Charles II and James II issued orders for such billeting [6]

---

[1] Clode, Mil Forces i 57, 61, and App xii
[2] 1 Will & Mar, sess 2, c 2
[3] 1 Will & Mar sess 2, c 4
[4] The Acts prohibiting billeting were suspended in express terms by the Mutiny Acts, they are now suspended in general terms by A A 102
[5] Clode, Mil Forces, i 232, 238
[6] Clode, Mil Forces, i 57, 61, 81, and App xii

Billeting in Scotland

147. As regards Scotland, billeting was regulated by a number of Acts passed before the Union with England, which, while prohibiting free quartering, contained no definition of the houses liable to billets, so that private houses were not exempt At the time of the Union, in 1708, the Mutiny Act was extended to Scotland, and a provision was inserted[1] allowing officers and soldiers to be quartered in such and the like places and houses as they might have been quartered in by the laws in force at the time of the Union

This provision was annually re-enacted until 1857, when the provisions as to billeting in Scotland were assimilated to those in England [2]

Billeting in Ireland

148 As regards Ireland, billeting was regulated by Acts passed before the Union with Great Britain, which allowed billeting in public houses (described in much the same terms as in England), and " where there shall not be found sufficient room in such houses, then in such manner as has heretofore been customary " After the Union the law remained the same, the provisions of the Irish Acts being at first continued by, and afterwards re-enacted in, the Mutiny Act until the year 1879, when the words allowing billeting in private houses were omitted from the Army Discipline and Regulation Act, and billeting was placed on the same footing throughout the United Kingdom [3]

Necessity of billeting while barrack accommodation insufficient

149. Although billeting was oppressive and generally unpopular as well as detrimental to the soldier,[4] yet down to the end of the eighteenth century the opponents of a standing army objected to the building of barracks on the ground that it facilitated the maintenance of the army to the danger of the constitution and to the oppression of the people,[5] and so long as these objections prevailed, billeting was a necessity In 1792, however, steps were taken for providing sufficient accommodation for the troops,[6] and during the nineteenth century barracks were gradually built, so that billeting is now hardly ever resorted to for the regular forces, except when actually moving, and modern methods of transport have greatly diminished its necessity even on those occasions

Checks on abuse of practice

150. A check has always existed on the arbitrary exercise of the power of billeting, the power having been entrusted to civil authorities, namely, the constable in the first instance, or in his default the justices, and these authorities have been held liable to pay damages to persons on whom they billet soldiers improperly [7]

Routes, authority for billeting

151. Moreover, it was always assumed that troops can only be moved by authority of a route signed on behalf of the Crown [8] These routes have always been signed by some civil officer, and it

---

[1] 7 Ann c 4, s 22
[2] 20 Vict c 13
[3] The provisions of the Army Act regarding billeting do not extend to the Irish Free State
[4] See many details as to the difficulties which arose as to billeting in Clode, Mil Forces, 1 chap xi
[5] Clode, Mil Forces, 1 221, 242
[6] Under a barrack establishment set up by the military authorities, the duties were, however, in a few years transferred to the Board of Ordnance Clode, Mil Forces, 1 chap xi
[7] This was decided in 1697, in the case of *Parker* v *Flint*, 12, Med Rep 255
[8] Clode, Mil Forces, 1 219 A route is an order of the Crown directing some military authority to move troops as considered necessary and requiring the civil authorities to assist in providing quarters and impressing carriages It does not quite appear whether the inability to move troops without a route was in consequence of the necessity of obtaining by means of the route carriages and billets, or of the route being a necessary authority for military reasons.

Ch IX — was the practice, which ultimately received statutory authority[1], for constables and justices to billet only on the production of such routes Formerly the routes were signed from time to time, as they were wanted, by the Secretary at War, but in 1857 (soon after the creation of the office of Secretary of State for War) they were signed by the Secretary of State in blank, and issued to the military authorities to be used as required [2] The present practice is to have printed copies of the various routes (general, district, regimental, or deserter) signed in blank in lithograph by the Secretary of State in the name of the King The details of the movement of troops are filled in by the military authority issuing the route, which is signed by an officer authorised to do so, if a general route, on behalf of the Quartermaster-General, and if a district route, on behalf of the general officer commanding

Billeting in case of emergency

152 By the Army (Annual) Act of 1909 the existing powers of billeting in cases of emergency were substantially increased Before that Act, as has been already pointed out, the only persons liable to billets were keepers of victualling houses, &c It was realised, however, that when the Territorial Force was embodied the accommodation in victualling houses in the localities where it would be necessary to concentrate the forces would be entirely inadequate It was, therefore, provided that when the Territorial Force was embodied, men belonging to that force or to the regular forces could be billeted elsewhere than in victualling houses

In 1926 the Army Act was further amended to enable these emergency provisions to be used on an Order by His Majesty distinctly stating that a case of emergency exists The authority to be entrusted with the duty of selecting the houses in which men are to be billeted is the chief officer of the police, who, however, is required to act under the instruction of the police authority, *i e*, in England, elsewhere than in the Metropolitan Police District, the standing joint committees in counties and the watch committees in boroughs having a separate police force The powers are only exercisable when a state of emergency has been proclaimed and then only on the specific authority of the Crown to enforce them

Billeting of women

153. In 1918 a provision was inserted in the Army Act applying the provisions of the Act as to billeting in time of emergency to women enrolled for employment by the Army Council There was also power under the Billeting of Civilians Act, 1917 (which lapsed in 1921), to billet civilians, both men and women, engaged on work of national importance, but the Act was designed for large numbers requiring permanent billets (*e g*, persons in munition centres), and difficulty was experienced in applying it to the case of women employed by the army who might remain in one place for a few nights only

Billeting during the Great War

154. During the Great War the Defence of the Realm Regulations made under the Defence of the Realm Acts, 1914–15, enabled possession to be taken of buildings for the accommodation of troops In such cases billeting rates were not payable, but the

[1] A A, 103
[2] Clode, Mil Forces, i 219

amount of compensation was assessed (except in certain cases where agreement with the owners was possible), by the Defence of the Realm Losses Commission, and after the passing of the Indemnity Act in 1920, by the War Compensation Court

Billeting the auxiliary forces

155. From 1757 onwards the Militia Acts authorised the militia when out for training, and when embodied, to be billeted, and this was done without a route under an order from the lieutenant of the county, and from 1871 until the repeal of the Militia Acts in 1921, from the commanding officer [1] Under s 181 of the Army Act the provisions of the Act as to billeting now apply to all the auxiliary forces, *i e*, at present, the Territorial Army

Impressment of Carriages, &c

Prerogative right of purveyance

156. Until the Restoration, carriages and horses could be obtained for the movement of the troops under the Sovereign's prerogative of purveyance This prerogative was abolished in 1660[2] in consequence of the great oppression caused by it, but in 1662 a power was given temporarily to impress carriages and horses for the use of the navy and the ordnance [3]

Impressment under the Mutiny Act.

157 The army in general was omitted, perhaps on purpose, from this Act, but in 1692 a section was added to the Mutiny Act[4] authorising justices when required by an order from the Crown to direct the constables to provide carriages for the use of the army when on the march within the kingdom, and specifying the maximum distance to be travelled, and the price to be paid This section was intended to provide for the impressment of carriages to convey arms and baggage only,[5] and contained restrictions similar to those now in force prohibiting soldiers (other than sick or wounded) from riding in the carriages, and forbidding the impressment of saddle horses In 1799 a section was added[6] enabling the Crown in case of emergency to require the justices to provide carriages, saddle horses, and vessels for the conveyance of persons as well as baggage The two sections were annually repeated in the Mutiny Act, with no alteration in principle, and very little in detail, down to the year 1879, when they were embodied in Part III of the Army Discipline and Regulation Act which has been replaced by the Army Act The power of impressment in an emergency was extended in 1909 to include motor cars and other locomotives, and in 1913 to include aircraft of all descriptions

Changes since 1914

158. At the commencement of the Great War an Act[7] (not limited to the duration of the war) was passed which further extended the power of impressment in emergency to include food, forage and stores of every description

---

[1] Clode, Mil Forces, i 42, and the various Militia Acts

[2] By 12 Cha II c 24, s 11

[3] 14 Cha II, c 20 which recited the repeal of the right of purveyance by 12 Cha II, c 24 The Act expired, but was revived for seven years by 1 Ja II, c 11, was again continued by 4 Will & Mar, c 24, and again by 11 Will III, c 13 but not subsequently, and was repealed by the Statute Law Revision Act, 1863 The requisition was to be made by warrant from the Lord High Admiral or two Commissioners of the Navy or from the Master or Lieutenant of the Ordnance, directed to two justices of the peace The maximum distance to be travelled and the rate of remuneration were fixed by the Act

[4] 4 Will & Mar, c. 13, s 27

[5] See 7 Ann c 4, s 35

[6] 39 Geo III, c 20, s 46

[7] 4 & 5 Geo V, c 26 See also 5 & 6 Geo. V, c 58, s.

Ch IX — In 1917, consequent upon the establishment of the Air Ministry, the power to impress aircraft was transferred from the military to the air-force authorities [1]

In 1925, the power to impress carriages both for a route and in emergency was again extended, by the definition of "carriage" as "a vehicle for carriage or haulage other than one specially constructed for use on rails"[2]

Scotland and Ireland

159. Impressment of carriages in Scotland was long regulated by Acts passed before the Union with England, which, after that event, were annually kept in force by a provision in the Mutiny Act till 1857, when the provisions applying to England were extended to Scotland [3] In Ireland also impressment of carriages was regulated until 1813 by Acts passed before the Union, and kept in force after that event by a provision in the Mutiny Act In that year[4] the provisions of the Irish Acts were transferred into the Mutiny Act, and consolidated as far as possible with the provisions applicable to England, but many differences in detail remained [5]

Orders authorising impress ment

160. The power of impressment, like that of billeting, is exercised only by the civil authority, that is to say, the justices and constables In the case of impressment for ordinary purposes these authorities could at first act only under an order from the Crown, which necessarily was countersigned by the Secretary at War or some Minister, but after 1708[6] orders were allowed to be signed by the General of the Forces, while they might also be signed by the Master-General or Lieutenant-General of the Ordnance from 1720[7] to 1855, when the Board of Ordnance was abolished, and since 1807[8] they have been allowed to be signed by any person duly authorised in that behalf In practice, however, the power of impressment has been exercised only in pursuance of a route signed as in the case of a route authorising billeting, and this practice has now received statutory sanction in the Army Act (s 112) Impressment in case of emergency was authorised by the Mutiny Act only on an order signified by the Secretary at War, or after the transfer of his duties, by the Secretary of State for War, or in Ireland by the Chief Secretary or Under Secretary, or the first clerk in the Military Department, and, except as regards Ireland, the law in this respect remains unchanged [9] The Act imposes penalties for disobedience to a requisition, but does not authorise the seizure of the carriages, &c, unless an order calling out the reserves on permanent service is in force, in which case the requisition may extend to purchase as well as hire, and a person

---

[1] See 7 & 8 Geo V, c 51, s 7
[2] See 15 Geo V, c 25 s 10
[3] 20 Vict, c 13
[4] 53 Geo III, c 17
[5] The principal changes in the law as to impressment of carriages were —
(*a*) As regards England 7 Ann c 4, s 37, 33 Geo III, c 20, s 46, 39 & 40 Geo III, c 27, s 45, 58 Geo III, c 10, s 73, 10 Geo IV, c 6
(*b*) As regards Scotland Impressment was regulated before the Union by an Act of the Parliament of Scotland, 1693, c 11 For subsequent changes see 58 Geo III, c 11, s 87, 10 Geo IV, c 6, 20 Vict c 13
(*c*) As regards Ireland, see Acts of Parliament of Ireland, 6 Ann c 14, 3 Geo II, c 10, 15 Geo II, c 6, 7 Geo III, c 14, 19 & 20 Geo III, c 16, 21 & 22 Geo III, c 43, and 41 Geo III (U K), c 11, s 55, 53 Geo III, c 17, 7 Geo IV, c 10, s 83
The provisions of the Army Act regarding impressment do not extend to the Irish Free State
[6] 7 Ann c 4 [7] 6 Geo I, c 3
[8] 47 Geo III, sess 1, c 32 [9] A.A 115

refusing or neglecting to furnish carriages, &c , as ordered, is liable to have them seized (s 115 (7) (8)) If, in any other case, they were seized, the owner would have a remedy by action for damages

Impressment of carriages for the auxiliary forces

161. The Militia Acts made provision for the impressment of carriages for the militia, in 1757, when embodied, and in 1786, when in training Under s 181 of the Army Act the provisions of the Act as to impressment of carriages, &c , apply to the auxiliary forces, *i e* , at present, the Territorial Army

Exemptions from tolls

162 The subject of exemption from tolls is nearly connected with that of impressment of carriages The exemption of carriages and vessels employed under requisitions of emergency was introduced in 1799,[1] when impressment under such requisitions was first allowed The general exemptions now conferred by s 143 of the Army Act were introduced into the Mutiny Act in 1803,[2] and 1807 [3] The clause as to payment of ferries in Scotland dates from 1721 [4] Exemptions from turnpike tolls in England are also conferred by the General Turnpike Act of 1822,[5] and by various local Acts The provisions were extended to the Army Reserve in 1867 [6]

Conveyance of Troops by Railway

Conveyance of troops by rail

163 Shortly after the introduction of railways, provision was made with respect to the conveyance of troops by rail The first provision was made in 1842[7] and required the directors of a railway company to permit, on the production of a route signed by the proper authorities, the conveyance of officers and soldiers of the army, marines, and militia, with their baggage, stores, arms, and ammunition, at the usual hours of starting, at such prices, or on such conditions as might be contracted for between the Secretary at War and the railway company This enactment was strengthened in 1844,[8] when the companies were required to provide conveyance at fares not exceeding those mentioned in the Act and a maximum of fares was also prescribed for the conveyance of public baggage, stores, ammunition (with an exception for gunpowder and explosives), and necessaries These provisions were extended to the Army Reserve in 1867, and were re-enacted in 1883[9] as regards the regular, reserve, and auxiliary forces as well as for naval forces The Act of 1883 reduces the maximum fares and requires the provision of such description of carriages as are specified in the route, but provides that if the company loses the benefit conferred by the other provisions of the Act with respect to the exemption from passenger duty, they are to convey the forces and baggage on the same terms as if the Act had not passed

Power to take possession of railways in case of emergency.

164 In 1871 it was enacted that when Her Majesty by Order in Council declared that an emergency had arisen in which it was

[1] 39 Geo III, c 20, s 46
[2] 43 Geo III, c 20, s 55
[3] 47 Geo III, sess 1, c 32, s 60
[4] 7 Geo I, c 6
[5] 3 Geo IV , c 126 s 32
[6] 30 & 31 Vict , c 110, s 16 re-enacted by 45 & 46 Vict c 48, s
[7] 5 & 6 Vict , c 55, s 20 See p 825
[8] 7 & 8 Vict , c 85, s 12 See p 826
[9] 46 & 47 Vict., c. 34, s 6 See p 828 This Act does not apply to Ireland

Scanned by CamScanner

Ch IX

expedient for the public service that the Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State might empower any person to take possession of any railroad, and of the plant belonging thereto, and use the same for Her Majesty's service in such manner as the Secretary of State might direct Full compensation must be paid to the persons of whose railroad possession is taken [1] The Secretary of State is, by the National Defence Act, 1888, as amended by the Acts relating to the Territorial Army, authorised to claim precedence for traffic for military purposes over all railways whilst an order for the embodiment of the Territorial Army is in force [2] This Act, as well as the Act of 1871, extends also to tramways

[1] 34 & 35 Vict , c 86, s 16 See p 827
[2] 51 & 52 Vict , c 31, s 4 See p 830,

CHAPTER X

ENLISTMENT

Object of chapter

1. A summary of the history of enlistment has been given in Chapter IX it is proposed in this chapter to sketch the system in operation under existing Acts, and under the Recruiting Regulations, which give general instructions as to the appointment and duties of recruiting agents, the qualification of recruits, the mode of recruiting, and other matters

Term of original enlistment

2. A recruit is not to engage for more than 12 years, and may engage to serve the whole time with the colours, or part of the time with the colours and part in the Army Reserve [1] The Army Council, however, are empowered to direct that where a boy is enlisted before attaining the age of eighteen, the period of 12 years shall be reckoned from the day on which he attains the age of eighteen years [2] Enlistment for a term less than 12 years would, however, be legal, if a less period were fixed by His Majesty, and any part of such term might be for service in the reserve [3]

Change of conditions of service

3 The Army Council, however, may allow a soldier, if he so wishes, to go into the reserve at once, or to extend his service with the colours for any time up to the whole term of his original enlistment, or to extend the term of his original enlistment up to 12 years or any shorter period [4]

Re engagement

4. The old term of 21 years is still retained in the Army Act, as, subject to any regulations made by the Army Council, a soldier whilst serving with the colours may, after the expiration of 9 years from the date of his original enlistment and with the approval of the competent military authority[5], re-engage to serve for such a further period of service with the colours as will make up a total of 21 years' continuous service [6]

Continuance in service after 21 years

5 Subject also to such regulations, a soldier who so re-engages may, at the end of the 21 years, with the approval of the competent military authority, continue to serve, with a right to his discharge 3 months after he claims it [7] If, however, at the time when he is entitled to be discharged, he is serving abroad, or a state of war exists, or the Army Reserve is called out on permanent service, he is liable to serve for an additional year [8]

Regulations as to extension of service.

6. The ordinary period of colour service at present varies from 2 to 12 years in the different arms of the service Men enlisted for less than 12 years' colour service, if efficient soldiers of good character and fit for service at home and abroad, and if vacancies exist in the number of extensions permitted, are allowed under certain conditions to extend their service so as to complete 12

---

[1] A A, 76, 77
[2] A A 76 (proviso)
[3] A A, 76–78, and Reserve Forces Act, 1882
[4] A A, 76 78 and Reserve Forces Act, 1882
[5] For definition of the competent military authority, see A A, 101 (1), 190 (32), and R P 129, see also K R 231
[6] A A, 84 As to the conditions under which approval is authorised to be given, see K R, 231–234
[7] A A, 85
[8] A A, 87 (1), and para 8 *infra*

Ch X

years with the colours [1] In a few instances enlistments for 1, 2, 3 or 4 years with the colours only are permitted

Regulations as to re-engagements, &c

7. Under the present regulations, the re-engagement of soldiers of and above the rank of serjeant may be approved after the completion of 9 years' service on their current engagement, but in the case of soldiers below the rank of serjeant re-engagement cannot be approved until after the completion of 11 years' service on their current engagement, and then only if efficient, well behaved, and medically fit for service at home and abroad [2]

Under the same regulations warrant officers, staff-serjeants and serjeants, after completing 9 years' service, have the right[3] to re-engage, subject only to the veto of the General Officer Commanding-in-Chief Other non-commissioned officers are in the same position as regards re-engagement as private soldiers

Warrant officers, non-commissioned officers and men may, with the approval of the officer in charge of records, continue their service after 21 years, but have not the right to do so [4]

Power in certain circumstances to detain soldier after expiration of his term

8. A soldier is liable to be detained in service for 12 months beyond the time at which he would otherwise be transferred to the reserve, or discharged, if a state of war exists, or if he is beyond the seas, or if the Army Reserve is called out A soldier who would otherwise be discharged may also agree with the competent military authority, while a state of war exists, to continue as a soldier during the war, or until the end of 3 months after he claims his discharge [5] The power of the Crown to discharge a soldier is noticed below

In case of imminent national danger or great emergency, when the Army Reserve can be called out for permanent service by the King's proclamation, a like proclamation can require men who would otherwise be transferred to the reserve to continue serving with the colours these men are then in the same position as if they had been transferred to the reserve and called out on permanent service [6]

Forfeiture of service under former Acts

9. Acts passed before 1870 adopted, in reckoning the years of a soldier's service, the principle of omitting those periods during which he had not given the service which he had agreed upon enlistment to give, *e g*, by having been in prison, or by reason of desertion or absence without leave After 1870 the effect of applying this principle to men liable under their enlistment to enter the reserve was to protract the time before a soldier's entry into the reserve, but not the term of his liability to service in the reserve It kept with the colours inferior men whose places might otherwise have been filled by good recruits

Provisions of Army Act as to forfeiture of service

10. The Army Act, therefore, abandons this principle, and does not, because a man is a bad soldier and constantly under sentence, require him to serve longer, but allows him to be discharged or sent into the reserve at the usual time On the other hand, it provides that a soldier guilty of desertion or fraudulent enlistment shall, if serving on his original engagement, forfeit, not only the time of his absence, but all his service prior to his conviction, and

---

[1] K R, 225–228
[2] There are certain exceptions to this See K R 231–234 for details
[3] There are certain exceptions to this See K R 231–232
[4] See A A, 86, K R, 236–245 for details
[5] A A, 87, 88, also 77
[6] A A, 88 See Reserve Forces Act, 1882, ss 12, 14

be liable to serve as if he had been attested at the date of his conviction, or of the order dispensing with his trial in the case of confession If serving on a re-engagement, a soldier convicted by court-martial of desertion or fraudulent enlistment, or whose trial has been dispensed with, forfeits all previous service rendered during the period of such re-engagement, *i e*, from the day following that on which he completed 12 years' service[1], the term of any imprisonment or detention to which he is sentenced will reckon as part of his service after the date of the sentence The Army Council, however, have power to restore all or any part of any service forfeited [2]

Effect of provisions.

11 This forfeiture, coupled with the provision referred to in para 19 as to the liability of a soldier convicted of the above offences to general service, will enable a man who has committed them to be sent to serve abroad, or in some other sphere where, by reason of greater activity or otherwise, he will be removed from the class of temptation under which he may have committed the offence For, however serious the above offences are in a military sense, they are often committed, not from any want of moral character or any reluctance to serve, but from some discontent, or from association with bad companions, or from some sudden or special temptation inducing the man to absent himself

Enlistment for general service and appointment to corps

12. Since 1870, under the Recruiting Regulations, a man may be engaged for service in any particular corps, but otherwise he is enlisted for general service or general service (infantry), and, if enlisted for general service, or general service (infantry), he is, under the present law, to be appointed, as soon as practicable, to some corps, or some corps of that arm of the service, but may be transferred, within three months of his attestation, to any other corps of the same arm or branch of the service [3] In 1923 an amendment to the Army Act provided that a boy enlisted for general service before attaining the age of eighteen years need not be appointed to a particular corps until he attains that age [4]

Power to transfer under former Acts

13. The power to transfer used formerly to be exercised in such a manner as to make it oppressive and much dreaded by the soldier The Mutiny Act in 1765 expressly authorised courts-martial to sentence deserters to be transferred for service in foreign parts

Provisions of Army Act as to transfer.

14. At present, when once a soldier is appointed to a corps for which he enlisted (or, if he enlisted for general service, has served for three months in a corps to which he has been appointed), he may make it his home so long as he serves with the colours, provided he conducts himself fairly well, and is qualified to serve in the place in which his corps is ordered to serve He may, however, as indicated below, be transferred to another corps with his own consent or compulsorily

By consent

15. Such cases may occur as that of a man who is appointed to the cavalry and who might be transferred to the infantry if he is unable to learn to ride, or of a man transferred to another corps for the purpose of serving with a brother Cases such as these would be with the man's consent

[1] A A, 84 (2)
[2] A A, 73, 79 See further as to restoration of service, K R, 246.
[3] A A, 83 (1).
[4] A A, 82 (2)

From regiment ordered abroad from home, or *vice versa.*

16. When a soldier has been invalided from abroad, or his battalion is ordered abroad, and he is unfit to serve abroad, or will, within two years, go into the reserve, or be discharged, he can, if he does not go into the reserve at once, be transferred compulsorily to a corps of the same branch of the service in the United Kingdom or to the reserve Similarly, when a regiment or battalion abroad is ordered home or to another station, a soldier who has (in addition to his reserve service) two years' colour service to run under his original enlistment, may, for the purpose of serving abroad the residue of his colour service, be transferred compulsorily to another corps of the same branch

When Army Reserve has been called out

17. A soldier of the regular forces enlisted for general service may be transferred to any corps of the same arm or branch of the service at any time whilst a proclamation ordering the Army Reserve to be called out on permanent service is in force (This does not apply to men enlisted before 4th August, 1914)

Re-transfer to former or to another corps

18. A soldier transferred to a corps, other than cavalry, artillery, infantry or engineers, may be compulsorily re-transferred to any corps serving in the United Kingdom, or to the corps in which he served immediately prior to his transfer, and when serving beyond the seas to any corps at the station at which he is serving at the time of his removal

As a punishment,

19. A soldier who has been guilty of desertion or fraudulent enlistment, or has been sentenced by a court-martial to not less than three months' detention, may have his punishment wholly or partly commuted into a liability to general service, and he may then be transferred from time to time to any corps This power may well be exercised in cases where a soldier gets into trouble at a home station and there is a prospect of his being converted into a good soldier by being sent abroad[1] A soldier committed as a deserter by a civil magistrate in any part of His Majesty's dominions may be transferred compulsorily to any corps near the place where he is committed, or to any other corps if the competent military authority direct, but this power need not often be exercised [2]

When corps are amalgamated, &c

20 Where a corps is amalgamated with one or more other corps, or its constitution is altered, or a unit is transferred from one corps to another, a soldier serving in such corps at the date of amalgamation, &c , is liable to serve in the new corps as if it were the corps in which he was previously serving, but he is not liable without his consent to serve in any unit in the new corps in which he could not, without his consent, have been required to serve if no such amalgamation, &c , had been effected

Conditions of enlistment not varied without consent of soldier,

21 The enlistment of the soldier is a species of contract between the Sovereign and the soldier, and under the ordinary principles of law cannot be altered without the consent of both parties The result is that the conditions laid down in the Act under which a man was enlisted cannot be varied without his consent

---

[1] See above, para 11, and A A , 83 (7)

[2] As to transfer generally, see A A , 83 , K.R., 202–802 ; and as to competent military authority, A.A , 101 (1), and R P 128

Attestation before civil authority required since 1694.

22. Since 1694[1] a soldier has been required to be attested before some civil authority[2] as a mode of protecting him against being entrapped, without understanding the nature of it, into a contract, which, even though not a contract for life, is one of a very serious nature Attestation was also adopted as a protection from impressment [3] The practice which exists in many parts of the country of concluding a bargain by giving some earnest of it, was adopted in the case of enlistment by the giving of the shilling, and formerly the acceptance of the shilling rendered the man for some purposes a soldier [4]

Provisions of Army Act as to attestation.

23 Under the Army Act, the acceptance of the shilling has no such effect A man offering to enlist receives a notice informing him of the general conditions of service in the Army, and of the requirements of attestation, and directing his appearance before a justice [5] If he fails to appear he has merely broken his bargain, he cannot be arrested as a criminal, and on appearing before the justice he may object to enlist, and if so cannot be required to pay any smart money If he appears before the justice and takes the oath, he becomes an attested soldier, but he will still be able to procure his discharge within three months by paying a sum which is not to exceed, and is at present fixed at, twenty pounds The attestation consists in appearing before the justice, answering certain questions, which are recorded, and making and signing a declaration as to the truth of those answers, and taking the oath of allegiance [6] Thereupon he becomes for all purposes a soldier, and any invalidity in the attestation can only be taken advantage of within three months afterwards Any immaterial error in the attestation paper can be amended at any subsequent time by a justice [7] Officers are empowered to act as justices for the purpose of attesting recruits for the regular forces, if authorised by the regulations of the Army Council The persons who in India, the colonies, and foreign countries have authority to attest recruits are enumerated in s 94 of the Army Act

Evidence of attestation.

24. The attestation paper is signed in duplicate, so that the original may be kept at home and the duplicate follow the man wherever serving [8] This procedure renders more practicable the provisions of the Army Act (s 163) for proof of enlistment by a certified copy of the attestation paper, which prevents a prosecution for desertion or fraudulent enlistment abroad from failing by reason of the attestation paper being at home The same section makes an attestation paper evidence of the soldier having given the

---

[1] 5 & 6 Will & Mar, c 15, s 2, quoted in Clode, Mil Forces, ii p 7

[2] See, however, as to attestation before officers, para 23 (*ad fin*)

[3] The Secretary at War used to discharge soldiers improperly enlisted See Clode, Mil Forces, ii p 8 The King's Bench discharged soldiers improperly impressed *R* v *Kessel* (1758) 1 Burr 637 See Clode, Mil Forces, ii p 587

[4] The acceptance of the shilling was treated as an agreement by the man to enlist, and either to complete his enlistment by attestation before a justice, or in default to pay smart money, which latterly amounted to 20s Enactments were made for giving him notice of what he was about to agree to, and for the lapse of a certain time between his receipt of the shilling and notice, and his final attestation before the justice On the other hand, if he absconded between his acceptance of the shilling and his appearance before the justice, he was liable to be apprehended as a vagabond, and punished accordingly, and also to be compulsorily attested as a soldier

[5] For persons included in the term "justice" for the purpose of enlistment, see A A, 94

[6] As to the form of oath and the validity of enlistment without it, see Clode, Mil Forces, ii p 21

[7] A A, 80, 81, 100

[8] K R, 1615

Ch. X

answers set out in it, a provision useful in case of a prosecution for making a false answer, in which case an attestation paper alone, and not a copy, is evidence

Acceptance of pay renders a soldier subject to military law, though not attested

25. Notwithstanding the provisions for protecting persons from being entrapped into being soldiers, it has always been the law that a man in pay as a soldier is subject to military law, though not attested This law is still maintained, because if a man chooses to serve and take pay as a soldier, he must be considered to have accepted the conditions under which he is paid and treated as a soldier, and therefore to be subject to military law Even an alien who enlists by making a false answer would apparently come under the same rule The Act, however, provides that a man in such a position may claim his discharge at any time, and the commanding officer is to forward the claim to the competent military authority for submission to the Army Council, but the man, until discharged, has no right to absent himself, and is liable in all respects to be treated as a soldier This provision as to discharge will not apply to a soldier who has gone through the form of attestation, but whose attestation is illegal, because after three months no advantage can be taken of any invalidity in the attestation [1]

26. If an apprentice in the United Kingdom, who was bound when under sixteen by a regular indenture for at least four years, enlists while still under twenty-one, he can be claimed by his master through a proceeding before justices, but not otherwise An apprentice who is so claimed is not liable afterwards to serve under his enlistment The claim must be made within one month after the apprentice left his master's service The apprentice is liable to, and on demand of his commanding officer must, be tried by the justice before whom the proceeding is taken for the offence of making a false statement on his attestation With the above exception, and a similar one for indentured labourers in the colonies, a master cannot claim his servant who has enlisted [2]

27 An enlistment is a valid contract, although entered into by a person under twenty-one, who by the ordinary rules of law, except where modified by statute, cannot, as a general rule, contract any engagement [3]

28 Though the Act of Settlement[4] which prohibits aliens holding any office, civil or military, does not in terms apply to soldiers, and though there was no statutory prohibition of the enlistment of foreigners, it seems to have been considered that the Crown had no authority either to enlist aliens for service in the United Kingdom, and consequently to punish them for desertion, or to billet them when in this country.[5]

29. Statutory power was therefore taken in 1757, and again in 1782, to quarter foreign troops in this kingdom,[6] and in 1794 and in subsequent years statutory power was taken by the Crown to

[1] A A, 100
[2] A A, 96, 97 See also K R 370 (iv)
[3] See cases cited in Clode, Mil Forces, ii p 34, *R* v *Rotherfield Greys* (1823), 1 Barn & Cr 345 See also *R* v *Hardwick* (1821), 5 Barn & Ald 176
[4] 12 & 13 Will III, c 2, s 3 An officer does, but a private does not, hold an office
[5] Clode, Mil Forces, i pp 89, 90, 487, ii pp 35, 431–435 Foreign troops seem to have been received in or brought into the kingdom in the time of Anne and Geo I Report on recruiting, 1867, Parl P, 215
[6] See 30 Geo. II, c 2, 22 Geo III, c. 26.

enlist aliens, even though they were to serve abroad [1] This was subject to the conditions that they were not to be brought into the United Kingdom, except with a view to operations abroad, that if so brought they were not to go more than five miles from the sea coast, and that there were never to be more than 5,000 men in the kingdom A similar provision was made in 1800[2], and during the Crimean War in 1854,[3] but in the latter case the only restrictions were that the number of men brought into the United Kingdom was not to exceed 10,000, and that they were not to be billeted The illegality of the enlistment of aliens has also been recognised in other Acts,[4] till at last, in 1837, it was enacted that, with the permission of the Crown (given in each case), an alien might be enlisted, but the number of aliens in any corps was not to exceed the proportion of one to every fifty natural-born subjects, and this provision has been re-enacted in the Army Act [5] An alien so enlisted is by the Army Act made incapable of becoming an officer A relaxation in favour of negroes and persons of colour was originally made in consequence of negroes captured in slavers being taken into the service of the Crown, and was continued to legalise the recruiting of natives on the West Coast of Africa for service in the West India Regiments (now disbanded) and of Lascars in the East, and the relaxation has been extended to inhabitants of British protectorates in order to enable troops raised in the East and West African protectorates to serve outside their boundaries [6] It must also be recollected that under the British Nationality and Status of Aliens Acts a naturalized alien has the same privileges as a British subject, and therefore is capable of being enlisted to serve His Majesty

Discharge

Power of Crown to discharge soldiers

30 The terms of the enlistment of a soldier, since he has been enlisted directly by the Crown, have always been to serve the Sovereign so long as his services are required, within the period for which he agrees to serve, consequently the Sovereign has always had power to discharge soldiers But a soldier cannot be discharged except by order of the Sovereign or under some statutory power, such as the sentence of a court-martial, to which is added in the Army Act an "order of the competent military authority" [7]

Certificate of service

31 A soldier on his transfer to the Army Reserve or discharge is entitled to receive a certificate of service This certificate combines in one form a "certificate of character," "certificate of transfer to the Army Reserve," "discharge certificate," together with other details relating to the soldier's service The soldier is provided with a certificate of service to show that he has been properly transferred to the Army Reserve or discharged, and that he is not a deserter [8] Until he is duly discharged he remains

[1] See 34 Geo III, c 43 The Act 29 Geo II, c 5 recited the enlistment of foreigners in America, and gave power to commission them, but not to enlist This was given by the amending Act, 38 Geo III, c 13

[2] 39 & 40 Geo III, c 100

[3] 18 & 19 Vict, c 2

[4] See 44 Geo III, c 75, and 46 Geo III, c 23, continued by 55 Geo III, c 85 See also the provisions on the amalgamation of the Indian Army, 24 & 25 Vict, c 74, s 2

[5] 7 Will IV & 1 Vict, c 29, A A, 95 (1)

[6] A A, 95

[7] A A, 92 For definition of the competent military authority, see A A, 101 (1), 190 (32), also R P 128 For regulations as to discharge, see K R, 398–410

[8] See K R 392–410

Ch. X

subject to military law Discharge has been at different times regarded as a reward or as a punishment [1] When the service was for life, discharge was in many cases the highest object of a soldier's desires, and even now it may be a material advantage to him There is no reference in the present law to discharge as a reward, but a soldier may be transferred to the reserve or prematurely discharged within a limited period of the termination of his normal colour service, to enable him to take up civil employment which cannot be held open [2] On the other hand, discharge with ignominy, or discharge towards the end of a man's service shortly before he becomes entitled to receive pension, cannot but have the effect of a punishment

32 A soldier enlisted in the United Kingdom is entitled, if on the completion of his service he is abroad, to be sent to the United Kingdom free of expense for his discharge, and a soldier enlisted in the United Kingdom, and discharged there on termination of his engagement, is entitled to be sent free of expense from the place where he is discharged to the place where he was attested, or to his residence, if his conveyance there costs no more [3] In no other case has a soldier any *statutory* right to be sent free of expense to any place on discharge, though, in some cases, he may be allowed a free conveyance as a matter of favour [4]

33 If a soldier is a lunatic, the Army Council or an officer deputed by them may, on his discharge, send him and also his wife and child, to the workhouse of the parish or union to which he is chargeable, and if he is a dangerous lunatic may send him to the lunatic asylum for lunatics chargeable to that parish or union [5]

34 The only power, except with the soldier's consent, of sending him into the reserve before the stipulated time is on occasion of his being unfit to serve abroad, or of his regiment being ordered abroad shortly before the expiration of the time of his service with the colours [6] A soldier who is transferred to the Army Reserve is entitled, on transfer, to free conveyance to his place of attestation or selected place of residence (if not involving greater cost) in the United Kingdom, but has no claim to free conveyance to any place on final discharge from the Army after completing his service in the reserve [7]

35. Offences in relation to enlistment, when committed by persons who are at the time or thereafter become subject to military law, are punishable by military law under ss 13, 32–34 of the Army Act A man renders himself liable to punishment not exceeding imprisonment who, after being discharged from any part of His Majesty's military or air forces with ignominy, or for misconduct, or on account of conviction for felony or a sentence of penal servitude, or dismissed with disgrace from the Navy, enlists without disclosing the circumstances of his discharge or dismissal

[1] See Clode, Mil Forces ii pp 43–47
[2] See K R 369 (ii) (*a*) & (*b*) and 370 (ix) (*b*)
[3] A A, 90
[4] See Allowance Regulations, sec 7, subsection 6, for the present practice
[5] A A, 91 See also K R 388–391
[6] A A, 89
[7] A A, 90 For the further benefits in this respect now enjoyed by reservists, see Allowance Regulations sec 7, subsection 6

A recruiter who enlists any man whom he has reason to believe to have been so discharged or dismissed, also renders himself liable to imprisonment

The making of a false answer to any question on attestation renders the offender liable to imprisonment on the sentence either of a civil court of summary jurisdiction for the place where the offence was committed, or where the offender may happen to be, or of a court-martial[1], and any person who uses, or gives for use, for the purposes of enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds [2]

No one may enlist soldiers unless duly authorised, and any person who does so is liable to a fine not exceeding twenty pounds [3]

A man who, while belonging to one corps, enlists in the same or any other corps, is guilty of fraudulent enlistment, and can be punished for it, but as he has made two engagements he can be held to either engagement, and is thus liable to serve, as the military authorities direct, either in accordance with the terms of his original attestation, or with those of his new attestation, and (unless he has enlisted in the corps to which he already belongs) in either of the corps to which he has been appointed to serve [4]

[1] A A, 99, 33, and notes

[2] Seamen's and Soldiers' False Characters Act, 1906, (6 Edw 7, c 5), s 2

[3] A A, 93 Under the Mutiny Act, authority was in terms granted to consuls and other persons abroad to enlist soldiers, but the present Act makes it clear that those officers have only power, like the justices at home to attest, and have no power to act otherwise in recruiting unless specially authorised to do so See A A 94

[4] For details see K R, 599

CHAPTER XI

CONSTITUTION OF THE MILITARY FORCES OF THE CROWN

Military forces

1 The military forces of the Crown consist of—
British forces,
Indian forces,
Dominion forces,
Colonial forces and the Channel Islands Militia

BRITISH FORCES

British forces

2 The British forces comprise—
(A) The Regular Army,
(B) Regular Army Reserve of Officers (including officers of the Militia and the Supplementary Reserve of Officers),
(C) Army Reserve (including Supplementary Reserve),
(D) Territorial Army (including the Territorial Army Reserve),
(E) Miscellaneous Organisations and Establishments,
(F) Royal Marines

(A) *Regular Army*

Regular Army

3. The Regular Army consists of—
(1) Cavalry, composed of two corps, *i e*, Household Cavalry and Cavalry of the Line,
(2) Artillery, comprising all Royal Artillery units and personnel, including the local brigades and batteries abroad,
(3) The corps of Royal Engineers, divided into battalions, engineer squadrons, troops, and companies,
(4) The Royal Corps of Signals, divided into corps signals, divisional signals, signal squadrons, companies, troops and sections,
(5) Infantry, composed of five regiments of Foot Guards,[1] and 63 county and rifle regiments (*vide* the Royal Warrant defining "Corps"[2]) Each regiment (except the Royal Inniskilling Fusiliers and the Royal Irish Fusiliers, which form one corps and have one battalion each) includes two line battalions,
(6) The Royal Tank Corps, which consists of tank battalions and armoured car companies,
(7) The Royal Army Service Corps, which is sub-divided into the Horse Transport and Remounts, Supply, and Mechanical Transport sections,
(8) The Royal Army Medical Corps,
(9) The Royal Army Ordnance Corps,
(10) The Royal Army Veterinary Corps,
(11) The Army Educational Corps,

[1] Two regiments of Foot Guards have three battalions each, one regiment has two battalions and two have one battalion each
[2] A.O. 40 of 1926

(12) The Royal Army Pay Corps,
(13) The Army Dental Corps,
(14) Corps of Military Police,
(15) Military Provost Staff Corps,
(16) Band of the Royal Military College,
(17) Corps of the Small Arms and Machine Gun Schools

There are also the Royal Army Chaplains' Department, Staff for Royal Engineer Services, and Queen Alexandra's Imperial Military Nursing Service These are not technically corps within the meaning of the Army Act, inasmuch as they are not declared to be so by Royal Warrant

Unit of army for enlistment and service is the corps

4. For the purposes of enlistment and service, the unit in the army (in the Army Act referred to by the common name of "corps") is one of the above regiments or corps A soldier, on his enlistment, is appointed to a corps, and is bound to serve in any part of it, and may belong for the whole of his military life to the corps to which he is first appointed The officers are also appointed to these corps, but are all alike officers of His Majesty's land forces, and have army rank as such, which may or may not be the same as their regimental rank, that is to say, their rank in the above unit They are consequently legally liable to serve, if so ordered, with any portion of the army, and not merely with the unit to which they may be appointed, in practice, however, they are not normally required to do so

An officer has not the right to resign his commission whenever he pleases This was decided long ago in the case of officers serving the East India Company, and (more recently) in the case of a naval officer who, having been refused leave to resign sent in his resignation, and quitted the service while abroad in order to take up a civil appointment at home [1] Exactly the same principles are applicable to commissions in the army

Unit for other purposes not necessarily the same

5 The unit for purposes of discipline and some purposes of administration is not necessarily the same as the above unit In the case of infantry, for instance, the unit for purposes of discipline is *prima facie* one battalion or the depot, if, however, part of the battalion is serving detached from the rest, that part becomes the unit for purposes of discipline, while for many purposes of administration it remains part of the battalion At the same time all men in a battalion are liable to be ordered to serve in any other part of the corps, whereas they cannot be transferred to any other corps without their consent or except as a punishment for certain offences, or in special cases provided for by the Army Act [2]

Explanation of term "commanding officer."

6. Throughout the Army Act the "commanding officer" is referred to for many purposes, and particularly for the purposes of investigating charges and awarding summary and minor punishments The Act does not define the term "commanding officer" The Rules of Procedure contain a definition, for the purposes of all the rules and also for the purpose of the sections

---

[1] *Parker* v *Lord Clive* (1769), 4 Burr 2419, *Vertue* v *Lord Clive* (1769), 4 Burr 2472, *R* v *Cumnng, Ex parte Hall* (1887) L R 19 Q B D 13, and *Hearson* v *Churchill*, L R [1892] 2 Q B 144 See also the *dictum* of Cockburn, C J, in *Ex parte Trenchard* (1874) L R 9 Q B 406 Clode Mil Forces, ii, p 96 Command formerly depended on the commission but is now the subject of regulation A A 71; see K R. 170–192.

[2] See Ch X, paras 14–20, and A A. 83

Ch XI — of the Act relating to "*Courts martial*," and to the "*Power of Commanding Officer*" [1] In cases to which this definition does not apply, the question who is, in any given circumstances, the commanding officer, must depend on the custom of the service and the King's Regulations

(B) *Regular Army Reserve of Officers*[2]

Composition of Regular Army Reserve of Officers

7. An officer who retires from the regular forces on retired pay or with gratuity becomes a member of the Regular Army Reserve of Officers,[3] and is liable to be recalled to army service until he reaches the age limit laid down in the Pay Warrant [4]

Officers retiring under Indian Regulations, or on account of mental or physical incapacity certified by the regulated medical authority, or on account of misconduct, have not this liability to service in the Regular Army Reserve of Officers or to recall

A commission in the Regular Army Reserve of Officers may be granted to an officer who has held a commission in the regular forces, Militia, Supplementary Reserve of Officers, Territorial Army, and such other formations of the military forces of the Crown as are provided for by Royal Warrant,[5] and also to an officer who held a temporary commission in the new armies during the Great War, 1914-19, provided that his service was satisfactory throughout, and that his age does not exceed the limits laid down [6]

Liability to recall to army service

8. An officer of the Regular Army Reserve of Officers is liable to be recalled to army service at home or abroad at a time of national emergency or when a national emergency appears to be imminent,[7] and becomes subject to military law in the circumstances mentioned in s 175 (10), Army Act

Officers of the Militia.

9. Officers of the Militia, formerly styled the Special Reserve of Officers, form a branch of the Regular Army Reserve of Officers established by Royal Warrant [8] This branch consists of a number of officers commissioned before 5th August, 1914, and still retained, but no new appointments are being made therein

Officers of this branch are governed by the Regulations for Officers of the Militia (formerly Regulations for Officers of the Special Reserve of Officers, 1911, which, by Royal Warrant,[9] were made applicable to officers of the Militia)

Officers of the Militia are subject to military law at all times [10]

Supplementary Reserve of Officers

10 The Supplementary Reserve of Officers is a branch of the Regular Army Reserve of Officers established by Royal Warrant [11] The Supplementary Reserve of Officers is designed to —

(*a*) ensure that all units, services and departments of the regular forces shall be complete in officers on partial or general mobilization,

---

[1] See R P 129, and K R 526
[2] P W 691-704A
[3] P W 691
[4] P W 521
[5] P W 692, 694
[6] P W 697
[7] P W 701
[8] Dated 3rd April, 1908, as applied by Royal Warrant dated 27th January, 1922 (Army Order 2 of 1922)
[9] Dated 27th January, 1922 (Army Order 2 of 1922)
[10] A A 175 (10)
[11] Dated 8th August, 1924 (Army Order 284 of 1924)

(*b*) maintain establishments in the regular forces in war, and

(*c*) provide officers for Supplementary Reserve units

Commissions in the Supplementary Reserve of Officers are given to qualified candidates[1] who are British subjects, the sons of British subjects, and of pure European descent

Organisation and administration

11. For purposes of administration and mobilization, officers of the Supplementary Reserve of Officers are divided into categories[2] as follows —

Category A —Officers of transportation units, Royal Engineers, required to undergo training in peace

Category B —Officers (other than those in Category A) required to undergo training in peace In certain cases they are organised in units in peace Those not in units form a reserve for the corps to which they belong, being available for use on mobilization as required

Category C —Officers not required to undergo training in peace In the event of their being called to army service they will be required to perform duties similar to those of their profession or occupation in civil life They may be organised in units in peace as necessary

Appointments

12. Except in the Royal Army Medical Corps, where appointments are made in the rank of lieutenant, candidates are normally appointed in the rank of second lieutenant Officers who have prior service qualifying them for promotion may be appointed in the rank of lieutenant, in the case of Royal Army Medical Corps officers (Category C), such officers may be appointed in the rank of captain

Officers appointed to Supplementary Reserve units may be appointed in such ranks as may be required to complete the establishment of the unit, and in the case of Royal Engineers (Transportation and Postal), Royal Corps of Signals, and Royal Army Service Corps, officers may be appointed in ranks necessary to provide for the mobilization requirements of those corps

Liabilities

13. Officers of Categories A and B are required to undergo preliminary training (unless exempted therefrom), and further training each year, or otherwise, as may be prescribed for their branch of the service[3] There is no training for officers of Category C

Officers of the Supplementary Reserve of Officers are liable to be called out on service when the Army Reserve, or any part of it, is called out by proclamation, and to serve with any unit or part of His Majesty's land forces in any part of the world[4]

They are subject to military law when ordered on any duty or service for which, as reserve officers, they are liable, or when employed on military service (otherwise than as above) under the orders of an officer of the regular forces who is subject to military law[5]

Period of service

14. Officers on attaining the age limit cease to belong to the Supplementary Reserve of Officers, but if they are then below the age limit for removal from the Regular Army Reserve of

[1] See S R Regs, para 16 *et seq*
[2] For further details, see S R Regs, para 2 *et seq*
[3] S R Regs 100–102
[4] S R Regs 14
[5] A.A., 175 (10) (1)

Ch XI

Officers, they continue in that Reserve unless they previously notify that they do not desire to do so [1]

Outfit allowance and gratuity

15 Officers joining the Supplementary Reserve of Officers, who have not previously served as officers in the regular forces, Special Reserve, Militia, Yeomanry, Territorial Force, Territorial Army, or Volunteers, or who have ceased to hold commissions in any of these forces for at least 3 years prior to joining the Supplementary Reserve of Officers, are (except as stated below) allowed an outfit grant of £40, or in the case of an officer appointed to the Cavalry £50 If the officer fails to fulfil certain conditions he may be required to refund the grant or part of it [2]

Outfit grant is not made to officers whose services are only available on embodiment and who do not undergo training in peace, until they are called up on embodiment being ordered These officers will then receive such grants as it may be decided to issue to officers commissioned temporarily during an emergency

An officer is granted, in arrear, at the conclusion of each year's service in the Supplementary Reserve of Officers, a gratuity of £25, provided he fulfils certain conditions [3]

Pay and allowances

16 When employed on military duty in peace, or attending an authorised course of instruction, an officer of the Supplementary Reserve of Officers is (with certain exceptions) granted the pay and allowances issuable under the Pay Warrant and Allowance Regulations to an officer of the regular forces of the same rank and arm of the service [4]

(C) *Army Reserve*

Army Reserves divided into two classes

17 The Reserve Forces Act, 1882, authorises the keeping up of an Army Reserve containing two classes, each to consist of such numbers as may be from time to time provided by Parliament, the first class is liable to service either at home or abroad, the second class, if it were in existence, would be liable only to serve in the United Kingdom

Special Reserve and Militia

18. The Territorial and Reserve Forces Act, 1907, authorised the conversion of militia units[5] into units of the Special Reserve, and further authorised the enlistment of men who had not served in the regular forces into the first class of the Army Reserve as special reservists The title of Special Reserve was altered to Militia by the Territorial Army and Militia Act, 1921, but with the exception of certain officers who were commissioned before 5th August, 1914, and who are still retained, this force is not at present maintained in Great Britain or Northern Ireland

In 1924, however, a new force[6] was formed under the Acts of 1882 and 1907 referred to above, and designated the Supplementary Reserve, although under the terms of the Act of 1907, as modified by the Act of 1921, it is, in law, Militia

First class of Army Reserve

19 The first class of the Army Reserve consists of three sections, A, B, and D[7], and the Supplementary Reserve

---

[1] S R Regs 37, 38
[2] S R Regs 280 284
[3] S R Regs, para 206 *et seq*
[4] S R Regs, para 182 *et seq*
[5] Raised under the old Militia Acts, which were repealed in 1921 See Ch IX
[6] See para 32, *et seq*
[7] Section C was abolished in 1904, and the men in it transferred to Section B: A O 207 of 1904

Section A of first class.

20. Section A[1] consists of reservists of certain corps who engage at the time of their first transfer to the reserve to join that section, or are permitted to join that section from Section B within the first twelve months of their transfer to the reserve, for a period of twelve months No man is allowed to engage in this section unless his assessment of military conduct on transfer to the reserve was at least " good," and unless he is pronounced to be medically fit The number of men in the section is limited to 6,000, and preference is given to those men who have the highest professional qualifications Men joining this section must agree in writing to the conditions of service,[2] and are enrolled therein on the date of their transfer to the reserve, or, if transferred from Section B, within twelve months from their first transfer to that section

A reservist of Section A may be permitted to re-engage in that section for a further term which will not exceed two years from the date of his transfer to the reserve He may revoke his engagement by giving three months' notice in writing to the officer-in-charge of records, if not required for permanent service during that period On receiving his release, or on completing his engagement in Section A, he reverts to Section B of the reserve under the terms of his army attestation If a reservist of Section A so misconducts himself as to make himself not immediately available for service, he is relegated to Section B[3]

Section B first class

21 Section B consists of soldiers enlisted for short service, who, having completed their period of colour service, are transferred to the Army Reserve under the conditions of their enlistment, to complete the period for which they originally engaged

Section B also includes men who revert to it from Section A, and men the residue of whose term of colour service has been converted into service in the reserve

The last-mentioned class of men comprised in Section B includes soldiers whose conditions of service have been varied by the Army Council so as to allow them, instead of serving with the colours during their whole period of army service, to enter the reserve at once for the residue of the term of their original enlistment They are transferred to the reserve, and placed in Section B[4]

Certificate of service.

22 A soldier on transfer to the Army Reserve receives a certificate of service[5]

Illustrations of Sections A and B.

23 Some examples will make clearer the above explanations of Sections A and B of the Army Reserve V, W, and X all enlist in the infantry for twelve years, of which seven years are to be in army service and five years in reserve service V and W serve with the colours seven years and then pass into the Army Reserve V engages to join Section A, and continues in it for twelve months, or, if allowed to re-engage in the section, for two years, from the date of his passing to the reserve, when he reverts to Section B for the remaining four or three years of his reserve service, and is then discharged W serves five years in Section B and is then

[1] See K R 416–419
[2] K R 416
[3] K R 418, 419, 447 (*a*)
[4] A A, 78 K R 369 (ii)
[5] K R 392

Ch XI

discharged X, after serving three years with the colours, converts, with the sanction of the Army Council, the rest of his army service into reserve service, passes into Section B, and after nine years in it is discharged

Section D

24. Section D consists of men who, on the completion of their first period of engagement (whether completed wholly with the colours, or partly with the colours and partly in Section B of the reserve), are enlisted or re-engaged to serve for a further period of one, two, three or four years in this section Only men whose military conduct was assessed at not less than "good" are eligible for service in this section of the reserve

A man can be re engaged, if he is in Section B of the reserve, within six months of the completion of his current engagement, and if he is serving with the colours, within the fortnight before his discharge, but in either case his service in Section D does not commence until the termination of his original engagement, *i e*, 12 years Re-engagements for further periods in Section D may be permitted by officers in charge of records, provided that such further re-engagements are completed before the reservist attains the age of 45 years in the case of skilled tradesmen possessing certain trade qualifications, drivers (internal combustion) of the Royal Artillery, and storemen of the Royal Army Ordnance Corps, and 42 years in the case of other reservists [1] A note of the man's enlistment or re-engagement (as the case may be) is entered on his certificate of service, as well as on the original and duplicate (army) attestations, and on his discharge from Section D he receives a certificate of discharge, the form of which depends on whether he enlisted or re-engaged for Section D [2]

Second class of Army Reserve.

25. The second class of the Army Reserve consisted, besides men enrolled under former Acts, of men enlisted or enrolled from among—

(*a*) Chelsea out-pensioners, or Greenwich out-pensioners being ex-marines, and

(*b*) Men who had served full time in the army [3]

Both these divisions of the second class are extinct

Entry by transfer or enlistment.

26 Men who enter the reserve, if they enter under the terms of their original enlistment, or on a variation of those terms, are transferred, and, if otherwise, are either enlisted or re-engaged, and may be enlisted or re-engaged for such term and in such manner as is fixed by regulations [4]

Annual training of Army Reserve men

27. Army Reserve men are liable to be called out annually for training, for a time not exceeding twelve days or twenty drills, and may during that training be attached to a body of the regular or auxiliary forces [5]

Calling out in aid of civil power

28. They are also liable to be called out by a Secretary of State, to aid the civil power in the preservation of the public peace The men residing in any town or district are liable to be called out for the same purpose by the officer commanding the forces in the town or district on the requisition in writing of a justice [6]

---

[1] K R 430
[2] K R 494
[3] Reserve Forces Act, 1882, s 3
[4] Reserve Forces Act, 1882, s 4
[5] Reserve Forces Act, 1882, s 11
[6] Reserve Forces Act, 1882, s 5

Liability of permanent service

29. Further, they are liable to be called out on permanent service, by proclamation of His Majesty in Council "in case of imminent national danger or of great emergency, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the proclamation if Parliament be not then sitting" [1]

In addition to the above liability, reservists belonging to Section A are liable under Section 1 of the Reserve Forces and Militia Act, 1898, to be called out on permanent service during the period of their engagement in that section, whether it lasts for twelve months or for two years, if required for service outside the United Kingdom when warlike operations are in preparation or in progress When so called out they are liable to serve with the colours for not more than twelve months Should, however, any portion of the reserve be called out on permanent service under Section 12 of the Act of 1882, then reservists of Section A become liable to serve to the same extent as any other portion of the reserve which has been called out [2]

The calling out of Section A under the Act of 1898 does not require a proclamation by the King in Council, or involve the meeting of Parliament, but any exercise of this power must be reported to Parliament as soon as may be [3]

Extent of liability

30. Every man, when called out, is liable to serve until His Majesty no longer requires his services, but not beyond his unexpired term of service in the reserve, with the addition of twelve months more if a state of war exists, or if he is on service beyond the seas, or if the men in the reserves are at the time called out, that is, if there is imminent national danger or great emergency An Army Reserve man, when so called out, forms part of the regular forces, and may be appointed to any corps as a soldier, and transferred within three months afterwards to any other corps [4]

Under the Regulations for the Army Reserve contained in the King's Regulations, a reserve man is not allowed to reside permanently outside the United Kingdom without authority from the officer in charge records concerned,[5] and is not allowed to quit the United Kingdom or proceed to sea without leave from the officer in charge of records [6] He is also duly to report himself and, if called on, to present himself for medical examination [7]

Re entry on army service

31. When so allowed by regulations, an Army Reserve man can voluntarily re-enter on service with the colours for all or any part of the residue unexpired of the term of his original enlistment, or for any time not exceeding twelve years from the date of his original enlistment [8]

[1] Reserve Forces Act, 1882, s 12 A A , 88 (4)
[2] See para 20 above , K R 432
[3] Reserve Forces and Militia Act, 1898, s 1 (e)
[4] Reserve Forces Act, 1882, s 14
[5] The Reserve Forces Act, 1908, s 1 (2), provides for the making of regulations under s 20 of the Reserve Forces Act, 1882, prescribing the conditions under which men belonging to the reserve may reside out of the United Kingdom, and the conditions under which men may be enlisted (out of the United Kingdom) for the reserve K R 456, 457
[6] K R 458, 459
[7] K R 440
[8] A A , 78 (2) Under existing regulations, a man cannot, under ordinary circumstances re-enter on army service unless specially permitted to do so K R , 487–489.

Ch XI — Supplementary Reserve

32. As mentioned in para 18, the Supplementary Reserve was established in 1924, under the authority of the Reserve Forces Act, 1882, and the Territorial and Reserve Forces Act, 1907, with the object of completing on mobilization the requirements, mainly technical, of certain arms and branches of the Regular Army, for which the remainder of the Army Reserve did not provide It is therefore primarily a reserve of tradesmen

Organisation and administration

33. For purposes of administration and mobilization, the warrant officers, non-commissioned officers and men of the Supplementary Reserve are divided into categories[1] as follows —

Category A —Consisting of personnel of transportation units, Royal Engineers, required to undergo training in peace

Category B —Consisting of personnel required to undergo training in peace

Category C —Consisting of personnel not required to undergo training in peace

With certain exceptions,[2] Category B personnel of Supplementary Reserve units are raised and administered by Territorial Army County Associations in the same way as units of the Territorial Army, and are affiliated to Territorial Army units or formations for training and administration

Supplementary reservists of Category B not organised in peace in separate Supplementary Reserve units are administered in the same way as personnel of the Territorial Army, and for this purpose they are attached to Territorial Army units of the arm or branch for which they enlist, except in the case of R A V C personnel, who are attached to such T A unit as the G O C -in-C may direct

Supplementary reservists of Category C may be organised in units in peace, or may be allotted to Regular Army or Supplementary Reserve units which exist in peace or which will be formed on mobilization

Composition

34. The Supplementary Reserve comprises the following —

Royal Artillery Personnel not organised in units,

Royal Engineers Transportation units, army troops companies, electrical and mechanical companies, and personnel not organised in units,

Royal Corps of Signals Signal companies and sections, and personnel not organised in units,

Royal Army Service Corps, Royal Army Medical Corps, Royal Army Ordnance Corps, and Royal Army Veterinary Corps Personnel not organised in units

With the exception of the transportation units of the Royal Engineers which consist of personnel of Categories A and C, Supplementary Reserve units are composed of personnel of Category B Personnel not organised in units belong to Category B or C

Enlistment and re-engagement

35. Supplementary reservists of Categories A and B are enlisted for a period of 4 years, and those of Category C for periods of 2, 3 or 4 years, in accordance with instructions issued by the War Office

[1] For further details, see S R.Regs., para. 2 *et seq.*
[2] S R.Regs 3

The classes of men to be enlisted and the corps for which they are required are fixed by the Army Council from time to time

The periods for which a supplementary reservist may be allowed to re-engage, subject to his possessing certain qualifications, are 1, 2, 3 or 4 years

To be eligible for enlistment into the Supplementary Reserve, a man must have attained the age of 19 years, and for re-engagement he must not have passed his 42nd birthday Men enlisted for service as tradesmen may be retained up to, but not beyond, 46 years of age, provided that they are qualified in their trades and are able to pass the necessary tests [1]

Enlistment into the Regular Army, &c

36. Supplementary reservists may enlist into the Regular Army in accordance with instructions published in Recruiting Regulations from time to time, and on final approval of such enlistment are deemed to be discharged from the Supplementary Reserve They are not granted a free discharge for the purpose of joining the Royal Navy or Royal Air Force "

Liabilities,

37. Supplementary reservists of Categories A and B are required to undergo training annually or otherwise, as may be prescribed for their branch of the service [3] Supplementary reservists of Category C are not required to undergo training in peace time

Supplementary reservists form part of the first class of the Army Reserve, and are liable under s 14 (2) of the Reserve Forces Act, 1882, to serve in any part of the world on mobilization They are liable to be called out when the Army Reserve, or any part of it, is called out by proclamation When called out on permanent service they become in all respects soldiers of the regular forces [4]

The liability to be called out in aid of the civil power under s 5, Reserve Forces Act, 1882, will not be enforced, but when supplementary reservists have been called out on permanent service, or when subject to military law under s 176 (5) (*a*) or (*d*) of the Army Act, then their liability as regards being ordered on duties of this nature is the same as that of men of the Regular Army [5]

Supplementary reservists are subject to military law when called out for training and exercise, or when employed in military service under the orders of an officer of the regular forces, or when called out on permanent service [6] At other times they are subject to the Reserve Forces Acts and to the Regulations for the Supplementary Reserve

Re posting and transfers

38 Supplementary reservists of Category B organised in units who change their permanent residence may, under certain conditions, be re-posted to another Supplementary Reserve unit of the same corps and category situated in the locality in which they intend to reside Those not organised in units may similarly, on a change of residence, be re-attached to another Territorial

[1] See generally S R Regs 48–75
[3] S R Regs 60, 61
[3] S R Regs 109–113
[4] S R Regs 76
[5] S R Regs 152
[6] A.A. 176 (5) (*a*) (*c*) (*d*).

Ch XI —

Army unit of the same arm or branch of the service situated in the locality in which they intend to reside

Supplementary reservists of Categories A and B may, under certain conditions, be permitted to transfer voluntarily to Category C of the same corps or arm of the service in order to complete the unexpired portion of their current engagement Supplementary reservists of Category C may also, under certain conditions, be permitted to join Categories A and B of the same corps or arm of the service in order to complete the unexpired residue of their current engagement [1]

Discharge

39. The various causes of discharge and special instructions relating thereto are contained in the Regulations for the Supplementary Reserve On discharge, a supplementary reservist is furnished with a discharge certificate [2]

Bounties, pay and allowances

40. Supplementary reservists are granted bounties at various rates ranging from £8 to £20 annually, according to trade groups and provided certain conditions are fulfilled [3]

When employed on military duty in peace, supplementary reservists are (with certain exceptions) granted the pay and allowances issuable under the Pay Warrant and Allowance Regulations to members of the regular forces of the same rank and arm of the service When called out on permanent service, pay and allowances at army rates are admissible for a supplementary reservist from the date of joining, provided that he is accepted for service [4]

(D) *Territorial Army*

Transfer of former auxiliary forces to Special Reserve and Territorial Force

41. Down to the year 1908 the auxiliary forces consisted of the Militia (raised under the old Militia Acts), Yeomanry and Volunteers As stated in Chapter IX, the old Militia was absorbed into the Special Reserve, and the existing Volunteers and Yeomanry were absorbed into the Territorial Force

The only auxiliary force raised at the present time in Great Britain is the Territorial Army

Territorial Army

42. The Territorial Force was created by the Act of 1907 [5] This Act was amended by the Act of 1921,[6] which, *inter alia*, altered the title to Territorial Army It consists[7] of —

Headquarters	
Honourable Artillery Company	(Included below under R H A and Infantry)
Royal Horse Artillery	1 Brigade (3 batteries)
Yeomanry	14 Regiments
Scouts	2 Regiments
Royal Artillery	Field—
	42 Divisional Brigades (168 batteries)
	16 Army Troops Brigades (50 batteries)
	Medium—
	11 Brigades (44 batteries)
	Light—
	1 Brigade (3 batteries)

[1] S R Regs 87–90
[2] S R Regs 91–99
[3] S R Regs para 219 *et seq*
[4] S R Regs para 177 *et seq*
[5] T R F Act, 1907 (7 Edw 7 c 9), p 844
[6] T A & M Act, 1921 (11 & 12 Geo V c. 37), s 1
[7] As constituted on 1st February, 1928

	Heavy (Coast Defence)—
	17 Brigades (38 batteries).
	Anti-Aircraft—
	5 Brigades (13 batteries)
Royal Engineers	1 Field Squadron
	14 Divisional Engineers (42 Field Coys).
	16 Fortress Groups (28 companies)
	2 A A Battalions (6 companies)
	3 A A Searchlight Groups (11 coys)
	Engineer and Railway Staff Corps
Royal Corps of Signals	1 Cavalry Divnl Signals (2 squadrons)
	14 Divnl Signals (42 companies)
	16 Field Artillery Signal Sections
	11 Medium Artillery Signal Sections
	2 Wireless Sections
	2 A A Signal Companies
Infantry	169 Battalions (including the H A C (Infantry), and Inns of Court O T C)
Royal Tank Corps	8 Armoured Car Companies
Royal Army Service Corps	1 Cavalry Divisional Train
	14 Divisional Trains
Royal Army Medical Corps	1 Cavalry Field Ambulance
	14 Field Ambulances
	3 General Hospitals
	4 Hygiene Companies (15 sections)
Royal Army Ordnance Corps	1 Cavalry Detachment
	14 Companies
Royal Army Veterinary Corps	
Royal Army Chaplains' Department	
General List	
The Territorial Army Reserve [1]	

43. Under the Act of 1907, County Associations were established[2] whose duty it is to raise, organise in accordance with schemes prepared by the Army Council, maintain and administer the units of the Territorial Army in their charge For this purpose they receive certain grants from the State [3] **County Associations**

An Association is also required to ascertain the military resources and capabilities of a county , to give advice and to render assistance to the military authorities [4]

An Association has no power over the training of the Territorial Army nor does it possess any powers of command These duties are vested in the military authorities [5]

The Auxiliary Air Force and Air Force Reserve Act, 1924, authorised the establishment and constitution of County Joint

[1] Formed under T R F Act, 1907, s 7 (6), which was amended by the T A & M, Act, 1921 A Territorial Army Reserve of Officers is maintained, but the Territorial Army Reserve for other ranks is at present in abeyance
[2] T R F Act, 1907, s 1
[3] *ib* s 3
[4] *ib* s 2
[5] *ib* s 2 (1).

Ch XI

Associations with duties in relation both to the Territorial Army and to the Auxiliary Air Force, and responsible both to the Army Council and the Air Council Five County Joint Associations only have as yet been formed [1]

Regulations under the Act.

44. His Majesty, by order under the hand of a Secretary of State, may make orders with respect to the government, discipline, pay and allowances of the Territorial Army, and other matters relating to it, and subject to any such orders the Army Council may make general or special regulations for the like purpose [2]

First Commissions

45 The President of an Association has the right of nominating qualified candidates to first commissions in the Territorial Army within 30 days after receipt of notice of a vacancy [3]

Officers' appointments

46. To be nominated for a commission a candidate must be a British subject, the son of British subjects, and of pure European descent, and be in all respects suitable to hold a commission [4] Applicants for commissions in the lowest rank apply to County Associations, those desiring commissions in a higher rank apply to the G O C -in C concerned through the usual channel Appointments to commissions in any but the lowest rank are, however, made only in exceptional circumstances

Outfit grant

47 With certain exceptions an officer on appointment receives an outfit grant on stated conditions,[5] but is liable to be called upon to refund the amount unless he fulfils the prescribed requirements [6]

Pay and allowances

48. Pay and allowances, including engineer or corps pay, additional pay and working pay, are (with certain exceptions[7]) issuable at the rates laid down in the Pay Warrant and Allowance Regulations for the days of actual attendance at annual training, at courses of instruction, and at other times if the G O C -in-C approves An allowance in aid of mess expenses is issuable during annual training in camp, week-end camps, &c [8]

Preliminary and annual training, and courses of instruction for officers

49 The Act of 1907 makes no specific provision for the preliminary or annual training of officers of the Territorial Army, but the regulations made under section 7 lay down the requirements in this respect[9], as well as the optional courses of instruction which may be undergone [10]

Resignation and retirement

50. An officer may resign his commission provided certain conditions are fulfilled[11], and is liable to compulsory retirement on attaining the age of 45 to 57 years, according to his rank on appointment[12] After 15 years' commissioned service he may be permitted to retain his rank and to wear the uniform of the corps in which he last served

[1] County of London, City of London, City of Edinburgh, City of Glasgow, and County of Warwick

[2] T R F Act, 1907, s 7 Part I of the T A Regs contains the orders made by the King, see p 17 T A Regs Under this, the Army Council are the sole administrators and interpreters of the Regulations

[3] T R F Act, 1907, s 6, T A Regs 53–56

[4] T A Regs 51, 52

[5] T A Regs, 705

[6] T A Regs, 708

[7] T A Regs, 644

[8] See T A Regs, 623 *et seq*, 691, 692

[9] See Appendix X to T A Regs

[10] See Appendix VIII to T A Regs

[11] See T A Regs, 141–143

[12] T A Regs, 137

Civil rights and exemptions

51. In England and Wales an officer of the Territorial Army who is a sheriff is exempted during embodiment from personally performing that office, and a field officer is not required to serve in the office of high sheriff In Scotland an officer of the Territorial Army may be a sheriff substitute, and in ordinary circumstances his judicial duties will have first claim on him No officer or man is compelled to serve as a peace officer or parish officer, and both are exempt from serving on any jury This latter exemption is an absolute one in Scotland, but in England and Wales it is a qualified exemption [1] The acceptance of a commission in the Territorial Army by a member of Parliament does not involve the vacation of his seat in Parliament

Precedence

52 When serving with officers of the regular forces or Militia, officers of the Territorial Army take rank as the junior of their degree, when serving with officers of the Supplementary Reserve of Officers, they take seniority on equal terms in accordance with dates of appointment or promotion [2]

Application of military law

53 An officer of the Territorial Army, if on the active list, is subject to military law at all times, and if on the Territorial Army Reserve, at any time when doing duty with any body of troops for the time being subject to military law, or when ordered on any duty or service for which as reserve officer he is liable [3]

Warrant officers, non-commissioned officers and men of the Territorial Army are subject to military law as soldiers when being trained or exercised either alone or with any portion of the regular forces or otherwise, when attached to or otherwise acting as part of or with any regular forces, when embodied, and when called out for actual military service for purposes of defence in pursuance of any agreement [4]

Enlistment

54. Each recruit is enlisted for a county, and is appointed to serve in such corps for that county or for an area comprising the whole or part of that county as he may select, and if that corps comprises more than one unit within the county, he is posted to such one of those units as he may select

The term of service is four years

After a recruit has been posted to a unit, he cannot, when not embodied, be removed to another without his consent [5]

Men can, however, when embodied, legally be posted from one unit to another, but a pledge[6] is given to every man enlisting into the Territorial Army that when sent outside the United Kingdom he shall serve with his own unit, but that if in case of special military emergency after being sent out of the United Kingdom he is necessarily attached to another unit, the attachment shall be temporary, and the man shall be returned to his own unit as soon as possible

The following classes are not permitted to enlist (or re-enlist) into the Territorial Army —

Men belonging to the Royal Navy, or to any corps of the Regular Army, Royal Marines, Royal Air Force, Militia, Territorial Army,

---

[1] T R F Act, 1907, s 23, T A Regs, 480–488, and Ch XII, para 9
[2] T A Regs, 108, S R Regs, 27
[3] A A, 175 (3A)
[4] A A, 176 (6A) See also T A Regs, 18,
[5] T R F Act, 1907, s 7 (4) (c)
[6] Para 9 of A F E 501A

Ch XI

or reserves to these forces, men who have been discharged as unfit for further service, for misconduct, or with a bad or indifferent character, men who have been convicted of a serious offence by the civil power, members of any police force, aliens, men with disability pensions, and members of the Army Recruiting Staff [1]

Re-engagement

55. Re-engagement is allowed for 1, 2, 3 or 4 years, as may be fixed by the County Association [2]

Liabilities Preliminary training and annual training

56. A man of the Territorial Army is required to attend the number of drills and fulfil other conditions prescribed by the regulations by way of preliminary training[3], and, annually, to attend a certain number of drills and other courses, as well as to train for not less than eight or more than fifteen days in the dismounted or eighteen days in the mounted branch of the Territorial Army [4] Subject, however, to any general direction which may be given by the divisional, cavalry brigade or air defence brigade commander, or by the colonel, Royal Artillery, or chief engineer attached to command staff, the officer commanding a unit may grant leave of absence to a man from the whole or any portion of the annual training, on account of sickness or any other urgent reason [5]

Embodiment.

57. When a proclamation has been issued[6] ordering the Army Reserve on permanent service, the King may order the Army Council to issue, and when issued, to revoke or vary, directions for embodying all or any part of the Territorial Army, and if all men of the first class of the Army Reserve are called out under a proclamation, then all men of the Territorial Army must be embodied within one month unless both Houses of Parliament present an address to the King asking that the whole force be not embodied, but unless the emergency so requires, the whole of the Territorial Army must not be embodied until Parliament has had an opportunity of presenting such an address It it is desired to embody the whole force when Parliament is not sitting, Parliament must be summoned by proclamation to meet within ten days if it would not otherwise meet sooner [7]

Special service

His Majesty may accept the offer of any part or men of the Territorial Army to subject themselves to the liability to be called out for actual military service for the purposes of defence at such places in the United Kingdom as may be specified in their agreement, whether the Territorial Army is embodied or not This liability for special service is limited to certain units of the Territorial Army [8]

Disembodiment

58. His Majesty may, by proclamation, order the Territorial Army to be disembodied, when the Army Council must issue

[1] T A Regs, 169
[2] T A Regs, 196
[3] T R F Act, 1907, s 14 (1) (*b*) In addition to this the recruit may be required to train for a certain time by way of preliminary training if an Order in Council so directs, but no such order has up to the present been issued (T R F Act, 1907, s 14 (1) (*a*))
[4] T R F Act, 1907, s 15 The period of annual training may, by Order in Council, be extended to a maximum of thirty days, be reduced or be dispensed with (T R F Act, 1907, s 15 (2))
[5] T A Regs, 458
[6] Reserve Forces Act, 1882, s 1
[7] T R F Act, 1907, s 17
[8] T R F Act, 1907, s 13 (2), T A Regs 18, 19.

directions for the disembodiment to be carried out [1] Until such proclamation is issued the Army Council can give directions from time to time for actually calling out for embodiment or for disembodying any part of the force

Failure to attend, or to perform drills required, for preliminary or annual training

59. A man who fails to attend at the time and place appointed for preliminary or annual training, or to attend the number of drills, &c , required, is liable to a fine not exceeding five pounds for each offence which can be inflicted by a court of summary jurisdiction [2] Proceedings may be instituted by the commanding officer or any other officer of the unit, but must, in England and Wales, be instituted within six months of the date on which the act complained of was committed

Liability in respect of articles lost, damaged or destroyed

60. When a member of the Territorial Army neglects or refuses to deliver up on demand, or negligently loses, any articles issued to him as a member of the force he may be proceeded against before a court of summary jurisdiction and is liable to pay the value of the articles , and when he designedly makes away with, sells, pawns, or wrongfully destroys or damages any of such articles he is not only liable for their value but, on conviction by a court of summary jurisdiction, may also be fined a sum not exceeding five pounds [3]

Fraudulent enlistment and false answer

61 If a man of the Territorial Army when embodied, enlists into the regular forces or any force raised in India or a colony without having obtained a regular discharge from the Territorial Army or without having fulfilled the conditions enabling him so to enlist, he commits the offence of fraudulent enlistment [4]

If a man on enlistment for the Territorial Army makes a false answer on his attestation he should be dealt with under s 99 of the Army Act

Procedure in connection with certain offences

62. Certain offences must be dealt with before the civil courts , some are cognizable by either a civil court or by a court-martial, others are cognizable by a court-martial alone, and reference should be made to the Territorial Army Regulations for particulars [5]

Forfeiture of service

63. A man who, when called out on embodiment, fails without reasonable excuse to attend, and who afterwards surrenders or is apprehended, does not forfeit the whole of his prior service on conviction for desertion as in the case of the regular soldier, but the period which elapsed between the time of the commission of the offence and the time of his apprehension or voluntary surrender does not reckon towards his period of service for discharge [6]

Enlistment into regular forces, Navy, &c

64 A man of the Territorial Army may enter the Royal Navy or enlist into the Regular Army, the Militia (Supplementary Reserve, Categories A and B only), the Royal Marines or the Royal Air Force, and, on final approval, is deemed to be discharged from the Territorial Army, but must return in good order the articles of clothing, &c , issued to him belonging to the Territorial Army He is not, however, allowed to join the Royal Naval Reserve or the Army Reserve (other than the Supplementary Reserve, Categories A or B) [7]

---

[1] T R F Act, 1907, s 18
[2] T R F Act, 1907, s 41
[3] *Ib* , s 22
[4] A A 13 (1) (*a*), and T A Regs , 325.
[5] T A Regs 305–318, 329, 332
[6] T R F Act, 1907, s 20 (3)
[7] T.A Regs 207 , S R Regs 50.

Ch XI

Courts-martial.

65. When a person belonging to the Territorial Army is tried by court-martial, one member of the court, if practicable, is to belong to the Territorial Army, and to the same branch as that to which the accused belongs [1]

Discharge

66. The method of obtaining discharge from the Territorial Army is laid down in the Act,[2] and the various classes of discharge are given in the regulations,[3] but there is one class of discharge which must be particularly noticed, *viz*, the discharge of a man for disobedience to orders while doing military duty, for neglect of duty, for misconduct, or for any other sufficient cause A C O has power to discharge a man for any of these reasons,[4] but the exercise of this power is ordinarily to be restricted to cases of misconduct or inefficiency while the man is subject to military law In all cases of this kind an investigation of the alleged misconduct is to be held, the evidence against and for the man, and particulars of the offence or offences, are to be recorded in order that, if the man appeals to the Army Council,[4] full particulars of the case may be forthcoming

Northern Ireland

67. There is power under the Act[5] for the raising of Territorial Army units in Northern Ireland, but no Territorial Army units are raised in that country

(E) *Miscellaneous Organisations and Establishments*

Royal Military College and Royal Military Academy

68. The Royal Military College is maintained for the purpose of affording a special military education to candidates for commissions in the Cavalry, Infantry, Royal Tank Corps, Royal Army Service Corps, and the Indian Army The Royal Military Academy is similarly maintained for those who are candidates for commissions in the Royal Artillery, Royal Engineers, and Royal Corps of Signals These establishments have a code of regulations of their own [6] The gentlemen cadets at these institutions (other than non-commissioned officer cadets of the Regular Army) are not subject to military law

Schools

69. The Duke of York's Royal Military School maintains and educates the sons of soldiers or deceased soldiers The Queen Victoria School maintains and educates the sons of soldiers of Scottish Regiments, or of Scotsmen who are serving or have served in the Navy, Army, or Air Force The boys are not subject to military law

Officers Training Corps

Object

70. The primary object of the Officers Training Corps is to provide students at schools and universities with a standardized measure of elementary military training, with a view to the students eventually applying for commissions in the Territorial Army (including the Reserve) or the Supplementary Reserve of Officers

Constitution.

71. The Corps consists of contingents of those universities and schools whose offer has been accepted by the Army Council To

[1] R P 20 (B)
[2] T R F Act, 1907 s 9 (3)
[3] T A Regs, 199-206
[4] T R F Act, 1907, s 9 (4), and T A Regs 201
[5] T R F Act, 1907, s 1 (1)
[6] The Regulations respecting admission to the Royal Military College and the Royal Military Academy, &c, published with A O 336 of 1927

be eligible for inclusion in the Corps a university or school contingent must have an enrolled strength of 30 cadets, and have at least one commissioned officer

Organisation

72. The Corps is organised in two divisions —

(i) Senior division, composed of university contingents

(ii) Junior division, composed of school contingents

Officers

73 The officers may belong to any of the following classes —

(*a*) Officers appointed to the General List (Territorial Army) for duty with the Officers Training Corps,

(*b*) Officers of the Territorial Army seconded for service with the Officers Training Corps,

(*c*) Officers of the Regular Army Reserve of Officers (including the Supplementary Reserve), or of the Territorial Army temporarily attached for duty with the Officers Training Corps and borne on the establishment of contingents,

(*d*) Officers of medical units appointed to Royal Army Medical Corps (Territorial Army) for duty with the Officers Training Corps

The officers are subject to military law at all times

Cadets

74 The cadets have no legal liability to service and are not required to take the oath of allegiance They are not subject to military law

Territorial Cadet Force

75. The Territorial Cadet Force consists of platoons, companies, and other bodies of lads formed for the purpose of receiving mental, moral and physical training through the medium of military instruction

Cadet units are raised under the provisions of the Territorial and Reserve Forces Act 1907, s 2 (2) (*f*), and are administered by County Associations through the Council of County Territorial Associations, which acts as the agent of the War Office

Every recognised cadet unit must be affiliated to a Territorial Army unit except where it is already affiliated to a unit of the Regular Army, in which case it must also be in touch with the County Association of the county in which it is situated

The Territorial Cadet Force is not subject to military law, and cadet officers, warrant officers and non-commissioned officers have no power or command over members of the regular or reserve forces or of the Territorial Army [1]

(F) *Royal Marines*

Royal Marines

76. On several occasions regiments appear to have been raised for service at sea, but it was formerly the practice for regiments of the land forces to be sent to serve on shipboard, and even as late as the last century certain regiments were more usually sent on this service than others

Regiment of Royal Marines raised in 1755

77 The corps now known as the Royal Marines was first raised in the year 1755, and consisted of two divisions, the infantry and artillery In 1923 the two divisions were amalgamated under the title of Royal Marines, and rank after the Royal Berk-

[1] Full information as to the assistance given to cadet units and the system by which they are administered is contained in the Regulations governing the formation, organisation and administration of Territorial Cadet Units in the British Isles, issued with Army Orders for September, 1927

Ch XI — shire Regiment[1] The men are liable to serve on board His Majesty's ships, and, when borne on the books of any of His Majesty's ships for such service, are subject to the Naval Discipline Act, as if they were seamen of the Royal Navy When not borne on the books of any of His Majesty's ships they are subject to the Army Act [2]

Term of service, &c

78. The men are enlisted according to the procedure in Part II of the Army Act, except that the duration of their service is fixed, by Acts applying only to them, at a term of twelve years, with a power to re-engage for a further period of nine years, making up twenty-one years in the whole [3] The service of a marine on a foreign station may be prolonged for two years, and a marine who desires to continue in the service after twenty-one years may give notice of his desire, and, with the approval of his commanding officer, may continue in the service, with a right to be discharged after the expiration of three months' notice A marine, on the completion of his term of service abroad, is, like a soldier, entitled on his discharge to be sent home to England A marine is not allowed to reckon towards completion of his engagement the time during which he is absent from his duty by reason of imprisonment, or desertion, or other specified circumstances [4]

Transfer of marine to army

79. The Army Council and the Admiralty can make regulations providing for the transfer with his consent of a marine to another part of the regular forces, and of a soldier of any part of the regular forces to the Royal Marines, and a man so transferred is to become a marine or a soldier of the other part of the regular forces as nearly as possible as if he had been enlisted for the force to which he is transferred [5]

Expenses of Royal Marines.

80. The expenses of the marine force are included in the votes for the Admiralty, and the force is under the control of the Admiralty, and not of the Army Council, and the Admiralty exercise, in respect of the Royal Marines, many functions that are exercised, in the case of the land forces, directly by His Majesty [6]

Indian Forces

Observations on Indian forces

81. The Indian regular forces consist of regiments and formations normally stationed in India, and formed almost entirely from Indians The Indian officers, who hold commissions from the Viceroy and Governor-General of India, and men of these forces, are subject to the Indian Army Act, 1911, or previous Acts which it has superseded, wherever they are serving and are only to a limited extent subject to the Army Act [7] There are also Europeans, and a certain number of Indians, serving as officers, and persons of certain degrees of European descent serving as non-commissioned officers, hospital apprentices, or otherwise, who, though forming part of the Indian forces, belong to His Majesty's regular land forces, and are subject to British

[1] Clode, Mil Forces, i Chs ix, xiii As to precedence, see K R, 575
[2] A A, 179 (15), 180 (8)
[3] 10 & 11 Vict c 68, 20 Vict c 1
[4] 10 & 11 Vict c 63, s 8
[5] A.A, 179 (12)
[6] A.A, 179 (4) (6)-(11)
[7] A A 180

and not to Indian military law The enlistment of Europeans for these forces, except for medical or other special service, is prohibited [1] Commissions on the unattached list for appointment to the Indian Army may be given to cadets who have passed through Sandhurst or the Royal Military College, Kingston, Canada, to candidates from approved Universities, and to officers of the Supplementary Reserve and Territorial Army, and transfers to the Indian Army are effected after a period of probation If it is required to supplement this direct supply, officers of British units serving in India can be transferred permanently to the Indian Army if qualified according to the regulations for the time being in force Officers may be employed, according as the Government of India may direct, in any military or civil employment, irrespective of their ranks in the Indian Army Such officers, while holding civil employments, cannot assume a military command, but continue to receive promotion in military rank in the ordinary course, and on accepting any military appointment they are entitled to take military command [2]

In addition to the Indian regular forces there are the Auxiliary Force composed of all arms and the Indian Territorial Force composed of infantry and pioneer battalions, the former, speaking generally, recruited from European British subjects and the latter from those who are not European British subjects

Dominion Forces

Observations on Dominion forces

82. The forces of the self-governing Dominions are raised entirely under the legislation passed in the several Dominions In the case of the Dominion of Canada and the Union of South Africa, the forces may, for the purpose of defence of their own Dominion, be required to serve outside the territories in which they are raised, while in the case of the Commonwealth of Australia, the Dominion of New Zealand and the Irish Free State this is not provided for The forces of Australia, New Zealand, and South Africa are raised on the basis of Acts providing for liability to compulsory service and training, while those of Canada are raised entirely by voluntary enlistment and enrolment, although the Governor-General is empowered in the event of a *levée en masse* being proclaimed to require all male inhabitants to serve, who are capable of bearing arms The forces may be divided generally into permanent forces, who train continuously and correspond to the Regular Army in Great Britain, and non-permanent forces, whose training is non-continuous, and who correspond generally to the Territorial Army The Governments of the Dominions of Canada and New Zealand and the Commonwealth of Australia have adopted as their code of military discipline the Army Act, which, broadly speaking, applies to the permanent forces at all times and to the non-permanent forces when they are called out for training or active service The Army Act has not been adopted by the Union of South Africa, but the Union Military Code, which applies to the permanent forces at all times, is a modified form of the Act and Rules of Procedure

---

[1] A A 180 (2) (*h*) and note
[2] Royal Warrant of 16 January, 1868, as amended

Colonial Forces and the Channel Islands Militia

Observations on Colonial forces and Channel Islands Militia

83. The Colonial forces are of two classes, namely, the forces raised by the government of a colony, and the forces raised in a colony by direct order of His Majesty to serve as auxiliary to, and in fact to form part for the time being of, the regular forces. The first class of Colonial forces—those raised by the government of a colony, such as the King's Own Malta Regiment, and the Royal West African Frontier Force—are only subject to the Army Act (i) when so provided by the law of the colony, or (ii) when serving with part of His Majesty's regular forces, but in that case only so far as the colonial law has not provided for their government and discipline, and subject to the exceptions specified in the general orders of the officer commanding the forces with which they are serving. The Army Act (s. 177), however, provides that the colonial law may extend to the forces although beyond the limits of the colony where they are raised.

The second class of Colonial forces—of which the Royal Malta Artillery, the non-Europeans of the Fortress Company, Royal Engineers, and Signal Section, Royal Corps of Signals, at Hong Kong, and the Hong Kong-Singapore Brigade, Royal Artillery, are examples—is referred to by ss. 175 (4) and 176 (3) of the Army Act. Their pay and maintenance are voted annually by the Imperial Parliament, and they are in fact Imperial forces although serving in a colony. The Royal Malta Artillery is declared by the Army Act to be part of the regular forces, while the others are included in the Royal Warrant defining "Corps."[1] The men composing the Hong Kong-Singapore Brigade, Royal Artillery, are in fact enlisted to serve in any part of the world. A man enlists in the Royal Malta Artillery for service in Malta and its dependencies alone.

The Channel Islands Militia is raised under local laws, and consists of the Royal Militia of the Island of Jersey, the Royal Guernsey Militia and the Royal Alderney Militia.

---

[1] Army Order 49 of 1926, but see A. A. 17c and note.

CHAPTER XII

RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE

Legal status of officers and soldiers

1. The English law on this subject differs from that of some foreign countries A man who joins the Army—whether as an officer or as a private—does not cease to be a citizen His official character is superimposed upon his civil character, and does not obliterate it [1] At the same time it has been found necessary, or desirable, to modify in certain minor respects his status as a civilian, in some cases by imposing restrictions and in others by conferring immunities and privileges

Under the criminal law

2. So far as the criminal law is concerned, the position of an officer or soldier is the same as that of a civilian If he commits an offence against the ordinary criminal law he can be tried and punished by the civil courts as if he were a civilian, and various liabilities are incurred by an officer who, on due application being made, refuses to hand over a man under his command to the civil authorities, or to assist in his apprehension [2]

In civil matters

3. In the case of civil rights, duties and liabilities, there is a difference between the position of a soldier and that of an ordinary citizen The former cannot whilst in the service change his domicile,[3] or acquire by residence a status of irremovability from, or a settlement in, some parish other than his own [4] Again, he cannot be punished for deserting or neglecting to maintain his wife and family, or leaving them chargeable to a parish or union Although his legal liability to maintain them and any bastard children remains, it cannot be enforced against his person, pay, or equipment, but provision has been made for deducting limited sums from his pay for the maintenance of such dependants [5] A soldier can without any official approval contract a legal and valid marriage, but claims to "marriage allowance" or "married quarters" are governed by regulations [6]

Restrictions on creditors

4. Certain restrictions have also been imposed on the creditors of a soldier, so as to prevent the Crown losing his services He cannot, under s 144 of the Army Act, be arrested or compelled to appear before a court on account of any debt, damages, or sum of money under £30, but the exemption applies to his person, not to his property, and a creditor may sue and have execution, so long as he does not touch the person, pay, or equipment of the soldier A soldier cannot be placed under stoppages for his private debts, and persons who suffer soldiers to contract such debts do so at their own risk An officer or soldier is unable, legally, to charge or assign his pay or pension [7]

---

[1] See *Burdett* v *Abbott* (1812) 4 Taunt 401 *per* Mansfield, C J, , *Haddon* v *Evans* (1919), 35 T L R 642

[2] A A 39, 41, 162 Under the Jurisdiction in Homicides Act, 1862, provision is made whereby a person subject to military law who is charged with the murder or manslaughter of any other person subject thereto, committed in England or Wales, may, in certain circumstances and by order of a judge be tried at the Central Criminal Court in London

[3] *Ex parte Cuningham* (1884) L R 13 Q B D 418, *In re Macreight* (1885), L R 30 Ch Div. 165

[4] Clode, Mil Forces, ii 38 Poor Removal Act, 1846, s 1

[5] A A 145; It will be noted that this section does not apply to an officer

[6] See K R 306–314, Allowance Regs, sec 6

[7] A.A 141 As to the appropriation of a portion of the pay or pension of a bankrupt officer to his creditors, see the notes to that section

Ch XII
Wills

5. Officers and soldiers have, while actually "*in expeditione*," certain privileges in regard to making wills [1]

By s 11 of the Wills Act, 1837, a soldier (which term includes an officer) "being in actual military service," may dispose of his personal[2] estate by a so-called "soldier's will," although under the age of 21

With regard to real estate the Wills (Soldiers and Sailors) Act, 1918, provides in effect that—(i) a "soldier's will" disposing of real estate in England or Ireland[3] shall be valid if the testator was of such age and the disposition is made in such manner and form that it would have been valid if it was a disposition of personalty by a person domiciled in England or Ireland, and (ii) that such a will disposing of heritable property in Scotland shall not in future be invalid by reason only that the testator is under 21, provided he is of such an age that he could if domiciled in Scotland have made a valid testamentary disposition of movable property

For the above purposes a man is "in actual military service" (*in expeditione*) when a state of war exists and he has taken some step towards joining the field forces, *e g*, from the time when he or the unit to which he belongs receives embarkation or mobilization orders for active service,[4] down to the final conclusion of operations[5], and the term "soldier" has been held to include an army nursing sister *en route* for the front [6]

A "soldier's will" may consist of a document not attested (as a civilian's will must be), *e g*, a private letter to the person intended to benefit under it, or to some one else, stating his wishes, also a mere verbal statement of his wishes is sufficient if such statement can be proved to the satisfaction of the court [7]

To establish the validity of such a will it is not necessary to prove that he knew that he was making a will, or had power to make one in that manner, but it must be shown that he intended to express deliberately his wishes as to the disposal of his property in the event of his death [8] Such a will is revoked (like any other will) by his subsequent marriage [9] It continues in force until revoked or superseded, unless its language shows an intention that it should only take effect if the testator died during the particular expedition [10]

A minor can by a "soldier's will" validly exercise a general power of appointment exercisable by will[11], and a "soldier's will"

---

[1] It is not possible to deal fully with this subject in the present work The information here given, together with that in the Soldiers' Service and Pay Book (A B 64), should be sufficient to enable an officer to make, or help a soldier to make, a valid disposition of his property upon emergency, but except where small amounts of personal property alone are concerned it is most unwise to rely upon the expedient of a "soldier's will" made without legal advice

[2] See *Godman* v *Godman*, L R (1920) P 261

[3] Now applicable only to Northern Ireland

[4] *In the goods of Hiscock*, L R (1901), P 78, *Gattward* v *Knee*, L R (1902) P 99, *In the goods of Gordon* (1905), 21 T L R 653, *In re Kitchen* (1919) 35 T L R 612

[5] *In re Lamond* L R (1915), 2 Ch, 240

[6] *In the estate of Stanley* L R (1916), P 192

[7] See, *e g*, *In the goods of Scott* L R (1903), P 243, *In the estate of Pawle* (1918) 34 T L R, 437, *In the goods of Tweedale* (1875), L R 3 P & D 204, *In the goods of Gordon* (1905) 21 T L R, 653, *In the goods of Coleman* (1920) 2 I R 332

[8] *In re Stable* L R (1919), P 7, *Godman* v *Godman* L R (1920), P 261

[9] *In the estate of Wardrop* L R (1917), P 54

[10] *In the estate of Pawle* (1918) 34 T L R, 437, *In the goods of Coleman supra*

[11] *In re Wernher* L R (1918), 2 Ch, 82

can validly appoint a guardian of his infant children (even though it disposes of no property)[1]

A person who (although attestation is unnecessary) does in fact attest such a will, is not thereby precluded from taking a benefit thereunder [2]

Death duties, &c

6. It is not necessary to take out probate or letters of administration in respect of small sums due to deceased officers and soldiers in respect of pay, pensions or prize money [3] Estate duty is not payable on the property of soldiers under the rank of serjeant who are killed or die while in the service [4] Where a person dies from wounds inflicted, accident occurring or disease contracted, within three years before death, while on active service against an enemy or on service which is of a warlike nature, and was at the time subject to military law as an officer or soldier, a total or partial remission of death duties may be granted [5] Special provision has been made for collecting and realising the effects of a deceased officer or soldier, and paying certain regimental debts thereout [6] Wound and disability pensions are exempt from income tax [7]

Exemption from licence duty

7. Officers are entitled to an exemption from licence duty for any servant who is a soldier and is employed by the officer in accordance with the regulations of the service [8]

Exemptions from rates and tolls

8. Officers and soldiers have no personal exemption from rates, but where an officer occupies property in respect of his office, the occupation is treated as occupation by the Crown, and he is not liable to be rated in respect of that property, inasmuch as the Crown is exempt from rates If the occupation is for his own personal benefit, and not for the benefit of the Crown, an officer will be liable to be rated like any other individual Similarly, officers and soldiers of the regular forces, when on duty, are exempt from tolls,[9] but are not so exempt when travelling[10] for their own purposes only

Public of municipal offices, jury service, &c

9 An officer of the regular forces on the active list is disqualified for the office of sheriff of any county or borough, and for that of mayor or alderman (or any other office) in any municipal corporation, but such disqualification does not extend to membership of a county council [11] Officers of the Territorial Army are not so disqualified [12]

Officers of the regular forces while on full pay,[13] soldiers of the regular forces,[14] militiamen (supplementary reservists) when

---

[1] Wills Act, 1918, s 4

[2] *In re Lamond* L R (1915), 2 Ch , 240

[3] Pensions and Yeomanry Pay Act, 1884, s 4 (personalty not exceeding £100), Army Pensions Act, 1830, Army Prize Money Act, 1832

[4] Stamp Act, 1815, Sched , Part III, and Finance Act, 1894, s 8 (1)

[5] Finance Act, 1900, s 14 , Death Duties (Killed in War) Act, 1914 , Finance Act, 1918, s 44, Finance Act, 1919, s 31 , Finance Act, 1924, s 38

[6] Regimental Debts Act, 1893, in Part III, *post*

[7] Finance Act, 1919, s 16, see s 17 as to war gratuities

[8] 32 & 33 Vict , c 14, s 19(5) As to firearms used for military purposes, see the Gun Licence Act, 1870, s 7, as amended by subsequent enactments, see also the Firearms Act, 1920, s 1 (8)

[9] A A 143, and notes thereto

[10] See *Jenkyns* v *Southampton, &c , Co.* (1919) 35 T L R 435, as to what is "personal luggage" in the case of an officer.

[11] A A 146

[12] A A 181(5).

[13] Juries Act, 1870, s 9, sched , Jurors (Scotland) Act, 1825, s. Jury Laws Amendment Act (Northern Ireland), 1926, s. 9, sched. 3.

[14] A.A. 147.

Ch XII

called out on permanent service or otherwise subject to military law,[1] and officers and men of the Territorial Army[2] are exempt from jury service [3]

Officers on full or half-pay and officers and men of the Territorial Army are exempt from compulsion to undertake any municipal or parochial office [4]

In time of war, provision is sometimes made relieving members of local authorities from the disqualification which would otherwise result from their absence on service [5]

Other restrictions

10 Officers on full pay and soldiers are prohibited by the King's Regulations from joining the directorate of any public or other company without permission They are also prohibited from acting either directly or indirectly as agents for any company, firm, or individual engaged in trade,[6] and are subject to restrictions as to communications to the press, publication of books and articles, &c [7]

Parliamentary candidature, &c

11. An officer or soldier is prohibited from taking any active part in political meetings, or becoming a candidate or prospective candidate for Parliament until he has retired, resigned, or been discharged, or in the case of a field marshal, until he has given up any appointment which he may be holding [8]. This prohibition does not apply to an officer or man of the reserve forces (including officers in any reserve of officers) or the Territorial Army as such, except when embodied or called out on permanent or active service, or when holding a full time paid appointment, *e g*, adjutant [9]

Right to vote at Parliamentary election

12 An officer or soldier has the same right as a civilian to vote at an election for members of Parliament

The Representation of the People Act, 1918,[10] gives to an officer or soldier certain privileges in respect of registration and of voting He is entitled, on attaining the age of 21 years, to be registered as an elector for any constituency for which he would have had a qualification but for his service He is also entitled to be placed upon the list of absent voters and can then, if serving in the United Kingdom, record his vote by post in the prescribed manner, or, if serving outside the United Kingdom, he can appoint a proxy in the prescribed manner to vote on his behalf[11]

An officer or soldier, if in the United Kingdom, ought to be allowed, if he wishes, to go to the place of election and record his vote, unless military exigencies render it impossible, but where he is registered on the absent voters' list he can record his vote only by post

[1] A A 190(8), 178, 147
[2] T R F Act, 1907, s 23(4)
[3] In the case of England and Wales it is conditional upon the person taking steps to keep his name off the jury list (Juries Act 1870, s 12)
[4] Municipal Corporations Act, 1882, s 253, in the case of parochial offices there is no express provision, but the principle appears to be generally recognised As to reservists, see Reserve Forces Act, 1882, s 7
[5] Local Authorities Relief Acts, 1900, 1914
[6] K R 516
[7] K R 522
[8] K R 517 See also O in C, dated 25th July, 1927, and Army Order 321 of 1927
[9] T A Regs 273
[10] As amended by subsequent Acts
[11] See K R, App IX

Mis-cellaneous enactments

13. In conclusion reference may be made to certain miscellaneous enactments such as those which deal with marriages of soldiers abroad,[1] the registration of marriages and births abroad,[2] the keeping of service canteens without full compliance with the law of licensing,[3] and the acting of plays in service recreation rooms without a stage play (or theatre) licence [4]

[1] Foreign Marriage Act, 1892, ss 12, 22
[2] Registration, &c, (Army) Act, 1879
[3] A A 174, Licensing Consolidation Act, 1910, s 111 (2), Licensing (Scotland) Act, 1903 s 50
[4] A A 174A.

CHAPTER XIII

EMPLOYMENT OF TROOPS IN AID OF THE CIVIL POWER

Object of the chapter

1 The object of this chapter is to give an explanation of the law relating to the duty of the soldier in case of riot and other disturbances of the peace

Two main obligations under the common law

2 The common law, which governs soldiers and other citizens alike, imposes two main obligations in such cases, which are, firstly, that every citizen is bound to come to the aid of the civil power when the civil power requires his assistance to enforce law and order, and, secondly, that to enforce law and order no one is allowed to use more force than is necessary

These obligations apply to everyone in every type of disturbance

Legal position regarding soldiers

3 When called to the aid of the civil power soldiers in no way differ in the eyes of the law from other citizens, although, by reason of their organisation and equipment, there is always a danger that their employment in aid of the civil power may in itself constitute more force than is necessary

The law is clear that a soldier must come to the assistance of the civil authority where it is necessary for him to do so, but not otherwise No excess of force or display must be used, and a soldier is guilty of an offence if he uses that excess, even under the direction of the civil authority, provided he has no such excuse as that he is bound in the particular circumstances of the case to take the facts, as distinguished from the law, from the civil authority [1]

Though there is no legal difference between soldiers and other citizens in respect of the duty to respond to the call of the civil authority, there is, in cases of disturbance where the civil authority has not asked for help, a duty to take action laid upon military officers by the King's Regulations which is not laid upon other citizens, except magistrates and peace officers (K R 1256), and even though the civil authority should give directions to the contrary the officer commanding troops, if it is really necessary, is bound to take such action as the circumstances demand

Requisition for intervention by troops

4 The primary obligation for the preservation of order and for the suppression of disturbance rests with the civil authority The civil authority [2] should only requisition troops when satisfied that it is or will be impossible to deal with the situation which has developed, or is immediately apprehended, by means of all the resources of the civil power, that is to say, the local police, supplemented by any additional police that can be procured from elsewhere or by any police reserves or special constabulary that may be available

An officer who receives a requisition for troops from a distance is bound to comply if he is not in full possession of the facts If, on arrival, the magistrate demands immediate intervention before the officer has had time to investigate for himself, he must intervene

---

[1] See the appendices to this chapter

[2] For definition of "civil authority" for this purpose, see K R 1239

and he would be protected by the law If, on arrival, an officer has time to investigate, he must do so, and acquaint himself with the facts and judge for himself before he intervenes An officer on the spot, while attaching great weight to the opinion of the magistrate, must himself decide whether military intervention is necessary to deal with the circumstances in which he has been requisitioned

Responsibility between civil and military authority.

5 There remains to be considered on whom, after a decision to take action has been made, the responsibility rests in the case of the employment of troops in the suppression of disturbances As stated in para 4, the primary duty of preserving public order rests with the civil authority An officer, therefore, in all cases where it is practicable, should place himself under the direction of a magistrate

The duties of a magistrate do not, however, impose upon him a knowledge of the weapons at the disposal of the troops, or of the effect of those weapons, he may not be, therefore, the best judge as to the degree of force to be employed by the soldiers in the particular circumstances for which he desires and requests their intervention A magistrate, therefore, if he acts with discretion, will necessarily defer to the opinion of the officer on military matters, particularly as to the degree of force to be used The primary responsibility, however, remains with the magistrate, and if he is on the spot, it is his duty to request the officer " to take action "[1] when the civil resources at his disposal are insufficient to deal with the circumstances which present themselves

On the other hand, an officer will not perform his duty if, from fear of responsibility, he takes no action and allows outrages to be committed which it is in his power to check, merely on the ground that there is no magistrate to direct him to take action

If the magistrate and the officer are acting together, the obligation lies on the magistrate to request the officer to take action, but the action to be taken, *i e*, the degree of force required in the circumstances, must be judged by the officer, the latter would incur considerable responsibility if he were to fire without a request to take action from the magistrate, or if he were to refuse to fire when requested to do so, but circumstances which he sees before him might justify an officer in firing, or not firing, notwithstanding the request which he receives from the magistrate The officer must judge of the degree of force to be employed, and it is his duty to fire if he cannot otherwise stop the violence which is being committed before him He must decide whether it is necessary to fire or not, and is responsible for his action

Types of disturbance.

6 The types of disturbance in which troops may be called upon to intervene matter little, and the principles set forth in the preceding paragraphs apply to each and every type, but an explanation of the law relating to disturbances may be useful to officers

Laws affecting various types of disturbance.

7 The law makes provision for the following situations, which are those in which troops may find themselves when called to the assistance of the civil authority —

(1) A National Emergency (Emergency Powers Act, 1920)

[1] K R 1238–1257

(2) Intimidation of Workers (Conspiracy and Protection of Property Act, 1875)
(3) Unlawful picketing (Trade Disputes Act, 1906, and Trade Disputes and Trade Unions Act, 1927)
(4) Unlawful assembly
(5) Riot (Riot Act, 1715)
(6) Insurrection

In each of the above situations, troops may be called upon to intervene The first three are generally connected with trade disputes and industrial unrest The merits or demerits of such disputes or unrest are of no concern whatsoever to soldiers, who are solely concerned with the duty and obligation common to all citizens of assisting the civil authority in the maintenance of law and order, and in these situations their principal duty will be the protection of persons and property

Emergency Powers Act, 1920

8 The Emergency Powers Act, 1920,[1] enacts that if at any time it appears that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel or light, or the means of locomotion, to deprive the community, or any substantial portion of the community of the essentials of life, His Majesty may, by proclamation, declare that a state of emergency exists

So long as such a proclamation remains in force, it is lawful for His Majesty in Council, by order, to make regulations for securing the essentials of life to the community, and those regulations may confer or impose on a Secretary of State, or other Government Department, or on any other persons in His Majesty's service, or acting on His Majesty's behalf, such powers and duties as His Majesty may deem necessary for the preservation of peace, for securing and regulating the supply and distribution of food, water, fuel, light, and other necessities, for maintaining the means of transport or locomotion, and for any other purposes essential to the public safety and the life of the community

Under such regulations soldiers may be called upon to perform duties, not otherwise regarded as military duties, in order to secure the necessities of life to the community, although no actual breach of the peace has occurred, and it follows that they are entitled to use such force, and no more, as may be necessary to enable them to carry out the duties entrusted to them

Conspiracy and Protection of Property Act, 1875

9 Under the Conspiracy and Protection of Property Act, 1875, s 7, an offence is committed by any person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or to abstain from doing, wrongfully and without legal authority —

(1) Uses violence to or intimidates such other person or his wife or children, or injures his property, or
(2) Persistently follows such other person about from place to place, or
(3) Hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof, or

[1] See page 806

(4) Watches or besets the house or other place where such other person resides, or works, or carries on his business, or happens to be, or the approach to such house or place, or

(5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road

Trade Disputes Act, 1906 and Trade Disputes and Trade Unions Act, 1927

10 The Trade Disputes Act, 1906, modified the Conspiracy and Protection of Property Act, 1875, to the extent that it made it lawful for one or more persons, acting on their own behalf, or on behalf of a trade union, or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working

It is to be observed that the above-mentioned Acts did not legalise any action which went beyond the purposes defined in the last paragraph Intimidation therefore remained illegal even though committed by persons attending nominally for the purposes of giving or obtaining information or persuading others The Trade Disputes and Trade Unions Act, 1927, s 3(1), made this quite clear by declaring that it is unlawful for one or more persons to attend at or near a house or place where a person resides, &c, for the lawful purposes mentioned in the Act of 1906, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place The Act of 1927, however, extended the meaning of "intimidation" (as hitherto interpreted in the courts) by defining the expression "to intimidate" as meaning "to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependents or of violence or damage to any person or property" The expression "injury" in this definition includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong

The Act of 1927 further makes it unlawful for a person or persons to watch or beset a house or place where a person resides, or the approach to such a house or place, for the purpose of inducing any person to work or to abstain from working

Unlawful assembly

11 An unlawful assembly is an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose (lawful or unlawful) in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it [1]

The commission of an act of violence by any one or more of those assembled is not necessary to make the assembly unlawful, if its character and circumstances are such as to be calculated to alarm, not only foolish or timid people, but persons of reasonable firmness and courage [2] If the assembly is for a lawful purpose and with no intention of carrying out that purpose in an unlawful manner, the

---

[1] Laws of England, vol ix, p 469, Digest of Criminal Law, p 55.
[2] *R v Vincent*, 9 C & P, 95

Ch XIII

assembly is not an unlawful assembly, even though the persons assembling know that the assembly is likely to be resisted by others [1]

Example of what is and what is not an unlawful assembly

12 Accordingly, in the case of the Chartist Meeting at Newport in 1839, an assembly was held to be unlawful in which from 300 to 1,000 persons were gathered together, and in respect of which evidence was given that the speakers endeavoured to incite the people to disaffection and the use of physical force No actual outrage was perpetrated, but numbers of persons armed with sticks were proved to have marched in procession, and several witnesses swore that they apprehended danger both to life and property [2] On the other hand, a peaceful meeting of the Salvation Army is not an unlawful assembly and cannot be made so by the knowledge that the assembly will be resisted and a breach of the peace ensue [3]

Suppression of unlawful assemblies

13 The law would fall far short of what is needed for the preservation of society if it did not allow all necessary measures to be taken for dispersing or otherwise putting an end to unlawful assemblies, riots, and insurrection The law accordingly declares that an unlawful assembly may be dispersed, although it has committed no act of violence, for it is better that individuals should be stopped before they proceed to outrage and violence, and a small amount of punishment in the first instance will probably save a great amount of crime afterwards [4]

Definition of "riot"

14 A riot is a tumultuous disturbance of the peace by three or more persons assembling together without lawful authority[5] with an intent mutually to assist one another against any who oppose them, in the execution of some enterprise of a private nature, and who afterwards actually begin to execute the same in a violent and turbulent manner to the terror of the people It is immaterial whether the act done be unlawful or not, but there must be an act [6] Doing the act in a manner calculated to inspire people with terror is punishable, whether it is lawful or unlawful, but where the object of the assembly is lawful, it requires far stronger evidence of terror caused by the means used to induce a jury to return a verdict of guilty

Examp'es of riot

15 For example, persons assembling together on a racecourse with the intent mentioned in para 14 and tumultuously pulling down a booth are guilty of a riot Again, a number of persons assembling for a lawful object, such as pulling down an inclosure which has been illegally put up, will be guilty of a riot if their assembling is accompanied with circumstances of actual force or violence calculated to inspire people with terror

Riot Act

16 The first section of the Riot Act enacts that, " If any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace and being required or commanded by

[1] *Beatty* v *Gillbanks*, L R , 9 Q B D 308 The principle established by this case does not appear to be affected by the later decision in *Wise* v *Dunning*, L R , (1902) 1 K B , 167, see Dicey, Law of the Constitution (6th Edn) App Note V , p 448

[2] *R* v *Vincent*, *ante*, and see *R* v *Neale*, 9 C & P 431 in which the law is similarly laid down by Mr Justice Littledale

[3] See note 1 above

[4] Baron Alderson in *R* v *Vincent*, 9 C & P , 94

[5] A lawful gathering may become a riot if a proposal to do collectively some act of violence is agreed to and executed

[6] Hawkins, Bk 1, ch lxv, sec 1, and see *R* v *Graham* 16 Cox Crim Ca 22

any justice, by proclamation to be made in the King's name, in the form hereinafter directed, to disperse themselves, and peaceably to depart , shall, to the number of twelve or more unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation," they shall be adjudged felons

17 The form of the proclamation and the mode of making it direct the justice among the rioters, or as near them as he can safely come, to command silence, and then with a loud voice to make proclamation in the following words — Form of proclamation

> " Our Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George the First, for preventing tumults and riotous assemblies God save the King"

18 Further, the Act provides that, if the persons so riotously and tumultuously assembled, or twelve or more of them, remain together for one hour after the proclamation, they may be seized and apprehended by any justice or person assisting him, and that if any of the persons so unlawfully assembled happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting, then the justices, constables, and persons assisting such justices and constables shall be fully indemnified for any such killing, maiming or hurting Persons hindering the reading of the proclamation, and if the proclamation be hindered, persons having knowledge of such hindrance and not dispersing within an hour after the hindrance, are liable to the same punishment as persons who remain together for an hour after the reading of the proclamation Effect of remaining for an hour after proclamation.

19 Every magistrate, sheriff, constable, and other peace officer is required to do all that in him lies for the suppression of a riot, and each has authority to command all other subjects of the King to assist him in that undertaking Every man is bound, when so called upon, to yield a ready and implicit obedience, and to do his utmost to assist in suppressing any tumultuous assembly [1] Suppression of riots

20 It is important to realise that the passing of the Riot Act in no way limited such powers as the civil authorities already possessed, or rendered it illegal for them to interfere, should circumstances require it, before the proclamation has been read and an hour has elapsed [2] At the same time the action of the legislature in passing the Act suggests strongly that, as a general rule, it would be extremely imprudent to use an armed force against a mob until the proclamation has been made and an hour has elapsed, except in circumstances where either the proclamation cannot be read owing to the violence of the mob, or the mob, A riot may be dispersed before the proclamation is read

[1] Charge of Chief Justice Tindal to the Grand Jury in 1832, quoted in *R* v *Pinney*, 5 C & P 262 note

[2] See appendices I & II to this chapter

Ch XIII

before the expiration of an hour, perpetrate or are evidently about to perpetrate some outrage amounting to felony [1]

Apprehension of rioters

21 There is no doubt that a person lawfully engaged in trying to apprehend a rioter is justified in using any degree of force to protect himself, or to overcome resistance It is, however, sometimes impracticable to attempt the apprehension of individuals without using means calculated to occasion bloodshed and the firing on a mob can only be excused by the necessity of self-protection, or by the circumstance of the force at the disposal of the authorities being so small that the commission of some felonious outrage—such as the burning of a building, or the breaking open of a prison, or the attacking of a barrack—cannot be otherwise prevented [2]

Definition of 'insurrection"

22 An insurrection differs from a riot in this—that a riot has in view some enterprise of a private nature, while an insurrection savours of high treason, and contemplates some enterprise of a general and public nature [3] An insurrection, in short, involves an intention to "levy war against the King," as it is technically called, or otherwise to act in general defiance of the government of the country

Examples of insurrection

23 For example, a determined mob assembling to pull down or burn a building belonging to their civil employers with whom they have a dispute, are engaged in a riot as soon as they have actually commenced to execute their purpose If the object were to attack a barrack or seize a store of bombs with a view to arming themselves and making war against the government, they would be in a state of insurrection

Suppression of insurrection

24 The observations made above with respect to the duty of suppressing riots apply still more strongly to insurrections, or "riots which savour of rebellion" In such cases the use of arms may be resorted to as soon as the intention of the insurgents to carry their purpose by force of arms is shown by open acts of violence, and it becomes apparent that immediate action by the use of arms is necessary

Distinction between unlawful assembly, riot and insurrection

25 The distinction between these three kinds of gathering may be thus expressed briefly —An unlawful assembly is an assembly which may reasonably be apprehended to cause danger to the public peace through the action of the persons constituting the assembly As soon as an act of violence is perpetrated it may become a riot (see para 14 above), while if the act of violence be one of a

---

[1] "The civil magistrates are left in possession of those powers which the law had given them before If the mob collectively, or a part of it, or any individual within or before the expiration of that hour attempts or begins to perpetrate an outrage amounting to felony, to pull down a house, or by any other act to violate the law, it is the duty of all present, of whatever description they may be, to endeavour to stop the mischief and apprehend the offender", *per* Lord Loughborough C J , in the "Gordon Riots" Trial (1781), 21 Howell's State Trials, 493

In the Six Mile Bridge case of riots in the County Clare election in 1852, an escort of two officers, two serjeants, and forty rank and file, employed to protect voters going to poll, were attacked and stoned by the mob The soldiers fired without orders from their officers, but, as was subsequently sworn by the commanding officer, *in defence of their own lives*, and killed two or three of the mob Indictments were preferred against those who fired, or were supposed to have fired, but the Bills were thrown out by the Grand Jury The charge of Mr Justice Perrin to the Grand Jury in this case appears virtually to ignore the riotous character and unlawful object of the mob, and the fact of the unprovoked attack on the soldiers

[2] *R* v *Vincent*, *ante* See also Lord Mansfield's charge on the trial of Lord George Gordon in 1781, 21 Howell's State Trials, 644 Lord George Gordon was indicted for high treason, but acquitted on the ground that his acts, in the opinion of the jury, did not amount to constructive levying of war against the Crown

public nature, and with the intention of carrying into effect any general political purpose, it becomes an insurrection or rebellion [1]

Additional crimes usually incident to riots and insurrection

26 The offence of taking part in a riot, or an insurrection, is independent of any additional crime which the persons assembled may either themselves commit, or of which they may be held to be guilty as principals, by reason of their forming part of the mob which commits such a crime For example, a riot seldom takes place without the rioters breaking into houses or otherwise destroying property An insurrection almost always involves murder or attempts to murder All persons present at the commission of such crimes are equally principals in the breaking into houses destroying property, murder, or attempts to murder, although at the time some of them take no actual part in the transaction at all, but practically the extreme measure of punishment is usually awarded only to the leaders [2]

Circumstances which may guide authorities in the use of force

27 Undoubtedly the decision as to the use of force is a difficult one, but many circumstances suggest themselves which may serve as a guide to justices and officers called on to act in cases of sudden tumult The first question they will ask themselves is "*for what purpose has the mob come together?*" A knowledge of its purpose usually furnishes the best clue to a determination of the time for, and mode of, forcible interference For example, a mob assembles for the purpose of pulling down an obstacle to a footpath which has been obstructed illegally or with doubtful legality Their proceedings may be disorderly, but their purpose may be legal, and certainly is not felonious The probability is that as soon as they have effected their object they will disperse In such a case the best course is to use no force, but merely to take means to identify some of the parties concerned with a view to subsequent proceedings, if necessary

Again, a meeting or procession assembles for, say, the furtherance of parliamentary reform, the abolition of an obnoxious tax, or some other political object not involving rebellion against established authority, or any intention to enforce by violence the object which they have in view It is, of course, quite possible that excitement may prompt them to outrage, but such a meeting, so long as it commits no act of violence, should be interfered with as little as possible and no exhibition of force should take place until some violent crime has been or is about to be committed

Further illustration

28 Quite different considerations apply where a mob avowedly set out to destroy the factory or property of, say, an unpopular

---

[1] Baron Alderson in his charge to the Grand Jury, delivered at the Monmouth Assizes in 1839 (9 C & P 94 n) cited the following observations of Mr Justice Bayley —"If 'the persons who assemble together say 'We will have what we want, whether it be accord-'ing to law or not,' a meeting for such a purpose, however it may be masked, if it be "really for a purpose of that kind, is illegal. If a meeting, from its general appearance, "and from all the accompanying circumstances, is calculated to excite terror, alarm, and "consternation, it is generally criminal and unlawful" Baron Alderson continued, "These are, as I take it, the clear principles of law, an unlawful assembly differing in "this respect from a riot, that a riot must go forward to the perpetration of some act "which the unlawful assembly is calculated to originate and inspire Something must be "executed in a turbulent manner to constitute a riot, but in these cases it must be some "enterprise of a private nature, because if the enterprise be of a general and public nature, "it savours of high treason, and there is no doubt that if you find these persons assembled 'together by delegates dispersed from any central jurisdiction in this kingdom, and those 'persons so meeting together in consequence of a delegation from a central body commit 'any act of violence for the purpose of carrying into effect any general political purpose, 'they run the risk of being charged with high treason"

[2] See *R v Howell*, 9 C & P , 437

Ch. XIII

owner, arming themselves with weapons to break the doors, and showing a settled intention to carry their object into effect In such a case their intent is felonious They should be warned of the danger they will incur in attempting such an outrage, and the proclamation in the Riot Act should, if time allow, be read, but whether it has been read or not, and whether the hour has or has not expired, the apprehension of the ringleaders or any other repressive measures which may be necessary to prevent the actual commission of an outrage, should be effected, if possible Troops may be summoned in case the civil authority is in danger of being overpowered, but they should not be called into action until the necessity arises for protecting life and property by armed force

In this connection it is important to bear in mind two facts, firstly, that (although it may well be prudent to make timely provision for troops to be ready within easy distance) an actual display of armed force may, under certain circumstances, provoke a mob and thus do more harm than good, and secondly, that troops (at any rate unmounted troops) can in practice seldom intervene except by using long range firearms, the effect of which may be to kill and wound a number of innocent or comparatively innocent persons

Further illustration

29 An insurrection is, of course, a more serious matter than any riot A mob which declares openly that it proposes to attack the constituted authorities, and which consists wholly or partially of armed men, or attempts like that of the Fenians at Chester in 1867 to seize an arsenal for the purpose of obtaining arms, cannot be too quickly dealt with, and force should repel force, care being taken to avoid any unnecessary bloodshed or injury

Summary of law

30 The conclusions deducible from the foregoing pages appear to be as follows —

The law which demands the suppression of unlawful assemblies, riots and insurrections necessarily justifies the civil power in using the necessary degree of force for their suppression The difficulty is to ascertain what is this necessary degree of force, and the danger of making a mistake in the matter is serious, as any excess in the use of force constitutes a crime

In the case of unlawful assembly

31 Beginning with an unlawful assembly, the civil authority has power to command those present to go away, to arrest them if they do not go, and to stop others whom they see joining them [1] If the parties interfered with resist, such force may be used as will compel obedience, but it would be extremely inadvisable to use any such force as would maim or injure the person resisting, unless he himself made an attack inflicting, or at all events calculated to inflict, grievous personal injury on his captor

In the case of riot

32 Proceeding to the case of a riot, before the proclamation required by the Riot Act is read, the same observations regarding the degree of force to be used apply as in the case of an unlawful assembly After the proclamation has been read and an hour has elapsed, considerable force may, if necessary, be used for the purpose of dispersing the mob If the mob is committing or evidently about to commit, some outrage calculated to endanger life or property, then, even before the expiration of the hour after

[1] Hawkins, Bk 1, ch lxv, sec 11

the reading of the proclamation, or even without reading the proclamation at all, force may equally be used But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing, some felonious outrage, which can only be stopped by armed force [1]

In the case of insurrection

33 The existence of an armed insurrection would justify the use of any degree of force necessary effectually to meet and cope with the insurrection

Conclusion

34 Sir Charles Napier complained in his Remarks on Military Law of the hardship of imposing on an officer the obligation of deciding whether he is or is not justified in ordering his men to act He contended that an officer ought not to be liable to trial by the ordinary courts of justice for anything he may do in executing the duty imposed upon him by the civil magistrate, *viz* to quell the riot [2]

It can be answered that an officer has no greater responsibility than a civilian Mr Justice Littledale, in the case of *R v Pinney*, says —

"Now a person, whether a magistrate or a peace officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if by his acts he causes death, he is liable to be indicted for murder or manslaughter, and if he does not act he is liable to an indictment or an information for neglect, he is therefore bound to hit the precise line of his duty, and how difficult it is to hit that precise line will be matter for your consideration, but that, difficult as it may be, he is bound to do Whether a man has sought a public situation, as is often the case of mayors and magistrates, or whether as a peace officer he has been compelled to take the office that he holds, the same rule applies, and if persons were not compelled to act according to law, there would be an end of society"

A practical answer to the complaint is also to be found in the fact that the last word so far as civil pains and penalties are concerned rests with a jury, who may be relied upon to make liberal allowances for the difficulties of persons so circumstanced, and to err, if they do err, on the side of leniency when it appears that an official, even if his action has proved excessive, acted honestly to the best of his judgment

At the same time the following brief summary of conclusions may be useful to an officer —

He will find that the King's Regulations (paras 1238 to 1257) lay down certain rules as to "Duties in Aid of the Civil Power" With regard to these he must remember that, although they define his duties to superior authority so far as such duties are not incompatible with the common law, yet they do not profess, and are indeed unable, to alter the duty laid upon him by that law There are usually two stages at which he has to exercise his judgment, first, when he is called upon to bring out his men, and secondly, when the question of firing arises

---

[1] See the appendices to this chapter
[2] Quoted by Clode, Mil Forces, II, p 153

Ch XIII — With regard to the first, he must act on his own judgment if he is in possession of the facts If it is not possible in the special circumstances for him to ascertain the facts, he must deal with the facts as represented by the civil authority

Secondly, when his men are on the spot, and the need for action is imminent, he is probably in as good a position as the civil authority to form a cool level-headed opinion as to the trend of events the fact that a request to take action has or has not been made must have all due weight given to it, but the receipt or non-receipt of a request cannot absolve him from his legal duty, which is to use such force and so much only as is necessary for the restoration of order and the checking of violence, but yet, at his peril, to use no excessive amount of force Further, the force which he uses must only be the amount which is necessary to effect the immediate object before him, and he must on no account use force with a view to its deterrent effect elsewhere or in the future

APPENDIX I

Evidence given by the Right Hon R B Haldane, K C , M P , Secretary of State for War, before a Select Committee on Employment of Military in cases of Disturbance (Parl paper 1908, H C 236)

103 *The Chairman* —You have been so good as to come before us to state your views, and, as I understand, the views of your department, on the questions which we are appointed to investigate I have not any *précis* at all of your evidence, so I will ask you to make your statement in any form that you please ?—The material which I propose to offer for the consideration of the Committee relates simply to the general law, which is a subject not unattended with obscurity Mr Troup in his evidence on Tuesday with which evidence I agree, states that in 1895 the King's Regulations were revised in consequence of some inquiries that were made at that time, and as they now stand they contain directions which are given on behalf of the commanding authorities to the military They do not, and cannot, alter the common law They are mere instructions to the commanding officers and the troops how to behave themselves in case they are called out, and they require to be read, consequently, as in harmony with the general law, which they do not purport in any way to alter The general law, therefore, is the key to the situation, and the general law is, in my opinion, quite simple, although, for the reasons I will point out in a moment, there has been some misunderstanding about it Broadly stated, there are two principles which form part of the common law of this country The one is that every citizen is bound to come to the assistance of the civil authority when the civil authority requires his assistance to enforce law and order That applies to the soldier, who is in no different position from anybody else But there is a second principle which does bear upon the duty of the soldier, and that is that when you do come to the assistance of the civil authority which has requisitioned you, neither you, nor for that matter the civil authority, is entitled to use more force than is necessary in order to assert the cause of law and order Now, the soldier is a person who is different from an ordinary citizen in this, that he is armed with a deadly weapon, and, moreover, he comes out in a military formation The result is that if he appears unnecessarily he is apt to create an impression in the minds of those who are about of a hostile character His very menacing appearance may lead to the very thing which it is his purpose to prevent—disturbance For that reason, in the War Office,

we are very averse to allowing the military to be employed We are compelled to do it, we have no choice, we have to obey the law, but we always tend to insist—and while I am there we always shall insist very strongly—on this, that we are called out legally and not illegally We are called out illegally if we are called out under any circumstances which admit of being dealt with by a force less menacing than a military force necessarily is There is a principle which must be borne in mind, and that is that people are taken to intend the consequences of their actions It may be perfectly legal for the military to march up and along a certain street, but, if their doing so will unnecessarily and unjustifiably bring about a disturbance, the military may find themselves breaking the law There are familiar cases in the books There is one case in which somebody in the neighbourhood of the Strand owned a theatre, and he gave a performance of a very well-known play, which had the result of attracting an enormous crowd trying to get in He was acting perfectly legally in opening his theatre and advertising the play, but he created such a disturbance by attracting the crowd that he was held liable to injunction In the same way it has been held in the courts that if you put up a very exciting and stirring advertisement in Fleet Street and a crowd collects and blocks the pavement, you are liable I say that by the way of illustrating that if the military, even within their rights, come upon the streets in circumstances when their doing so may create disturbance, they may be committing an offence against the law That is a principle which I am always disposed to bear very closely in mind when dealing with the question whether they should act or not But, subject to those qualifications, I wish to emphasize this, that the War Office has no discretion We are in control of a number of people who are citizens as well as soldiers, and if they are requisitioned to assist the civil authority, then, if it is necessary that they should assist, and if they are required, and they cannot be done without, they have to go That brings me to what I want to make clear here, because it is the vital point, and I do not think it is clear It has been said that the cases show that the military have no discretion when they are called on, that, although the King's Regulations say that they must use a discretion as to what troops they employ and what weapons they use, still they have no discretion whether they will go or not, and that it is for the civil authority to say whether they are to come or not From that proposition I emphatically dissent

104 Are you referring to the local military authorities or to the discretion of the War Office?—I was referring primarily to the local military authorities It would apply to both, but the case almost invariably arises in regard to the local military authorities There is some countenance, I think, given to the doctrine which I am combating in a sentence in the King's Regulations They were drawn with these words in them, in paragraph 949, which says that, when a requisition comes from the proper authority, the military authorities will arrange for the despatch of troops and inform the civil authorities who requisition them of their number and of the time at which they may be expected to reach their destination Now that is ambiguous That, to my mind, cannot alter the common law, and cannot relieve the military authorities of the obligation which is upon them, and that obligation is to judge for themselves My view of the law, and it was the view of Lord Bowen also, whom I assisted to frame the paragraph in the Featherstone Report on the subject, which, I think, is quite unambiguous on the point, is that the civil authority has no power to use more force than is necessary, and therefore, has no power to call out the military unless they cannot get on without the military They ought to do it by civil aid if they can If they do call out the military, the commanding officer is in this position an illegal command—an illegal requisition—cannot absolve him from his liability to the general

Ch XIII — law of the land Consequently, although the opinion of the civil magistrate is very weighty, and is a thing on which he may place a great deal of importance, it does not absolve him from his liability to the law If he is summoned from a distance, not knowing the facts, and the civil magistrate says "You must come and help me to put this disturbance down, I cannot do it with a civil force," he is bound, in my opinion, to go, because he does not know the facts, and he would be acting at his own risk if he did not go, and he would be committing a misdemeanour at common law if he did not give the assistance he is bound to give But, supposing he goes and finds there is only a small disturbance, which could be put down by the ordinary police, certainly he would be committing an offence against the law if he intervened Consequently, he must to some extent exercise his own discretion, notwithstanding the requisition of the magistrate In nine cases out of ten the magistrate knows much better than the commanding officer can know, but there are cases in which the commanding officer is on the spot and can judge for himself and may think the magistrate is mistaken in his view of the facts The mere authorization of the magistrate cannot, in point of law, absolve the commanding officer from doing what is illegal, because by the jurisprudence of this country everybody is taken to know the law, the commanding officer as well as anybody else, it is only judges who are allowed to say they have made a mistake about the law But a commanding officer may say "The question is not for me, who am at a distance and cannot know what is happening, one of law, but is one of fact, the magistrate is a better judge than I am of the circumstances, and, in point of fact, I accept his view, there being no reason to the contrary, that I ought to intervene" In that case my view is that he would be protected, not because he has not committed what would have been an offence, but that he has not had what is called in the law the *mens rea*—the guilty mind He could not allege a mistake of law on his part, but he could allege a mistake of fact, into which he had been *bonâ fide* led by the misjudgment and action of a magistrate That is his protection, but subject to that he has to judge for himself, like anybody else I have gone into that at some length, because of the words in the King's Regulations, and I think I know where the mistaken impression on which these words, which are certainly ambiguous, are founded came from In 1822 there were some very well-known riots in Lancashire, and the military were called to the assistance of the civil authorities in order to enable a warrant to be executed, and after the riots were over—more than 6 months after—an action was brought by a plaintiff called Redford against a Militia officer called Birley, and the case of *Redford* v *Birley* is a great case which is reported in the State Trials in the first volume of the new series *Redford* v *Birley* was tried by Mr Justice Holroyd and a jury, and in Mr Justice Holroyd's summing up, there occurred certain words which have misled a good many people Mr Justice Holroyd said "The only question here is whether the military were assisting the civil authority in response to a request to do so That is all the jury have to consider" The head-note of the case—the short summary of facts at the beginning of the report—lays down that the issue that was tried was the question whether the military were rendering assistance in dispersing an unlawful assembly Of course, if the principles of law which I have stated to the Committee are right, that left open the question whether the military authorities acted wrongly in obeying the requisition of the magistrate, and Mr Justice Holroyd apparently says, and to anybody who read only the head note would be taken to rule, that on that what the magistrate said was conclusive But he did not really say that The difficulty which has arisen has arisen from the people reading only the head-note of the case (which is, in my view, erroneous) without reading the whole of the report If you read the report, you will find this it is very technical

but it is well the Committee should understand what the point was It was an action of tort—for damage for an assault—and the plea raised what was called the general issue It was a plea of "not guilty," which was in those days a proper plea to an action of tort, and, it enabled you to raise any relevant issue, including an issue of "not guilty by statute" There is an Act of George II, which says that when anybody has been assisting the civil authority in executing a warrant or quelling a riot or generally enforcing the law the action must be brought within six months If it is not brought within six months, all you have to prove is that you were assisting the civil authority, no matter whether you were wrongfully requisitioned or not If the action is not brought within six months, you have a complete defence if you merely plead you were called out by the civil authority, and were assisting it That issue was raised in *Redford* v *Birley*, and it was that to which Mr Justice Holroyd referred when he said "The only question is, were they called out to assist the civil authority, not whether the civil authority were wrong in calling them out, and they wrong in coming" When you get rid of that case, as you do when you read through the proceedings instead of pausing only at the head-note, then you will find the other authorities pretty well consistent The law to my mind is clear that the soldier is in no different position from anybody else He must obey the civil authority by coming to its assistance, where it is necessary that the soldier should give assistance to the civil authority, but it must be necessary that he should do so, and excess of force and an excess of display ought not to be used The soldier is guilty of an offence if he uses that excess, even under the direction of the civil authority, provided he had no such excuse as that he was bound to take the facts, as distinguished from the law, from the civil authority Now the officer, of course, thereby is placed in an extremely difficult position He is in the same position as his own man is If an officer orders his own man to fire unnecessarily, and clearly unnecessarily, the command of the officer does not absolve the private from his duty to obey the common law On the other hand, under the law of the Army, the private is bound to obey his officer He is, in other words, in peril of being, on the one hand, tried and shot by a court-martial, and on the other hand, of being tried and hanged by a judge and jury But in practice it is one of those situations which is really perfectly simple In 999 out of 1,000 cases it does not arise People are very sensible in this country Two principles which may come into conflict have to be reconciled, and they are reconciled by taking the case in the concrete The result is that, while the commanding officer is bound to pay great respect to the opinion of the civil authority, and on a mere question of fact, when he comes from a distance, to accept it, until he sees that it is obviously wrong, he is not absolved, in law, from his duty not to use more force than is necessary The result is, I think, that these words, which are doubtless founded on an impression from a misreading of the case of *Redford* v *Birley*, go a little too far, and I propose to modify the language of paragraph 949 of the King's Regulations I do not think it has misled anybody in practice We have enforced the other view very strictly because, as I said, the War Office is very reluctant to act The other day, for instance, at Winchester, the civil authority requisitioned the officer commanding the troops at the depot to bring them up, and the officer did not bring them up, and the civil authority complained to us I went into the case, and I had not the smallest hesitation in approving the action of the officer commanding, and yet it was said, with some truth, that the paragraph in question says that the military authorities will arrange for the despatch of troops They did not in that case, because they said, very sensibly "This must be read in accordance with the common law, and not as inconsistent with it" The Regulations cannot repeal the common law I agree that should

Ch XIII — be made more distinct than it is at the present time That is the statement which I wanted to put before the Committee in order to make the law perfectly clear, as I think it is

105 *Mr Middlebrook* —Am I correct in assuming that the Winchester case was a case where the commanding officer was on the ground, and had the opportunity of judging whether or not necessity existed before calling out his men ?—Yes, that was the essence of the case at Winchester

106 That would differ from the case of a commanding officer at a distance who had no means of judging as to the necessity, and who I assume in your view should respond by taking his men to the locality, and, having arrived, then form his opinion ?—Exactly so

107 *The Chairman* —Have you concluded now the statement you wished to make ?—Yes

108 *Sir Frederick Banbury* —I should like to know whether you propose to make an alteration in the King's Regulations which you suggested You said you were going to make an alteration ?—Yes I propose to revise the King's Regulations, to make it clear that they are in accordance with the common law They do not purport to alter it, and could not alter it if they purported to alter it There is no statutory authority that I know of anywhere to alter the common law by the King's Regulations, and I think it should be made perfectly clear that the two do remain consistent

109 *Mr Middlebrook* —Have you any suggestion as to dealing with a difficulty which might arise in a difference of opinion as between the civil authority, on the ground of necessity, and the military authorities on the ground of non-necessity ?—I do not think any suggestion is possible for dealing with it One or other must be wrong, and each acts at his peril So that the situation is, that while the military commanding officer will, of course attach the utmost weight to the civil authority, who is *primâ facie* the best judge both of fact and law, he will remember that he is acting at his peril, and, if he forms in his mind a clear reason for dissenting from what he is told to do, he will act on it, but he will remember that there also he is acting at his peril

110 And you see no alternative but leaving it in that position ?—I see no alternative I have considered the question whether we could codify the common law, and I have looked up the draft code drawn up in 1879 under the auspices of Lord Blackburn, but that code I think probably public opinion would demur to if it were adopted It, as I read it, gives too great an exemption to the commanding officer from the obligation to observe the common law It says, in fact, very much what is said in the Regulations, that he has to obey, and that may not be a good thing to lay down

111 *Mr Lambton* —With regard to these King's Regulations, I think you said that that particular paragraph was regarded as mere instruction ?—Yes, as mere instruction

112 Is that regarded so by the military ? Would an officer in command of a battalion, for instance, consider it as a mere instruction ? —Yes, he has to obey because they are instructions from his superior officers, but he has also to obey the common law, which overrides this paragraph in cases of conflict

113 That is an impossible position for the poor officer ?—The officer is no worse off than anybody else If you or I were called upon by a magistrate to take part in checking a disturbance with a lethal weapon we should be in an impossible position—we should be bound by the law to obey the magistrate, and bound by the law not to do what was illegal

114 As far as I make out, you lay it down that the law is that every civilian is bound to obey this order when called upon, and that the military may judge for themselves, although they are only in the same position as an ordinary civilian ?—No, the civilian must judge for himself, too

115 But supposing he says he will not go?—Then he is tried before a court, as happened in the case of the *King* v *Pinney*, at the time of the Bristol riots

116 *Mr Middlebrook*—Was that a trial before a civil court?—A criminal court

117 *Sir Frederick Banbury*—Not a military court?—Certainly not He would be tried before a civil court, and he would be held liable, it might be, to imprisonment for a misdemeanour for not assisting the authorities On the other hand, if he used unnecessary violence he would be tried before a similar court and convicted I should point out that the Army Act is very careful to say that all these provisions are to be read consistently with the general law of the land It is only a lawful order which the commanding officer is bound to obey The expression in the King's Regulations is "lawful command"

118 *Mr Lambton*—I think the second principle of the common law which you laid down was that they were not to use more force than necessary, and you pointed out that the military may act illegally, even if they march along a street and so make a display of force?—A menacing display

119 Even if called upon by the magistrate?—It might be so

120 If called upon, how can they possibly help making this military display?—You have a very difficult duty to perform, which the law imposes upon you, but you have to steer between the two things The judges have laid down, over and over again, that a man is on the verge of two precipices, not one, and he has to get along, and he does get along

121 Then you do not think it necessary to make any alteration in order to save the officer from falling over these precipices?—If you do, you will make the law go over the precipices It is such an extreme conflict of principles, that I know no way and I have given a great deal of consideration to it, of defining it better We did our best in the Featherstone Report, in a passage which is classical now, which comes from the pen of Lord Bowen, who was one of the greatest masters of legal language that this country has ever seen, and no code, I think, could lay it down more clearly

122 As head of the Army, are you satisfied that the officers under your charge have sufficient protection?—They have as much protection as the civilian Their duty is a little more difficult, but they have as much protection as the civilian, and where they have a more difficult set of circumstances to deal with, as you are quite right in saying they have, because they must bring their troops up, the law, which is a very sensible institution, recognizes their difficulties and deals with them accordingly

123 *Mr Albert Stanley*—I do not know that I am perfectly clear about all this, and in order rather to refresh my memory, I want to put a question or two I understand you to say that the King's Regulations must harmonise with the common law, they cannot in any way override or conflict with it?—Except in certain specific cases where the Army Act says they may, and which cases do not cover dealing with riots They cover a vast variety of cases, and in some cases dealing with the affairs of the Army they do alter the common law, but not in anything we are dealing with here

124 I think I understood you to say if when an officer arrives with his troops he finds that the circumstances in his judgment have not warranted the calling out of the military, he has the discretion not to act?—Yes, he commits a crime if he does act in that case

125 *Mr Curran*—In regard to an answer you have just given to Mr Stanley, the manual of military law, issued from the War Office in 1907, on page 211—and this is the present King's Regulations—gives a summary of the law of riot and insurrection, and in the third paragraph you will find it describes an unlawful assembly thus "An unlawful

Ch XIII — assembly is any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger public peace and raise fears of jealousies among the King's subjects, as where great numbers complaining of a common grievance meet together armed in a warlike manner" While we are desirous of having the present Regulations altered, there are some of us here prepared to prove that the present Regulations have been absolutely violated, and that people have deliberately committed murder I say that with all due respect, that is to say, if these are the Regulations, inasmuch as men and women have been shot down where no unlawful assembly in accordance with this description has taken place at all?—You must know that what you are quoting from is not the King's Regulations, but a manual of military law, which has been compiled to collect the law in a convenient form The passage you have quoted represents a very authoritative statement of the common law taken from a book of great fame—Hawkins' Pleas of the Crown—but it is a very old book, and "armed in a warlike manner" means a warlike manner in law, and not according to our military notions of it Coming on with sticks and stones would be in a warlike manner for the purposes of this passage It must be interpreted in accordance with the fact that it is taken from a book which was written a great many generations ago

126 Coming back to the King's Regulations, page 64, paragraph 273, refers to duties in aid of the civil power?—I have not the same book I have the 1908 edition, and you have the 1901 edition

127 Is there any alteration since?—Yes, because you have the edition of 1901, which has been recast For instance, my paragraph is 948, and I should have to compare the two That edition is not in force now

128 This has been altered?—I cannot tell how much it has been altered unless I compare it, but it is always being recast, and it is in a different place in the book, and probably has been altered

129 Has the calling out of the military up to now been based upon this paragraph?—Will you read the paragraph?

130 "When troops are called out in aid of the civil power at home, the General Officer Commanding the district, or the officer commanding the station to whom application is made for assistance, is immediately to report the fact by telegraph to the War Office The officer commanding the unit will report daily in writing to the War Office, as well as to the officer commanding the station from which he has been despatched in the prosecution of the service in which he is employed"?—It is now verbally altered, but substantially it is the same

131 I mentioned the matter to Mr Troup, of the Home Office We very much fear that these conditions as laid down here, if they are in operation in the new issue, have not been carried out in regard to four separate cases that have occurred in recent years?—In what respect not carried out?

132 The War Office has not been put in possession of the information required by this paragraph?—I think in all cases, so far as I know, we enforce strictly the substance of what you have read

133 We are now on the general principle, but let me cite a case The Lord Mayor, the chief magistrate of Belfast, requisitioned the troops through the Lord Lieutenant, and when the case was raised in the House, as you will remember, Mr Birrell, the Secretary of State, had to reply to the questions put in regard to the presence of the troops in the streets of Belfast, and on one occasion you undertook to give your views, and your views, if I remember correctly, were that you were not responsible for the presence of the troops in Belfast?—I do not think I said that altogether, because I am responsible to Parliament for everything that soldiers do, but what I said was this The duty of the officer commanding is, first of all, if he is called upon by the civil authority, to go to the assistance of the civil authority *Primâ facie*

that is so When he gets there he must judge for himself whether he is contravening the law by rendering the assistance, or whether he is only doing his duty He reports to us immediately afterwards and not before, what he has done, because, if he delayed it by making a report beforehand, and getting our advice, we could not tell His duty is to act on the spot like any other citizen, but he reports to us without any delay as soon as he can detach himself from his work, and puts us in possession of what has happened, and then we should judge, and we should censure him if we thought he had done wrong, and approve him if we thought he had done right

134 According to the present Regulations, it is laid down specifically that the Riot Act must be read and a certain time elapse before any firing takes place ?—No, that is another misconception of the law The effect of reading the Riot Act is that if the mob does not disperse within an hour, everybody there is guilty of felony, and when people are guilty of felony, and felons will not disperse, or submit to capture, they are liable to be shot, and, therefore, an hour after the Riot Act has been read, it is absolutely lawful, if you cannot stop the felony in any other way, to shoot the people there That is an additional protection to the military, but it does not prevent the military from facing the possibility of firing on the people before the Act is read If the people are going about setting fire to houses, and murdering innocent passers-by (I do not say they do do it), it would then be the duty of the military, if the police could not do it, to stop it, even by shooting them down

135 If the mob was committing through their riotous conduct murder or injury to persons or property, the military are justified in using arms ?—They are, and at once, if it cannot be stopped without their intervention

136 But injury both to persons and property is the only justification for the use of arms, even under the present Regulations ?—It is impossible to say that it must be to both persons and property For instance, one of the most serious offences known to the law is arson, the firing of buildings, which is felony If you find people committing arson and you cannot stop it in any other way, although they may not be trying to kill anybody, the duty of the military would be, if they could not stop them otherwise, to shoot them down, even though the Riot Act had not been read The military would be acting at their peril if they did it without the order of a magistrate, but it would be their clear duty, as it would be the duty of any other citizen

137 We are taking up, perhaps, a partial position in speaking for the section affected in the civil world What we want to get at is that violence has always broken out after the presence of the military, that is to say, violence of a serious character ?—I am with you to this extent, that I think the calling out of the military unnecessarily, very often leads, or may lead, to a breach of the law, by making an unnecessary demonstration which incites and provokes the public, and that is a view on which the War Office not only in my time, but always of late years, have acted consistently and strongly We hold the military ought not to be called out except in the last resort

138 Except when the police authorities say they are absolutely unable to cope with the local conditions ?—That is it

139 We had the spectacle in Belfast of the police going on strike because the military went there ?—If the police strike, that does not justify the military in not coming up

140 The military were "blacklegging" by coming ?—It may be the fault of the police They may have broken their contracts for the best of reasons, but still there had to be forces there sufficient to preserve law and order, and if the police will not or do not act, for whatever reason, the military are bound to obey the law It is not really an individual question it is a question in which the law of

Ch XIII — England is consistently and unswervingly Socialistic—the good of the State and of the community is preferred to the good of the individual, and the individual is even to be shot down if his interests conflict with the interest of the State

141 I take it from your statement this morning, which is very clear and definite, that the department has under consideration the alteration of certain of the King's Regulations?—Yes, to make clear that they are to be read consistently with the law, and not inconsistently, and I agree that those words "will arrange" have given rise to misunderstanding In my knowledge it has been misunderstood by the soldiers It says the military authorities "will arrange" for the despatch of the troops whenever they get the requisition The other day the officer commanding at Winchester refused to "arrange," and he was on the spot and made up his mind that the mayor was wrong, and in my opinion that officer acted with great discretion, and I approved his conduct, although it looks as if he acted inconsistently with the King's Regulations, and I am not sure he did not, but he obeyed the common law

142 When considering the revising of the Regulations would it be possible to provide for an independent expert to be placed on the spot prior to the military being permitted to be called out?—No These things, when they happen at all, happen with the utmost suddenness and swiftness, and such an expert as you speak of it would be almost impossible to find He would have to be a combination of lawyer, soldier and I do not know what He would be a very exceptional person, and I doubt whether anybody exists who would be markedly better than the kind of person you generally have on the spot You have to do the best you can

143 I quite understand the difficulty, but the point which affects us very seriously in this case is that the local magistrate, or magistrates, in a state of panic, when there is absolutely no reason for it, make immediate applications for military assistance When people like ourselves are on the spot and could control the people and keep them from creating injury to other persons or property, they get into a panic and make application, and the military come on the spot which simply prevents the possibility of our keeping the peace That has occurred in four cases where I have been associated with the business myself?—It has occurred both ways In the Gordon riots the weakness of the magistrates and the timidity of the authorities led to the sacking of a great part of London, and in the Bristol riots the want of decision of both authorities led to enormous damage being done to the city No doubt, on the other hand, there are cases, such as you indicate, where people have lost their heads and great mischief has occurred from the premature calling in of the military All we can do is to lay down in the clearest way what the law is, and give the clearest instructions to the officers to use their own discretion, and there is a growing tendency in the minds of the average commanding officers against using their troops if it possibly can be avoided We want the Army to be a popular institution, and not a menace to civil liberty

144 *Mr Devlin*—You say it is not necessary to read the Riot Act before firing takes place in the case of a riot?—It is not necessary, no

145 But of course the Riot Act is, in 99 cases out of 100, read?—It is for the protection of the magistrate and military—an additional protection

146 The Riot Act, of course, could only be heard by a comparatively small number of people who are engaged in a riot?—Yes, not by very many They generally know it is being read—they are told

147 Do not you think it would be very desirable when the Riot Act is read, that some bugle should be sounded or some notice given to the people who cannot hear the Riot Act?—They always are informed I have known of no case of a riot in which it has not been

known that the Riot Act is being read, as the magistrate is seen with something in his hand, and they could not hear it if he did read it ever so distinctly, but they see the document read, and they think they will be shot down at once, and the lawful part of them disperse, it is the riotous part that remains

148 In the recent case of Belfast, two perfectly innocent people were shot down, who did not hear the Riot Act read, and did not know it was read?—It always happens when firing takes place, in my opinion, that the innocent suffer rather than the guilty When I was sitting on the Featherstone Commission I remember hearing the case of a Sunday-school teacher who, one-quarter of a mile off up in the hills, got a bullet through his two thighs, he was merely looking on

149 For that reason do not you think that before the military fire, and after the Riot Act is read, or even if the Riot Act is not read, when the military authorities make up their minds to order the men to fire, some better intimation ought to be given to the people than simply the holding of a document in the hand of an officer, and a more or less dumb show taking place?—In my experience of these cases and from what I have read of them—of course, I have not seen them, but have investigated a good many—they always know the Riot Act has been read, and, moreover, if you put by law some interval of time between something which is done and the firing, the whole mischief might have occurred that you were there to prevent For instance, at Featherstone, if the firing had not taken place, the little detachment of soldiers and the mine manager would have been thrown down the pit We came clearly to that conclusion It was not the rioting of peaceable men on the spot, but of a lot of rowdies from round about who had congregated

150 *Mr Curran*—It is an opportunity for the class of rowdy that may be there?—That is it It is an opportunity for evil-disposed people

151 *Mr Devlin*—And the evil disposed persons generally get away and the innocent people suffer?—I will not say generally, but it does happen I remember one sturdy miner at Featherstone of a riotous character got shot through the knee, and when they said, "Poor man, we must take you to the doctor," he said, "Not before I know who is going to pay the bill" That is the spirit of them

152 Do not you think it desirable to use blank cartridge first of all, after the Riot Act is read?—I think it is most undesirable, because the mob get it into their minds that you have nothing but blank cartridge, and they come on and get killed The military authorities say "We are here, and if we use our firearms, it is to kill" That is why we demur to being called out except in the last and most perilous necessity If the mob get the impression we are there with only blank cartridge the result will be bloodshed galore

153 I do not know if you know about the Riots Commission, which held a sitting in Belfast, under the presidency of Mr Justice Day That Commission recommended in its Report "It has been made abundantly clear by facts that for the primary and all-important duty of preserving order, the rifle is worse than useless, and that its efficiency as a weapon for the restoration of order is very questionable, but on the other hand, in every instance in which the baton was used with judgment (in the riots of 1886) and determination, whether for the preservation or restoration of order, it proved to be a thoroughly reliable and effective weapon" It was further held that "the rifle has the following serious disadvantages Its range with ball cartridge made it excessively dangerous to inoffensive people, and its use ought, in our opinion, to be absolutely prohibited for police purposes in towns"? If I may say so, I entirely agree with that, and I think riots should be put down wherever possible by special constables with batons and not by the military We do not exist for that purpose

154 When the military authorities were requisitioned for the use of military force in the case of civil disturbance, you stated in Win-

Ch XIII — chester the military authorities refused, and you also said they were quite right in refusing?—In that particular case

155 One is naturally inclined to draw the conclusion that it is not fair to place the entire responsibility upon one man, the Mayor of the city, in determining whether the military authorities ought to be brought out or not The judgment of the officer in Winchester proved that it is not right to give him full power to requisition the military Do not you think there ought to be a consultation, so that the individual decision of one man should not be responsible for calling out the military —a consultation of the magistrates or City Council, or some body in a responsible position, as well as the individual who has the power at present?—The difficulty is that while they are consulting Rome might be burning, you have to act at once

156 You know that the Mayor of a city does consult someone?—He does

157 He does not act wholly on his own responsibility?—But his chance of stopping the thing must be by immediate and prompt action, you must bear that in mind

158 It would be as easy to consult half-a-dozen people promptly —perhaps people who had a larger local knowledge than one individual who, perhaps, may be excited?—If you laid that down, it might lead to a delay of one or two hours before he took action, and great misery and loss of life and destruction of property might be the result I think in these cases, which are all cases of urgency, you ought to leave people free, telling them what the law is and telling them what their duty is

159 *Mr Albert Stanley* —Would not consultation also lead to divided authority and divided responsibility?—Yes Divided authority is always awkward in this way It is much better to have one man whom you can hang, if necessary

160 I take it, if the magistrate or mayor is responsible for calling in the military, an officer becomes responsible if he acts, knowing all the circumstances?—That is it

161 *Mr Lambton* —Supposing the military are there—I am not considering whether they are properly or improperly called out—it is the duty of the officer to look after and protect his own men, as well as to quell the disturbance Supposing his men are being assaulted by stones, and the lives of his own soldiers are in danger, he may act then independent of any other consideration?—Yes, using just sufficient force to repel the assault Of course, you cannot judge very closely

162 *Mr Albert Stanley* —The whole of the circumstances of these cases are reported to you?—Yes

163 Eventually you have a full report of the whole thing?—Yes

164 And you are able to review exactly what has taken place?—Yes

165 And you can apportion the responsibility?—Yes

166 And put on a penalty even?—Yes

167 *The Chairman* —I think the Committee will understand from the evidence you have been good enough to give us that first of all you lay the greatest possible stress upon the unwillingness of the War Office and the military authorities to permit the use of military forces except in cases of grievous necessity You lay great stress upon that, as was the case with Mr Troup, representing the view of the Home Office the other day, and the Committee may take it that the War Office and the Home Office are entirely in agreement?—Entirely in agreement

168 The civil and military authority take the same view?—Yes

169 With regard to the question just raised by Mr Devlin as to consultation on the part of the civil authorities before calling upon the military to give assistance or to take action, I understand that you also agree with what Mr Troup laid before us and emphasized strongly, that it is not desirable to diffuse authority in these matters, but that

it is better on the whole that one individual should be, as far as possible, responsible ?—I am of that opinion Somebody may have to act promptly and fearlessly, and it would be his duty to do so, and the responsibility must rest with him

APPENDIX II

Extract from Report of Committee on Featherstone Riot (Parl papers 1893–94, C 7234)

The following summary of the law as to the duties of soldiers in case of riot was given in their Report by the Committee who inquired into the facts of the Featherstone Riots in 1893 The Report gains weight from the fact that the Committee was presided over by Lord Bowen It will be seen that this statement of the law is in complete accord with the present chapter —

" By the law of this country every one is bound to aid in the suppression of riotous assemblages The degree of force, however, which may be used in their suppression depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained

" The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed, or in the case of persons whose conduct has become felonious through disobedience to the provisions of the Riot Act, and who resist the attempt to disperse or apprehend them The riotous crowd at the Ackton Hall Colliery was one whose danger consisted in its manifest design violently to set fire and do serious damage to the colliery property, and in pursuit of that object to assault those upon the colliery premises It was a crowd accordingly which threatened serious outrage, amounting to felony, to property and persons, and it became the duty of all peaceable subjects to assist in preventing this The necessary prevention of such outrage on person and property justifies the guardians of the peace in the employment against a riotous crowd of even deadly weapons

" Officers and soldiers are under no special privileges and subject to no special responsibilities as regards this principle of the law A soldier for the purpose of establishing civil order is only a citizen armed in a particular manner He cannot because he is a soldier excuse himself if without necessity he takes human life The duty of magistrates and peace officers to summon or to abstain from summoning the assistance of the military depends in like manner on the necessities of the case A soldier can only act by using his arms The weapons he carries are deadly They cannot be employed at all without danger to life and limb, and, in these days of improved rifles and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders To call for assistance against rioters from those who can only interpose under such grave conditions ought, of course, to be the last expedient of the civil authorities But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is in law a misdemeanour

" The whole action of the military when once called in ought, from first to last, to be based on the principle of doing, and doing without fear, that which is absolutely necessary to prevent serious crime, and of exercising all care and skill with regard to what is done No set of rules exists which governs every instance or defines beforehand every contingency that may arise One salutary practice is that a magistrate should accompany the troops The presence of a magistrate on such occasions, although not a legal obligation, is a matter of the highest importance The military come, it may be, from a distance

Ch XIII — They know nothing, probably, of the locality, or of the special circumstances They find themselves introduced suddenly on a field of action, and they need the counsel of the local justice, who is presumably familiar with the details of the case But, although the magistrate's presence is of the highest value and moment, his absence does not alter the duty of the soldier, nor ought it to paralyse his conduct, but only to render him doubly careful as to the proper steps to be taken No officer is justified by English law in standing by and allowing felonious outrage to be committed merely because of a magistrate's absence

"The question whether, on any occasion, the moment has come for firing upon a mob of rioters depends, as we have said, on the necessities of the case Such firing, to be lawful, must, in the case of a riot like the present, be necessary to stop or prevent such serious and violent crime as we have alluded to, and it must be conducted without recklessness or negligence When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person and property An order from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice But the order of the magistrate has at law no legal effect Its presence does not justify the firing if the magistrate is wrong Its absence does not excuse the officer for declining to fire when the necessity exists

"With the above doctrines of English law the Riot Act does not interfere Its effect is only to make the failure of a crowd to disperse for a whole hour after the proclamation has been read a felony, and on this ground to afford a statutory justification for dispersing a felonious assemblage, even at the risk of taking life In the case of the Ackton Hall Colliery, an hour had not elapsed after what is popularly called the reading of the Riot Act, before the military fired No justification for their firing can therefore be rested on the provisions of the Riot Act itself, the further consideration of which may indeed be here dismissed from the case But the fact that an hour had not expired since its reading did not incapacitate the troops from acting when outrage had to be prevented All their common law duty as citizens and soldiers remained in full force The justification of Captain Barker and his men must stand or fall entirely by the common law Was what they did necessary, and no more than was necessary, to put a stop to or prevent felonious crime? In doing it did they exercise all ordinary skill and caution, so as to do no more harm than could be reasonably avoided?

"If these two conditions are made out, the fact that innocent people have suffered does not involve the troops in legal responsibility A guilty ringleader who under such conditions is shot dead, dies by justifiable homicide An innocent person killed under such conditions, where no negligence has occurred, dies by an accidental death The legal reason is not that the innocent person has to thank himself for what has happened, for it is conceivable (though not often likely) that he may have been unconscious of any danger and innocent of all imprudence The reason is that the soldier who fired has done nothing except what was his strict legal duty"

APPENDIX III

Opinion of Law Officers (Aug 18th, 1911) on duty of soldiers called upon to assist the police

A soldier differs from the ordinary citizen in being armed and subject to discipline, but his rights and duties in dealing with crime are precisely the same as those of the ordinary citizen If the aid of the

military has been invoked by the police, and the soldiers find that a situation arises in which prompt action is required, although neither Magistrates nor Police are present or available for consultation, they must act on their own responsibility They are bound to use such force as is reasonably necessary to protect premises over which they are watching, and to prevent serious crime or riot But they must not use lethal weapons to prevent or suppress minor disorder or offences of a less serious character and in no case should they do so if less extreme measures will suffice Should it be necessary for them to use extreme measures they should, whenever possible, give sufficient warning of their intention

(Signed) RUFUS D ISAACS
JOHN SIMON

CHAPTER XIV

THE LAWS AND USAGES OF WAR ON LAND

Introductory Note

This chapter, as it appeared in the last edition, published in 1914, was based on the international declarations and conventions which are contained in Appendices 1–9 In these declarations it was foreseen that improvements which science might effect in the armament of troops, would need consideration at some future date

The Great War intervened, new weapons were introduced, but so far no international agreement has been reached adapting the use of these new weapons to the general principles of international law previously established In the absence of any such agreement it has been decided that at the present time no useful purpose would be served by any attempt to bring the chapter, as a whole, up to date With the exception, therefore, of minor emendations the text of the chapter has been left in its previous form, not necessarily as representing a code universally accepted, but as the best guide at present available upon the subjects of which it treats The notes have been revised, with additions, and the Appendices brought up to date

I —Origin and Nature of the Laws and Usages of War

Origin of the usages and laws of war

1 The laws of war are the rules respecting warfare with which, according to International Law, belligerents and neutrals are bound to comply In antiquity and in the earlier part of the Middle Ages no such rules of warfare existed the practice of warfare was unsparingly cruel and the discretion of the commanders was legally in no way limited During the latter part of the Middle Ages, however, the influences of Christianity as well as of chivalry made themselves felt, and gradually the practice of warfare became less savage The present laws of war are the result of a slow and gradual growth Isolated milder war practices became in the course of time usages, so-called *usus in bello,* manner of warfare, and these usages were developed into legal rules by custom and treaties

Customary rules and written rules

2 The laws of war consist therefore partly of customary rules, which have grown up in practice, and partly of written rules, that is, rules which have been purposely agreed upon by the Powers in international treaties Side by side with these customary and written laws of war there are in existence, and are still growing, usages concerning warfare While the laws of war are legally binding, usages are not, and the latter can therefore, for sufficient reasons, be disregarded by belligerents [1] Usages have, however, a tendency gradually to harden into legal rules of warfare, and the greater part of the present laws of war have grown up in that way

[1] As to the means of securing legitimate warfare, see para 435 *et seq*

3. The development of the laws and usages of war is determined by three principles There is, firstly, the principle that a belligerent is justified in applying any amount and any kind of force which is necessary for the purpose of war that is, the complete submission of the enemy at the earliest possible moment with the least possible expenditure of men and money There is, secondly, the principle of humanity, which says that all such kinds and degrees of violence as are not necessary for the purpose of war are not permitted to a belligerent And there is, thirdly, the principle of chivalry, which demands a certain amount of fairness in offence and defence, and a certain mutual respect between the opposing forces

Three principles determining development of laws and usages of war

4 The existing written agreements which affect the military[1] forces are[2] —

Existing international agreements

(i) The Declaration of St Petersburg, 1868, renouncing the use, in time of war, of Explosive Projectiles under 400 grammes weight

(ii) The two Hague Declarations, 1899, (*a*) respecting Expanding Bullets,[3] and (*b*) respecting Asphyxiating Gases [4]

(iii) The Geneva Convention of 1906 " for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field "[5]

(iv) The Hague Conventions, 1907, (*a*) " Relative to the Opening of Hostilities, " (*b*) " Concerning the Laws and Customs of War on Land "[6], and (*c*) " Respecting the Rights and Duties of Neutral Powers and Persons in War on Land "

(v) A portion of the Hague Convention, 1907, " Respecting Bombardments by Naval Forces in time of war " , and

(vi) The Hague Declaration, 1907, " Prohibiting the Discharge of Projectiles and Explosives from Balloons "[7]

5 The above-mentioned Convention " Concerning the Laws and Customs of War on Land," does not pretend to provide a complete

Agreements recognised to be incomplete

[1] Such agreements as concern the naval forces only are not enumerated here Officers charged with duties in connection with coast defences and defended ports should, in addition to the Conventions outlined in para 4, make themselves acquainted with the contents of the Hague Conventions dealing with the " *Laying of Automatic Submarine Contact Mines* " and " The Right of Capture in Naval War "

[2] For the text of these agreements see App 1 to 9, of this chapter

[3] The question of the legality of the use of " tracer " " incendiary " or " explosive " projectiles by or against aircraft was considered by a Commission which met at the Hague in 1922–1923 in accordance with the Resolution of the Washington Conference of 1921–1922 The draft rules prepared by this Commission have, however, not yet become the subject of an international agreement

[4] By art 5 of the Treaty of Washington, 1922, the U S A , the British Empire, France, Italy and Japan assented to the prohibition of chemical warfare in all its forms, but the treaty has not yet been ratified A Protocol signed at Geneva in 1925 by most of the civilized powers prohibits the use of bacteriological methods as well as the use of poison gas in warfare Up to the present, however, the Protocol has not been ratified by H M the King Although the Hague Declaration of 1899 is theoretically still binding, the fact that it was deliberately broken in the Great War, 1914–1918, and that preparations for chemical warfare can be made without fear of detection, must be borne in mind

[5] The Geneva Convention of 1864, " for the Amelioration of the condition of Wounded and Sick in Armies in the Field, " is still binding on signatories of that Convention who have not ratified or acceded to the Convention of 1906 These Conventions stood the test of the Great War, 1914–1918, and few alterations to them are required

[6] To this Convention are annexed " Regulations respecting the Laws and Customs of War on Land, " consisting of 56 articles These are referred to in this chapter as the Hague Rules Thus art 23 of the Regulations is referred to as Hague Rules 23

The Hague Convention of 1899, " Concerning the Laws and Customs of War on Land, " is still binding on the signatories of that Convention who have not ratified or acceded to the Convention of 1907

[7] See para 41 (v) and note 5 thereto.

Ch XIV

code, and cases beyond its scope therefore still remain the subject of customary rules and of usage [1]

Which States are bound by the international agreements

6 The Conventions and Declarations above mentioned are, strictly speaking, only binding on the Powers which have agreed to them, and have not subsequently denounced them, and then only in a war in which all the belligerent States engaged are parties to them Similarly, if one Power had not agreed to a particular article of these Conventions, that article would not be binding on the other belligerents although they might have contracted to accept it [2]

In the absence of agreements, nations are bound, however, by the usages which preceded formal conventions, and which, as was shown in 1870–1, amount to the same thing

Warfare with uncivilized peoples

7. It must be emphasized that the rules of International Law apply only to warfare between civilized nations, where both parties understand them and are prepared to carry them out They do not apply in wars with uncivilized States and tribes, where their place is taken by the discretion of the commander and such rules of justice and humanity as recommend themselves in the particular circumstances of the case [3]

II —The Opening of Hostilities

(1) *Declaration of War*

Declaration of war obligatory

8 The "Convention Relative to the Opening of Hostilities," 1907, binds the contracting Powers, in the case of war between two or more of them, not to begin hostilities without previous and explicit warning in the form of a reasoned declaration of war, or of an ultimatum with a conditional declaration of war There is, however, nothing to impose any period of delay between the issue of notification and the beginning of hostilities Sudden and unexpected declarations of war for the purpose of surprising an unprepared enemy are in no wise rendered impossible

Notification of war to neutral States

9. The signatories are bound when belligerents[4] to notify the existence of a state of war without delay to neutral signatory States, whose responsibilities as neutrals are, as a rule, not engaged

---

[1] See preamble to the Convention in App 6

[2] Paragraphs to this effect are to be found in each Convention and Declaration (except as regards art 2 of "The Convention relative to the Opening of Hostilities", see art 3, para 2, of the Convention in App 5)

The Conventions above mentioned, and all the Declarations, except that "Prohibiting the Discharge of Projectiles and Explosives from Balloons," have been generally accepted by the Powers, but in some cases with reserve of certain articles I or signatories, &c, see the list after each Convention and Declaration in App 1–9

The experiences of the Great War, 1914—1918, subjected the Hague Rules to a severe test On the whole, considering the magnitude of the struggle and the new engines of warfare which were employed, the Rules did not work badly, and their absence would have been disastrous At some future time they will require to be re considered at an international conference and brought more up to date Further provision is specially required for dealing with the treatment of resident enemy subjects, the means of carrying on war, the treatment of prisoners of war, the bombardment of undefended places, the question of military reprisals, the punishment of war crimes, and the occupation of enemy territory

[3] The trend of public opinion on this subject is indicated by the discussions in the Press and by the questions and interpellations in Parliament with regard to the operations in the Sudan, 1898, in the Reichstag respecting those in China in 1900, and in the Chambre des Deputés respecting those in Morocco in 1908, and further by the speech of M Beernaert at the close of the labours of the Second Committee of the Hague Conference, 1907, of which he was President, and which drew up the revised rules in the Convention concerning the Laws and Customs of War on Land He said, "May these rules be observed, observed in all particulars, better observed than in the past, and even with regard to races whom we have been accustomed to regard as inferior to our own" (Hague Conference 1907, *Acts*, Vol III, p 89)

[4] Opening of Hostilities Convention, art 2

until they receive the notification The omission of a notification on the part of belligerents does not, however, absolve a neutral Power from its responsibilities,[1] if it is actually aware of the existence of hostilities

Importance of the Convention concerning the opening of hostilities.

10 The Convention is valuable from the legal and commercial points of view, especially in a maritime war, since it compels belligerents themselves to fix and announce a definite date which is to be regarded as the beginning of hostilities and after which they are entitled to exercise the rights of belligerency and to exact from neutrals the obligations of neutrality

(ii) *Treatment of Resident Enemy Subjects*

General position of the ordinary citizen in war

11 According to the British view, the first consequence of the existence of a condition of war between two States is that every subject of the one State becomes an enemy to every subject of the other, for it is impossible to sever the subjects from their State, and the outbreak of war between two States cannot but make their subjects enemies Before the Great War, 1914–1918, the tendency had been, however, to regard hostilities as being restricted to the armed forces of the belligerents,[2] and to differentiate between them and the ordinary citizens of the contending States, who did not take up arms

Detention of enemy subjects *en masse*

12 It was thus formerly thought to be inadmissible to detain as prisoners subjects of one of the hostile parties travelling or resident in the country of the other at the time of the outbreak of war,[3] except perhaps in the case of grave emergency That view gained some support from article 5 of the Regulations annexed to the Convention of 1899, concerning the Laws and Customs of War on Land, which permitted the internment of prisoners of war, and whence it was argued, *e contrario*, that the internment of enemy subjects, other than prisoners of war, was prohibited The case has assumed a new aspect now that the liability of the whole male population to military service has become the almost universal rule, and greatly increased facilities of travel, especially at certain seasons, may result in the presence of enemy visitors in numbers which would appreciably tax the war resources of a State dependent on imported foods, or having to provide man-power for their supervision if left to their own devices It must now be considered as a settled and lawful practice either to prevent or to compel the departure of enemy subjects present in a belligerent State, and to intern or otherwise control or restrict the liberty and vocations of those who are not compelled to depart, as may seem necessary or best adapted for preserving the safety of the State in all the circumstances of the moment [4]

13. In the application of any such controls or restrictions to enemy subjects it is permissible to differentiate between ordinary

[1] Opening of Hostilities Convention, art 2 See para 465 *et seq*, as regards the duties of neutral Powers

[2] For definition of "armed forces," see para 20

[3] The conduct of Napoleon, who in 1803 seized all British subjects travelling in France and detained all between 18 and 60 years of age, some 10,000 in number, till the peace of 1814, was at the time severely criticised It must, however, be borne in mind that Napoleon did not claim a right to make civilians prisoners of war He justified his act as one of reprisals, considering it a violation of international law on the part of England to begin hostilities by capturing two French merchantmen in the bay of Audierne without a formal declaration of war

[4] At the beginning of the Great War, 1914–1918, both Germany and France detained and interned males of military age

Ch XIV

enemy civilians and those known to be active or reserve officers or men of the hostile armed forces, or liable to service with these forces The principle of self-preservation must justify belligerents in refusing to permit each other the use of hostile man-power which may be prepared to inflict military injuries upon them either from within or without their own territories [1]

Expulsion of enemy subjects

14. The expulsion of any or all subjects of the enemy from the territory of the opposing State is strictly admissible In Great Britain, under the Aliens Restriction Acts of 1914 and 1919, powers are taken for the deportation of any alien at any time where the Secretary of State " deems it to be conducive to the public good "[2]

15 Belligerents have in recent years always acted[3] in obedience to this principle Expulsion has also been decreed from seaports, fortresses, and defended areas, where special precautions were necessary,[4] and from the actual or expected theatres of hostilities [5]

16. Should the expulsion of any person be ordered he should be given such reasonable notice as may be consistent with public safety, in order to make arrangements for the custody of his property and preparations for his departure

[1] Persons suspected of being in communication with the enemy may without doubt be detained and interned or tried

At the commencement of the Franco German War, the Duke de Cramont in his despatch, dated 23rd July, 1870, to the American Minister in Paris (who was in charge of North German interests), stated that the Emperor of the French would not allow the departure of North Germans not past the age of active military service (Washburne, 1905, p 41)

Professor Lueder in Holtzendorff, 1885–1889, iv p 349 fully recognises the right to detain *"aktive Militärs"* and *"Militärpflichtige"*, that is, persons belonging to and liable to be called on for duty in the army and navy The usage of 1914–1918 was in accordance with Professor Lueder's view

[2] See art 12 (6) (c) of the Aliens Order, 1920 In peace time the great majority of deportation orders are made by the Secretary of State on the recommendation of a court by which the alien has been convicted of some offence (see Article 12 (6) (a)) The power to deport without such a recommendation is usually reserved for use in cases where the alien's known character is such that his presence is undesirable, though he may not have committed any specific offence

[3] In 1870 German citizens in France were at first, by notice inserted in the *Journal Officiel* of the 20th July, permitted to continue their residence as long as their conduct did not give any legitimate cause of complaint But on the 12th August the French Government decided that with certain exceptions they must quit France Exceptions were made in favour of persons recommended by respectable citizens of the neighbourhood The decision was made partly because of the hostility of the populace towards Germans and of the difficulty of providing for their safety It appears to have been modified, for on 28th August, General Trochu, the Governor of Paris, ordered every German in Paris and in the Department of the Seine to leave France or retire beyond the Loire within three days Even this order was not effective, for foreigners in France not being registered, it was difficult to secure their departure

At the close of the siege of Paris the American Minister reported that he had 2,900 Germans under his protection in the city (Washburne, 1905, p 387)

German authorities admit the complete right of the French Government to act as they did (Holtzendorff, 1885–1889, iv, p 350)

The German States in 1870 did not order the expulsion *en masse* of the French who were resident in their territories, there were, however, only 2,000 to 3,000 scattered over twenty five States

[4] During the Crimean war many British subjects were expelled from the Russian seaports of Cronstadt, Odessa and Sebastopol

Previous to the outbreak of hostilities in 1904, the Commandant of Vladivostok declared officially that he was authorised to proclaim a state of siege, and that, when declared, all Japanese must leave within three days (Ariga, 1908, pp 363, 364)

On 12th February, 1905, the Japanese military authorities at Port Arthur declared that the commander-in chief intended to compel all foreigners to leave that fortress as soon as the preparations for its defence were complete " It was a measure of precaution for the preservation of military secrets " This order was enforced except as regards twenty persons, agents of German, American, and Danish commercial firms, to whom it was found convenient to grant permission to remain (Ariga, 1908, pp 363, 364)

[5] It has already been pointed out in footnote 3 above that on the 28th August, 1870, every German in Paris and the Department of the Seine was ordered to leave

In 1904–5, although Japanese subjects were permitted to remain in European Russia, they were required to leave Manchuria and certain parts of Asiatic Russia

III —The Armed Forces of the Belligerents

(i) *The Division of the Enemy Population into Two Classes*

The armed forces and the peaceful population

17. The division of the enemy population into two classes, the armed forces and the peaceful population, has already been mentioned Both these classes have distinct privileges, duties, and disabilities It is one of the purposes of the laws of war to ensure that an individual must definitely choose to belong to one class or the other, and shall not be permitted to enjoy the privileges of both , in particular, that an individual shall not be allowed to kill or wound members of the army of the opposed nation and subsequently, if captured or in danger of life, to pretend to be a peaceful citizen

Rights and privileges of armed forces

18 The forces of a belligerent have the right to withstand the enemy by all the methods not specially forbidden by the laws of war[1], but they may be killed or injured as long as they continue to resist Once, however, they cease resistance they have a right to humane and honourable treatment as prisoners of war Their lives are spared, and it is the business of the captor to protect and maintain them [2]

Rights and privileges of the peaceful population

19 Peaceful inhabitants, on the other hand, may not be killed or wounded, nor as a rule taken prisoners [3] If, however, they make an attempt to commit hostile acts, they are not entitled to the rights of armed forces, and are liable to execution as war criminals [4]

(ii) *The Armed Forces*

Who are comprised under the term armed forces

20. Under the term armed forces are comprised —

(i) The army this includes militia or volunteer corps[5] in countries where they constitute the national forces or form part of them [6] The members of the army are entitled to recognition as belligerent forces whether they have joined voluntarily or have been compelled to do so by State law, whether they are nationals of the enemy or of a neutral State,[7] and whether they joined before or after the declaration of war

(ii) Militia and volunteer corps which do not ordinarily form part of the army, but have been raised, possibly, for the duration of the war or even for the execution of some special operation These irregular troops must, however, fulfil all of the following conditions —

(*a*) Be commanded by a person responsible for his subordinates ,

(*b*) Have a fixed distinctive sign recognisable at a distance ,

(*c*) Carry arms openly , and

(*d*) Conduct their operations in accordance with the laws and customs of war [8]

---

[1] See para 39 *et seq*

[2] See para 54 *et seq*

[3] For further discussion of the relations between an invader and the population see paras 340 *et seq* , and 405 *et seq*

[4] See para 441

[5] *e g* , the Territorial Army.

[6] Hague Rules, 1

[7] *e g* , the Garibaldians who fought for France in 1870–1 and the various foreigners who assisted the Boers in 1899–1902.

[8] Hague Rules 1

Ch XIV

(iii) The inhabitants of a territory not under occupation[1] who, on the approach of an enemy, spontaneously take up arms to resist the invading troops without having had time to organise themselves as laid down in (i) or (ii), provided they conform to conditions (*c*) and (*d*) laid down above for irregular combatants [2]

Non combatants

21. Both combatant and non-combatant members of the armed forces are included in the above categories [3] The conditions, however, under which irregular corps obtain the rights of the armed forces require some explanation

(iii) *The conditions required of Irregular Combatants*

Responsible commander

22. The first condition, "to be commanded by a person responsible for his subordinates," is completely fulfilled if the commander of the corps is regularly or temporarily commissioned as an officer or is a person of position and authority, or if the members are provided with certificates or badges granted by the Government of the State to show they are officers, N C Os , or soldiers, so that there may be no doubt that they are not partisans acting on their own responsibility [4] State recognition, however, is not essential, and an organisation may be formed spontaneously and elect its own officers [5]

Distinctive sign

23. The second condition, relative to the fixed distinctive sign recognisable at a distance, would be satisfied by the wearing of military uniform, but less than complete uniform will suffice The distance at which the sign should be visible is left vague, but it is reasonable to expect that the silhouette of an irregular combatant in the position of standing against the skyline should be at once distinguishable from the outline of a peaceful inhabitant, and this by the naked eye of ordinary individuals, at a distance at which the form of an individual can be determined [6] As encounters now take place at ranges at which it is impossible to distinguish the colour or the cut of clothing, it would seem desirable to provide irregulars with a helmet, slouch hat, or forage cap, as being completely different in outline from the ordinary civilian headdress

24 It may, however, be objected that a headdress does not legally fulfil the condition that the sign must be fixed Something

[1] For definition of "occupied territory," see para 341 below

[2] Hague Rules, 2

[3] Hague Rules See para 58, footnote 4, below, as regards non-combatants

[4] Identity discs were issued to all ranks in the Great War, 1914–1918

[5] In 1870 the Germans issued the following notice —

"Every prisoner who claims to be treated as a prisoner of war must prove his status as a French soldier by the production of an order issued by a competent authority and addressed to himself showing that he has been summoned to the colours and is borne on the rolls of a military unit raised by the French Government" (*Kriegsbrauch*, 1902, p 6) Germany would appear to refuse recognition to "individual irregulars, or to small bands," unless they can prove that they have State authorisation (*Kriegsbrauch*, 1902, p 5) The Hague Rules now make such conditions unlawful, for there is no mention in them of State authorisation

[6] The Japanese authorities informed the Russians in 1904 that the sign should be "easily distinguishable by the naked eye of ordinary people" (Ariga, 1908, pp 85, 86) *Kriegsbrauch* 1902, p 7, demands that it should be plainly visible at long (*white*) range

of the nature of a badge sewn on the clothing should therefore be worn in addition [1]

25. It is not necessary to inform the enemy of the distinctive mark adopted to fulfil the second condition[2], although to avoid misunderstandings it may be convenient to do so [3]

Carrying of arms openly

26. The third condition provides that irregular combatants shall carry arms openly They may therefore be refused the rights of the armed forces if it is found that their sole arm is a pistol, hand-grenade, or dagger concealed about the person, or a sword stick, or similar weapon, or if it is found that they have hidden their arms on the approach of the enemy

Compliance with the laws of war

27 The fourth condition requires that irregular corps shall conduct their operations in accordance with the laws and customs of war It is especially necessary that they should be warned against employment of treachery, maltreatment of prisoners, wounded, and dead, improper conduct towards flags of truce, pillage and unnecessary violence and destruction

28 It is taken for granted that all members of the army[4] as a matter of course will comply with the four conditions, should they, however, fail in this respect[5] they are liable to lose their special privileges of armed forces

(iv) *The Levée en Masse*

Conditions under which an armed rising of inhabitants is recognised

29 A rising of "the inhabitants of a territory not under occupation who on the approach of the enemy spontaneously take up arms to resist the invading troops without having had time to organise themselves," is spoken of as a *levée en masse* Such inhabitants are recognised as having the privileges of belligerent forces if they fulfil the last two conditions laid down for irregulars,

---

[1] This might take the form of a device sewn to, or embroidered on, the breast of the coat, or uniform buttons on the coat, or a coloured stripe on the trousers, or two coloured arm bands, or some similar indication It has been suggested that one white or distinctive coloured sleeve to the coat, or a sash sewn across the coat would largely satisfy all the conditions There appear to be objections to the use of a single red arm band, as it might be mistaken for the brassard of the Geneva Convention, or the arm band used in some armies as the badge of neutral attachés, newspaper correspondents, and others

The following historical examples of distinctive marks are of interest —

In 1870 the uniformed French *Garde Nationale Mobile*, and the *franc tireurs* wore blue or grey blouses with a red arm band (in some cases a red shoulder strap), the former in addition had *lèpis* The German Government did not consider the blouse and arm band sufficiently distinctive The following is the translation of part of the telegram of the German Chancellor communicated by the medium of the American Minister to the French authorities —

"The blue blouse is the national costume, the brassard on the arm is only distinguishable at a short distance, and can be taken off or replaced instantly with the result that it becomes impossible for the Prussian troops to distinguish the individuals from whom they have to expect acts of hostility In consequence, those not recognisable as soldiers on all occasions and at the necessary distance, who kill or wound Prussians, will be tried by Martial Law" (Guelle I 1884, p 77) (*Kriegsbrauch*, 1902, p 7)

In 1904 certain Japanese civilians who were organised into a volunteer corps to assist in the defence of Pingyang wore white helmets, European clothes (and a population wearing Chinese), and a flower embroidered in red thread on their coats (Ariga, 1908, p 82)

The Russian volunteers on the Island of Saghalien had no military uniform, and as distinctive signs had on their caps a cross or a cross with the letters M P (*Mandchurski Polk*, Manchurian Regiment), on their sleeves a red band about two thirds of a inch broad, and a red edging to their greatcoats and caps (Ariga, 1908, pp 85, 86) It is not clear from Professor Ariga's work whether these signs satisfied the Japanese Certain irregular combatants taken prisoners by them were shot (Ariga, 1908 p 87)

[2] Hague Conference, 1907, *Actes*, Vol III, pp 20, 104–106

[3] In July, 1904, the Russian Government informed the Japanese Minister at Berlin, through the intermediary of the American Chargé d'Affaires at St Petersburg, of the distinct signs which were worn by the "volunteers" in Saghalien (See last paragraph of note to para 24)

[4] As defined in para 20 above

[5] For example, by concealing their uniform under civilian clothes, or using civilian clothes without a distinctive mark owing to their uniforms having worn out The use of the enemy's uniform is dealt with in para 152, below

Ch XIV

these are to carry arms openly and to conduct their operations in accordance with the laws and customs of war They are exempt from the obligations of being under the command of a responsible commander and wearing a distinctive sign It must, however, be emphasized that the inhabitants of a territory already invaded by the enemy who rise in arms do not enjoy the privileges of belligerent forces [1]

30. The rules which affect a *levee en masse* should be generously interpreted The first duty of a citizen is to defend his country, and provided he does so loyally he should not be treated as a marauder or criminal [2]

31 The word "territory" in this relation is not intended to mean the whole extent of a belligerent State, but refers to any part of it which is not yet invaded

32. Thus if an enemy approaches a town or village with the purpose of seizing it, the inhabitants, if they defend it are entitled to the rights of regular combatants, as a *levée en masse*, although they wear no distinctive mark, in this case all the inhabitants of a town may be considered legitimate enemies until the town is taken [3]

33. Should some inhabitants of a locality take part in the defence, it might be justifiable to treat all the males of a military age as prisoners of war

34. The privileges granted to irregular combatants by article 1 of the Hague Rules [4] apply whether these combatants are acting in immediate combination with a regular army or separate from it

Permanent character of belligeren status

35 It is necessary to remember that inhabitants who have legitimately taken up arms cannot afterwards change their status back to that of peaceful inhabitants Even if they lay down their

[1] Hague Rules, 2

The South African War of 1899–1902 affords an example of the first two conditions being dispensed with

[2] Considerable difficulty was experienced at the Hague Conference, 1899, in obtaining the adoption of art 2 of the Rules respecting the Laws and Customs of War on Land The countries which had large armies raised by universal service insisted that only the persons referred to in art 1 should be considered as belonging to the belligerent forces, they drew attention to the fact that if all the inhabitants were permitted to fight without any conditions, art 1, which requires four essential conditions for the quality of belligerent, became entirely useless, that the invading army would have no means of distinguishing peaceful inhabitants from combatants, and thereby might be led to consider all inhabitants as active enemies and to attack them The small States, however, replied that although they were not compelled to keep up large armies based on a system of conscription they had nevertheless the right to defend their countries in case of need, and then they might have recourse to a *levée en masse*

A compromise was made and is embodied in art 2, which authorises the *levée en masse* of the population of a territory not occupied, on the enemy's approach (See Procès verbaux in "Conference International de la Paix Ministère des Affaires Etrangères, La Haye, 1899," p 51)

[3] Professor Ariga gives as an example the defence of Ying kou on the 12th February, 1905 in which only 70 of the 400 defenders were Japanese soldiers, the remainder being post officials, military telegraphists, settlers and men of the commercial classes, they had time to organise themselves, but had no distinctive mark (Ariga, 1908, pp 83–91)

In some terms of surrender, *e g*, those of Metz and Port Arthur, the volunteers from among the inhabitants who had assisted the armed forces have been specially mentioned as included, in order, no doubt to avoid any misunderstanding

In September, 1870, the Germans shot certain inhabitants of Bazeilles who had taken an active part in the defence of the village during the battle of Sedan on the ground that they had offered violence to Bavarian soldiers, and had fired from the cellars of houses already captured, sparing neither wounded nor stretcher bearers (Official Account of Franco Prussian War, 1870–1, part 1, vol 2, p 316), that is for infringement of the laws and customs of war The Japanese shot twenty five inhabitants of Vladimirovka who were taken prisoners armed but without any distinctive sign to show they were combatants In this case the reason alleged was that they were not inhabitants defending their hearths, property and country, but convicts and vagabonds ignorant of the laws of war (Ariga, 1908, p 87)

[4] See para 20 (ii), above.

arms and return to their peaceful avocations they may be made prisoners of war

Fugitives and deserters

36 Deserters and subjects of a belligerent fighting in the enemy's ranks are traitors to their country, and are, when captured, liable to the penalty for treason They cannot be regarded as enemies in the military sense of the term and cannot claim the privileges of the members of the armed force of the enemy, but terms may be specially made for them

Duty of officers as regards legal status of combatants

37. It is not, however, for officers or soldiers in determining their conduct towards a disarmed enemy to occupy themselves with his qualifications as a belligerent Whether he belongs to the regular army or to an irregular corps, is an inhabitant or a deserter, their duty is the same they are responsible for his person and must leave the decision of his fate to competent authority No law authorises them to have him shot without trial, and international law forbids summary execution absolutely If his character as a member of the armed forces is contested he should be sent before a court for examination of the question

(v) *Coloured Troops*

Employment of coloured troops

38 Troops formed of coloured individuals belonging to savage tribes and barbarous races should not be employed in a war between civilized States The enrolling, however, of individuals belonging to civilized coloured races and the employment of whole regiments of disciplined coloured soldiers is not forbidden

IV —The Means of Carrying on War

Limitation of means of carrying on war

39. The first principle of war is that the enemy's powers of resistance must be weakened and destroyed The means that may be employed to inflict injury on him are not, however, unlimited [1] They are in practice definitely restricted by international conventions and declarations, and also by the customary rules of warfare And, moreover, there are the dictates of religion, morality, civilization, and chivalry which ought to be obeyed The means include both force and stratagem

(1) *The Means of Carrying on War by Force*

General means of carrying on war by force

40 The most important powers of resistance possessed by an enemy, in addition to the general resources of his country,[2] are furnished by his armed forces with their military stores and apparatus, and his permanent or improvised fortresses The means of reducing these powers of resistance are —Killing and disabling the enemy combatants, constraining them by defeat or exhaustion to surrender, that is taking them prisoners, and the investment, bombardment, or siege of the fortresses How far an invader is allowed to damage, destroy, or appropriate property and injure the general resources of a country, will be considered later [3]

---

[1] Hague Rules, 22 "Belligerents have not an unlimited right as to the choice of means of injuring the enemy"

[2] The general resources of a country have become a determining factor in its ability to wage a national war successfully, owing to the increase in size of the armed forces engaged, and to the tremendous quantities of munitions required Consequently every legitimate method of hindering the production of munitions will inevitably form an important means of reducing an enemy's power of resistance

[3] See para 405 *et seq*

Ch XIV

(i) A —*Killing and Disabling the Enemy Combatants*

International agreements

41 The international agreements limiting the means of destruction of enemy combatants are contained, apart from article 23 of the Hague Rules, in four Declarations by which the contracting parties, of which Great Britain is one, engage —

(i) " to renounce in case of war amongst themselves the employment by their military and naval forces of any projectile of a weight below 400 *grammes* (approximately 14 oz), which is either explosive or charged with fulminating or inflammable substances ",[1]

(ii) " to abstain from the use of bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions ",[2]

(iii) " to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases ",[3]

(iv) " to prohibit, for a period extending to the close of the Third Peace Conference,[4] the discharge of projectiles and explosives from balloons or by other new methods of a similar nature "[5]

Prohibited means of killing

Arms which cause unnecessary suffering

42. It is expressly forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering[6] Under this heading might be included such weapons as lances with a barbed head, irregularly-shaped bullets, projectiles filled with broken glass, and the like[7], also the scoring of the surface of bullets, the filing off the end of their hard case, and smearing on them any substance likely to inflame a wound The prohibition is not, however, intended to apply to the use of explosives contained in mines, aerial torpedoes, or hand-grenades

Poison, &c.

43 The use of poison and poisoned weapons is forbidden[8] By analogy this prohibition has been extended to the use of means calculated to spread contagious diseases

44 The deliberate contamination of sources of water by throwing into them corpses of human beings or animals is a practice confined to savage tribes There is, however, no rule to prevent measures being taken to dry up springs, and to divert rivers and aqueducts

45. Train wrecking, and setting on fire camps or military depôts are legitimate means of injuring the enemy when carried out by members of the armed forces

Assassination

46 Assassination, the killing or wounding of a person behind the line of battle by enemy agents or partisans, and the killing and

[1] Declaration of St Petersburg, 1868 For a list of parties to the Declaration, see App 1
[2] Hague Declaration, 1899 For a list of parties to the Declaration, see App 2
[3] Hague Declaration, 1899 For a list of parties to the Declaration, see App 3
[4] That is until the next Peace Conference has completed its labours
[5] Hague Declaration, 1907 For a list of parties to the Declaration, see App 9 It may be remarked here that hardly any of the Great Powers have signed this Declaration, it is therefore practically without force
[6] Hague Rules, 23 (*e*)
[7] The use of soft nosed and explosive bullets is already provided against in the Declaration referred to in para 41 (ii) above According to the French Manual, 1893, p 14, it must not be accounted reprehensible if irregular troops raised in haste to oppose an invader should in default of regulation ammunition and bayonets make use of small shot and the cutting tools which are available in the country Thus, however, goes too far, since " cutting tools," include saws and the like which would cause " unnecessary suffering," and are therefore forbidden.
[8] Hague Rules, 23 (*a*).

wounding by treachery of individuals belonging to the hostile nation or army, are not lawful acts of war,[1] and the perpetrator of such an act has no claim to be treated as a combatant, but should be put on his trial as a war criminal.[2] Measures should be taken to prevent such an act from being successful in case information with regard to it is forthcoming.[3]

Outlawry

47 As a consequence of the prohibition of assassination, the proscription or outlawing of any enemy, or the putting a price on an enemy's head, or any offer for an enemy "dead or alive" is not permitted.

Quarter

48. It is forbidden to declare that no quarter will be given.[4]

49 It is hardly necessary to state that the custom is now obsolete by which quarter could be refused to the garrison of a fortress carried by assault, to the defenders of an unfortified place who did not surrender when artillery was brought against it, and to a weak garrison who obstinately and uselessly persevered in defending a fortified place against overwhelming forces.

Killing of surrendered combatants

50 It is forbidden to kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion.[5]

51. This prohibition is clear and distinct: there is no question of the moment up to which acts of violence may be continued without disentitling the enemy to be ultimately admitted to the benefit of quarter. War is for the purpose of overcoming armed resistance, and no vengeance can be taken because an individual has done his duty to the last but escaped injury.[6]

Infractions of laws of war

52. Few wars have occurred without both belligerents making mutual charges of breaches of the laws of war.[7] Such charges as have been proved have almost invariably been shown to have been the deeds of subordinates who have acted through ignorance or excess of zeal; they have less often been deliberate acts.[8] Care must therefore be taken that all ranks are acquainted with the laws of war and that they endeavour to observe them.

53 A belligerent is not justified in at once dispensing with obedience to the laws of war on account of their suspected or ascertained violation on the part of his adversary.

[1] Hague Rules, 23 (*b*). For instance, it would be treachery for a soldier to sham that he was wounded or dead, or to pretend that he had surrendered, and afterwards to open fire when the enemy came up to him.

[2] See para 441 *et seq* below.

[3] In 1806 an offer to assassinate Napoleon was made to the British Government by a foreigner. The man was detained (the law not permitting of his punishment) and the French Minister of Foreign Affairs was informed.

[4] Hague Rules, 23 (*d*). Formerly it was held that the general duty to give quarter did not protect an enemy who had personally violated the laws of war, who had declared his intention of refusing to grant quarter, or of violating those laws in any grave manner, or whose government or commander had done acts which justified reprisals. (See paras 452–460.) The American Instructions, 1863, recognised the refusal of quarter in certain circumstances (arts 60–63.)

[5] Hague Rules, 23 (*c*).

[6] An individual who refuses to cease firing after a general surrender has been made by his commander forfeits his privileges as a combatant.

[7] For further examination of this question see *post* para 435 *et seq*, "Means of securing legitimate warfare."

[8] The Great War, 1914–1918, however, produced several instances in which breaches of the laws of war were deliberate. This was notably so at Ypres in 1915 when the Germans released poison gas, and again in 1917 when they declared unrestricted submarine warfare.

Ch XIV

(1) B —*The Taking of Prisoners*

Changes in treatment of prisoners

54. Few of the customs of war have undergone greater changes than those relating to the treatment of prisoners [1] In antiquity war captives were killed, or at best enslaved, in the Middle Ages they were imprisoned and held to ransom, it was only in the seventeenth century that they began to be deemed prisoners of the State and not the property of the individual captors Even during the wars of the nineteenth century they were often subjected to cruel neglect, unnecessary suffering, and unjustifiable indignities

The persons who may claim the privileges of prisoners of war

55. The written laws regarding prisoners of war are contained in articles 4 to 20 of the Hague Rules, in certain paragraphs of the Geneva Convention, and in the Convention concerning the Rights and Duties of Neutral Powers and Persons in war on land

56 Every member of the armed forces, if he falls into the hands of the enemy, has a claim to be treated as a prisoner of war, unless he has committed a war crime [2]

Followers

57. It is expressly enacted that followers of armies—such as newspaper correspondents, reporters, sutlers, and contractors—who are captured and retained, can claim to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they are accompanying [3]

Civilians

58. In addition to the members of the belligerent forces and the civilians who accompany armies by permission of the military authorities, the following are liable to be made prisoners —

(i) The Sovereign and the male members of the royal family, the head of a Republican State, and the Ministers who direct the policy of a State, although as individuals they may not belong to the army

(ii) Civil officials and diplomatic agents attached to the army

(iii) Persons whose activity is of service in the war —such as higher officials, diplomatic agents, couriers, guides, &c , also all persons who being at liberty may be harmful to the opposing State —such as prominent and influential political leaders, journalists, local authorities, clergymen, and teachers, in case they incite the population to resistance [4]

(iv) The mass of the population of a province who rise to defend their territory before it is invaded by the enemy [5]

59. In some cases it may only be found necessary to detain such persons for a period

60. Although the Hague Rules do not contain anything regarding the treatment of private enemy individuals and enemy officials whom a belligerent thinks it necessary to make prisoners,

---

[1] The revision of the rules for the treatment of prisoners of war has already been considered at an International Conference which sat at the Hague in December, 1922, when a new set of regulations was drawn up and approved These rules have not yet been ratified—in general they follow the Hague Rules, but are more detailed

[2] See para 441 *et seq*

[3] Hague Rules, 13 Without such certificate they are liable, if found in the theatre of war, to arrest as suspected persons

[4] As regards civilian inhabitants of occupied territory who are requisitioned, impressed or hired to act as transport drivers, as labourers to construct fortifications or siege works, and in similar capacities which assist the army, or who voluntarily perform such services, and who are captured whilst so assisting, the enemy may detain them temporarily, requisition their services (see, however, paras 388–91), or release them as he thinks fit But he may not retain them as prisoners of war (see para 207 (i), last three lines) There is of course no necessity for such civilians to wear a " fixed distinctive sign, recognisable at a distance " (see para 23)

[5] See para 29 above

it is evident that they also can claim all the privileges of prisoners of war Such individuals are not civil prisoners, they are taker into captivity for military reasons, and they are therefore prisoners of war

Special treatment of military attachés and diplomatic agents of neutral Powers

61 It is contrary to usage to take prisoners military attachés or diplomatic agents of neutral Powers, who accompany an army in the field, or are found in a captured fortress, provided they are in possession of papers of identification and take no part in the hostilities They may, however, be ordered out of the theatre of war, and if necessary handed over by the capturing Power to the Ministers of their respective countries [1]

Wounded and sick

62 Wounded and sick when captured are prisoners,[2] but the members of the medical personnel are not made prisoners [3]

Chaplains

63. Chaplains attached to armies, so long as they confine themselves to their spiritual duties, cannot be made prisoners of war[4], if they are captured they must be released under conditions similar to those applicable to the medical personnel

Deserters from the enemy

64 Deserters from the enemy should be treated as prisoners of war, unless special circumstances render it desirable to liberate them Deserters and subjects of a belligerent captured in the ranks of the enemy have, as already pointed out, no right to claim treatment as prisoners of war, or the benefit of the laws of war

Prisoners who enter neutral territory

65 Prisoners of war, even if sick or wounded, who escape into the territory of a neutral Power, or are brought into it by troops taking refuge in such territory, do not necessarily acquire their complete liberty [5]

General position of prisoners

66 Prisoners of war are in the power of the enemy Government, and not of the individuals or units capturing them, and they must be humanely treated [6]

Right of interrogation

67 Every prisoner is bound to give, if questioned on the subject, his true name and rank In case he refuses to do so, he is liable to have the privileges curtailed which are due to prisoners of his class [7]

68. The right of interrogation is not limited to name and rank, yet a prisoner is not bound to reply to other questions It is permissible to employ every means, provided they are humane and not compulsive, to obtain all the information possible from prisoners with regard to the numbers, movements, and location of the enemy A prisoner cannot, however, be punished for giving false information about his own army [8]

Private property of prisoners

69. According to the Hague Rules all personal belongings of prisoners of war, except arms, horses, and military papers,

[1] A British naval attaché and two American military attachés with the Russian forces captured by the Japanese at Mukden were, after a report had been made to the Minister of Foreign Affairs, Tokio, sent to Japan and handed over to the Ministers of their respective countries (Ariga, 1908, pp 122, 123)

[2] Geneva Convention, art 2

[3] See para 184 *et seq*

[4] Geneva Convention, art 9

[5] See para 490 *et seq*, for the discussion of this situation

[6] Hague Rules, 4

[7] Hague Rules, 9

[8] The shooting of a prisoner for such reason is, as *Kriegsbrauch*, 1902, p 16, says, "cowardly murder"

Ch XIV

remain their property [1] In practice personal belongings are understood to include military uniform, clothing and kit required for personal use, although technically they may be the property of Government [2]

Money

70 This rule does not, however, authorise prisoners to retain large sums of money, or articles which might facilitate their escape Such money and articles should be taken from them against receipt and returned at the end of the war [3]

Unportable property

71 This rule, further, does not compel the captor to be responsible for such personal belongings of prisoners as they are unable to take with them [4]

Booty

72 Everything that is captured with prisoners, and is not included under the term "personal belongings," becomes the property of the belligerent Government, and not of the individuals or units capturing them [5]

Indulgence as regards property

73 A commander in arranging the terms of surrender may in his discretion permit prisoners to keep certain things otherwise liable to capture Thus, officers are frequently allowed to retain their swords

Escape of prisoners

74 Prisoners of war attempting to escape may be fired upon [6]

75 Escaped prisoners who are retaken before being able to rejoin their own army, or before leaving the territory occupied by the army which captured them, are liable to disciplinary punishment [7]

Disciplinary punishment

76. The words "disciplinary punishment" are intended to exclude a sentence of death For conspiracy, mutiny, revolt, or insubordination, prisoners of war are, however, liable, as will be seen below, [8] to the same punishment as persons subject to military law in the army which captured them [9]

Punishment for attempted escape

77 Punishment for attempted escape usually consists in curtailment of the measure of liberty allowed to prisoners, or even of detention If escapes are of frequent occurrence it is permitted

[1] Hague Rules, 4 According to the opinions expressed at the Hague Conference 1907, *Actes*, Vol III, pp 20 107, field glasses, range finders, maps, bicycles, and other objects used for military purposes and means of transport also remain their property See, however, para 71 Nothing was said about saddlery and harness, but they would naturally follow the fate of the horse to which they belong, whilst ammunition should seem to be included under "arms" Prisoners may of course be called upon to prove that the field glasses, &c, are really their private property

[2] After the battle of the Sha Ho some Japanese soldiers compelled Russian prisoners to give up good boots and take their worn out ones in exchange This was admitted to be irregular but was excused on the ground that the men did not like the boots to enrich themselves, but in order better to serve their country (Ariga, 1908 p 161) Similar stories are narrated of the Germans in 1870–1 (See Letters of Major von Kretschmann, Lieutenant's French translation p 382)

[3] Prisoners should always be called upon to prove ownership if it is suspected that the large sums of money or other objects in their possession are in reality government property Their private property is liable to requisition in the same manner as that of other persons (cf para 405 *et seq*)

[4] The Japanese authorities at the capitulation of Port Arthur declared to be responsible for property of the Russian officers "It was simply understood that the baggage not taken away would be confided to Russians remaining in the hospitals or to the ordinary inhabitants" (Ariga, 1908, p 325)

[5] See para 405 and footnote, below

[6] Hague Conference, 1899, p 144 A previous summons to halt and to surrender should be given if possible

[7] Hague Rules, 8

[8] See para 85

[9] Hague Conference, 1899, pp 113–4

to anticipate further attempts by increasing the measures of security [1]

78. Persons who after a successful escape are again taken prisoners of war are not liable to any punishment on account of their previous escape [2]

Execution of prisoners.

79. Prisoners of war may be shot down if they resist their guard or attempt to assist their own army in any way,[3] or if, as already mentioned, they attempt to escape Further, they may be executed by sentence of a proper court on conviction of an offence punishable by death under the civil or military law of the captor [4]

80 A commander may not put his prisoners to death because their presence retards his movements or diminishes his means of resistance by necessitating a large guard, or by reason of their consuming his supplies, or because it appears certain that they will regain their liberty through an impending success of their army Whether nowadays such extreme necessity can ever arise as will compel a commander on grounds of self-preservation to kill his prisoners may well be doubted [5]

81 The execution of prisoners by way of reprisal is dealt with elsewhere [6]

Internment

82 Prisoners of war are ordinarily interned,[7] that is to say, they are compelled to reside in a certain town, fortress, camp, or other place They may be bound not to go beyond certain fixed limits, obliged to respond to roll calls, and submitted to special surveillance so that any attempt at flight may be prevented

83. They should, if possible, be removed from the frontier districts Officers, with such servants as are considered necessary, should be detained in localities separate from the non-commissioned officers and men

84 The relations of the various ranks to each other nominally cease during captivity [8] For the sake of convenience, however, non-commissioned officers may be placed in charge of squads of men [9] Officers of whatever rank become subordinate to the officers and soldiers who are entrusted with their security

[1] In the Franco German War, 1870–1, the French officers who were prisoners were at first permitted to retain their arms and to have a considerable liberty of movement on condition of not leaving the locality assigned as their place of residence The Prussian Government, alleging the frequency of escapes, did not continue these indulgencies, and exhibited a severity in the surveillance of French officers of which the following order of General Vogel von Falkenstein is a specimen —

"On each occasion that a French prisoner escapes, ten of his comrades with whom he was living will be chosen by lot and will be closely confined in a fortress and deprived of all the privileges granted to an officer prisoner of war" (*Kriegsbrauch*, 1902, p 14)

[2] Hague Rules, 8 Para 75 indicates the character of a successful escape

[3] If they are not shot down at once, they may subsequently be tried for the offence

[4] Hague Conference, 1907, *Actes*, Vol III, p 29

[5] The American Instructions, 1863, art 60, read —"in great straits when his own salvation makes it impossible to cumber himself with prisoners"

The German *Kriegsbrauch*, 1902, says —"Prisoners can be killed in case of extreme necessity when other means of security are not available and the presence of the prisoners is a danger to one's own existence Exigencies of war and the safety of the State come first and not the consideration that prisoners of war must at any cost remain unmolested"

The last authenticated case of the killing of prisoners in cold blood occurred in 1799, at Jaffa, when 3,563 Arabs were shot down or bayoneted on the sea-shore by order of Napoleon

[6] See para 452 *et seq*

[7] For the treatment of troops interned in a neutral country, see para 485 *et seq*

[8] By A R 180 the ordinary relations of superior and subordinate legally remain unaltered in the British Service, when officers, warrant officers, N C Os or men become prisoners of war

[9] It is undesirable to employ officers for this purpose, since if placed in charge of men they might feel bound to make at least an attempt to overpower the guard,

Ch. XIV

Legal position

85. Prisoners of war, whilst well behaved, cannot be placed in close confinement except as an indispensable measure of safety, and only whilst the circumstances which necessitate that measure continue to exist [1] They are, however, subject to the laws, regulations, and orders in force in the army of the State in whose power they are In the case of crimes and misdemeanours they may be tried in the same way as a soldier of that army would be Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary [2] Such an act may vary from simple absence at roll call to an attempt at escape Collective punishment for the offences of individual prisoners is not forbidden [3]

86. Prisoners must not be regarded as criminals or convicts They are guarded as a measure of security and not of punishment

87. The object of the internment is solely to prevent prisoners participating further in the war Anything, therefore, may be done that may seem necessary to secure this end, but nothing more Restrictions and inconveniences are unavoidable, but unnecessary limitation of liberty, unjustifiable severity, ill-treatment and indignities are forbidden The searching of prisoners is a necessary measure of precaution

Maintenance,

88. The Government into whose hands prisoners of war have fallen is charged with their maintenance In default of special agreement between the belligerents, prisoners of war must be given the same scale and quality of rations, quarters, and clothing as the troops of the Government which captured them [4]

89 The scale of ration need only be that authorised for peace, without extras reserved for soldiers in the field Prisoners are only entitled to what is customarily used in the country, but due allowance should, if possible, be made for difference of habits, and captured supplies should be used if they are available [5]

90. The rooms in which prisoners of war are accommodated must be as healthy, clean, and decent as possible, they should not be kept in prisons or convict establishments

91 Freedom of movement inside the internment area should be permitted, unless there are special reasons to the contrary

Employment

92 The State may employ the labour of prisoners of war, other than officers, according to their rank and capacity The work must not be excessive, and must have no connection with the operations of war [6] Such work should be paid for at the same rates as are authorised for similar work of soldiers of that State, or if no rates are laid down, then at reasonable prices [7]

93. Prisoners may be authorised to work for municipal or other administrations, for private persons, or on their own account In

[1] Hague Rules, 5
[2] *Ibid*, 8.
[3] See *note* para 77, above
[4] Hague Rules, 7
[5] The ration of the Japanese soldier was found insufficient and unsuitable for the Russian prisoners They were allowed nearly double the regulation scale, and as soon as possible were fed after their own fashion (Ariga, 1908, p 113)
[6] Hague Rules, 6 Thus the use made by Germany of prisoners of war in digging trenches even on payment or with the alleged consent of the prisoners during the Great War, 1914–1918, was illegal
[7] Hague Rules, 6

these circumstances the conditions and rates of pay must be settled in agreement with the military authorities [1]

94 The money earned by prisoners must be used, if they desire it, to purchase comforts and small luxuries The balance can be retained but must be paid to them on their release, unless their Government refuses to refund the cost of their maintenance [2]

Pay

95. Officers who are prisoners must be given the same rate of pay as officers of corresponding rank in the army of the country where they are detained [3] The amount must be refunded by their own Government [4] There is no obligation to pay the rank and file [5]

Parole

96 Prisoners of war may be set at liberty on parole, if the laws of their country allow it [6] In such cases they are bound, on their personal honour, scrupulously to fulfil, both as regards their own Government and the enemy Government, the engagements they may have contracted, and their own Government is bound neither to require of nor to accept from them any service incompatible with the parole given

97. Some doubt exists whether the engagement of a prisoner of war simply released on parole extends to active service only, or whether even indirect services are forbidden

98 It is therefore advisable that the form of parole should state definitely the conditions under which the prisoner is released For instance, whether he is only bound not to take part directly with arms in the present war , or whether he is not permitted to accept any appointment in his own country or in the colonies, which may give direct or indirect assistance , or whether all and every performance of duty is forbidden The indirect assistance which could be rendered, if not forbidden, might include office work, work upon fortifications of places not besieged, raising or instructing recruits, fighting enemies who are not allies of the belligerent to whom he has given parole, repressing civil insurrections, or carrying out civil or diplomatic functions

---

[1] Hague Rules, 6 In Germany, in 1870–1, prisoners of war were permitted to work in factories and on the land In most wars prisoners have been allowed to make models, souvenirs, and other articles, one or more prisoners being permitted to act as agents for their sale

[2] Hague Rules 6 At the close of the Russo Japanese War it was agreed in the treaty of peace that each belligerent should pay the cost of maintenance of its soldiers whilst prisoners of war Art 224 of the Treaty of Versailles, 1919, reads —

" The High Contracting Parties waive reciprocally all repayments of sums due for the maintenance of prisoners of war in their respective territories "

[3] It was learnt early in the Great War 1914–1918, that British officers in Germany were not being paid in accordance with this Rule (Hague Rules, 17)

Both the German and Austro Hungarian Governments having refused to comply with the British Government's demand that the provisions of this Rule should be observed, a scale of pay was adopted in March, 1915, which was based on that which was in force in Germany, and it was made applicable to officer prisoners of war of all nationalities held by Britain other than medical officers (See para 200) Under this scheme the daily pay of a subaltern was fixed at four shillings, and that of a captain and all higher ranks at four shillings and sixpence Officers were required to pay for their food, clothing and laundry

British officer prisoners of war in Germany received —

Subalterns 60 marks a month

Captains and all higher ranks 100 marks a month

[4] Hague Rules, 17 It should be noted that the members of the medical personnel whilst in the hands of the enemy must receive " the same allowances " as well as the same pay as are granted to persons holding the same rank in the enemy's army Geneva Convention, art 13

[5] In 1870–1 the German rank and file prisoners in France received food and 7 *centimes* a day, the French rank and file prisoners in Germany received no pay

During the Great War, 1914–1918, British rank and file prisoners of war in Germany and German rank and file prisoners of war in England received no pay, except working pay when employed

[6] Hague Rules, 10 As regards the paroling of officers interned in a neutral country, see para 488

Ch. XIV

99. The parole should be in writing, and be signed by the prisoner [1]

100. A prisoner of war cannot be compelled to accept his liberty on parole, nor is the hostile Government compelled to accede to the request of a prisoner to be set at liberty on parole [2]

Broken parole

101. Prisoners of war liberated on parole and recaptured bearing arms against the Government to which they have pledged their honour or against allies of that Government, forfeit their right to be treated as prisoners of war, and may be tried for the offence [3]

Prisoners of war information bureau

102. A bureau of information relative to prisoners of war must be formed at the commencement of hostilities in each of the belligerent States The work of this bureau is to reply to all inquiries with regard to prisoners [4]

103. The departments concerned must therefore notify to the bureau all casualties amongst prisoners, and furnish it with such information as will enable it to make out and keep up to date a history sheet for each prisoner of war [4]

104. This history sheet must give the number, surname, and Christian name of the prisoner, his age, place of origin, rank, wounds, date and place of capture, internment, wounding and death, with such other remarks as may be necessary The sheet must be sent to the Government of the other belligerent as soon as peace has been concluded [4]

105. Belligerents must, although hostilities may still be going on, keep each other mutually informed with regard to the sick and wounded who have been taken prisoners A nominal roll must be sent as early as possible and all casualties notified, including any fresh admissions to hospital which have taken place [5]

106. It is usual, but not obligatory, to furnish similar information with regard to all prisoners of war [6]

107 The prisoners of war information bureau is also charged with the duty of receiving and storing all personal effects, valuables, letters, &c , found on the field of battle, or left by prisoners who have been released on parole, or exchanged, or have died in hospitals or ambulances It must forward these effects to the persons concerned through their Government [7]

Letters and presents for prisoners

108. The information bureaux must enjoy the privilege of free carriage Letters, money orders, and valuables, as well as postal parcels, intended for prisoners of war, or despatched by them, must

---

[1] The formula used by the Japanese at the surrender of Port Arthur was written at the commencement of a book which such prisoners as accepted parole signed It ran "The undersigned declares under oath that he will not take up arms again against Japan, and will not act in any matter inimical to the interests of that country until the end of the present war" (Ariga, 1908, p 115)

Generally a duplicate list of persons paroled is made out and a copy sent to the enemy army According to British practice, a soldier cannot give his parole except through a commissioned officer

[2] Hague Rules, 11

[3] Geneva Convention, art 4

[4] Thus in the Russo Japanese War, from the 30th March, 1904, a nominal list of Russian prisoners was sent weekly to the French Consul at Tokio, who transmitted it to St Petersburg In August, 1904, direct communication between the Japanese and Russian bureaux was established, the Russian bureau sent nominal rolls to the Japanese Legation in Berlin, and the Japanese bureau to the Russian Legation in Peking, on the 5th, 15th, and 25th of each month At the close of the war the Russian Government sent a special commissioner to Tokio to receive the prisoner of war history sheets (Ariga, 1908, pp 120–1)

[5] Hague Rules, 14 Geneva Convention, art 4

be exempt from all postal charges in the countries of origin and destination as well as in the countries through which they pass Presents and relief in kind for prisoners of war must be admitted free of all import and other duties, and free of any payment for carriage by State railways [1]

109. The receipt and despatch of letters and other articles referred to above are subject to censorship and any regulations which the belligerent holding the prisoners may choose to lay down

Exchange

110. The exchange of prisoners is unusual in modern warfare, although it is in no way illegal, and the practice might for certain reasons be revived The rule generally observed in the past was to exchange man for man and rank for rank, with due allowance if denominations differed or there were no exact equivalent A condition was often made that the men exchanged should not participate as soldiers in the present war—in fact, they were paroled [2]

111. The exchange of prisoners is carried out by means of so called " cartels "[3] There are no other requirements than a simple statement agreed on by the two commanders, such agreement being arrived at by parlementaires or the interchange of letters But for exchanges on a large scale commissioners are usually appointed,[4] and commanders ought not as a rule in such cases to act without having previously reported to their Government

Charitable societies

112. Legally constituted charitable societies, formed for the purpose of assisting prisoners of war must be given facilities for carrying out their task, provided military exigencies and administrative regulations permit The representatives of the societies need not, however, be given access to the places of internment of prisoners, or the halting places of prisoners who are being repatriated, unless they are in possession of a personal permit furnished to them by the military authorities, and have given an undertaking in writing to comply with all regulations of order and police which may be issued [5]

Religious observances

113. Prisoners of war must be given complete liberty in the exercise of their religion, including attendance at the services of their own Church, on the sole condition that they comply with the regulations of order and police prescribed by the military authorities [6] The simplest method of carrying out this obligation is to allow ministers of their religion to have access to the prisoners at

---

[1] Hague Rules, 16 The provision in regard to Customs duties applies only to articles intended for the personal use of prisoners (Hague Conference, 1899, p 145)

[2] During the Great War, 1914–1918, agreements were arrived at between the Allies and Germany early in 1916 whereby all wounded prisoners of war held by their respective Governments, as well as prisoners suffering from any one of twenty specified diseases or infirmities, were to be transferred to Switzerland

Later agreements were arrived at whereby prisoners who had been in captivity not less than eighteen months and who fulfilled certain conditions as regards age and citizenship were to be repatriated or interned in a neutral country Some 16,000 British and German prisoners were interned in Holland In March, 1918, it was stated that 26 000 prisoners of the several belligerents were being cared for in Switzerland Of these, 16,000 were English, French, and Belgian, while 10,000 were German, besides these some 500,000 invalid and sick prisoners of various nationalities had been exchanged and repatriated through Switzerland since the beginning of the War

[3] See para 338 below

[4] This was the practice usually followed in the Napoleonic wars and in the American Civil War In the Crimean war exchanges were discussed and arranged through the intermediary of a neutral State

[5] Hague Rules, 15

[6] *Ibid*, 18

Ch XIV

the usual times of service It has already been stated that military chaplains cannot be made prisoners of war,[1] but they should be permitted to accompany prisoners of war into captivity if they desire to do so

Wills and burials

114. The wills of prisoners of war must be received or drawn up, their certificates of death prepared, and their burials carried out, due regard being paid to their rank, in the same way as for soldiers of the army which captured them [2]

Repatriation

115 Through the conclusion of peace captivity comes *ipso facto* to an end, but the prisoners of war remain nevertheless as a body under the military discipline of the Government that holds them, until their repatriation The repatriation must be carried out as quickly as possible[3], but absolute immediate repatriation is not always feasible, owing to the risk of creating disorder[4] and to insufficiency of transport

116. It is a matter of controversy whether prisoners of war may be detained who are awaiting trial or are undergoing a term of imprisonment imposed on them for disciplinary offences [5] It is advisable, therefore, to come to some arrangement with regard to all such prisoners in the terms of peace That prisoners of war may be retained after the conclusion of peace until they have paid debts incurred during captivity seems to be an almost generally recognised rule

(1) C —*Bombardments, Assaults, and Sieges* [6]

Undefended localities

117. Investment, bombardment, assault and regular siege are severally and jointly legitimate means of warfare Before the advent of aircraft and long range artillery, these means were limited to defended localities

118 It is not sufficient reason for bombardment that a town contains supplies of value to the enemy, or railway establishments, telegraphs, or bridges [7] These must, if it is necessary to do so, be destroyed by other means

Defended localities

119 The defended locality need not be fortified, and it may be deemed defended if a military force is in occupation of or marching through it [8]

[1] See para 63 above
[2] Hague Rules, 19
[3] *Ibid* 20
[4] Hague Conference, 1899, p 144
[5] After the Franco German War in 1871 Germany retained such prisoners, whereas Japan after the Russo Japanese War in 1905, released them Under art 218 of the Treaty of Versailles, 1919, such prisoners were to be repatriated, except in the cases of offences committed subsequent to 1st May, 1919
[6] It must be particularly noted that bombardment and assault on the battlefield are not dealt with here, as they are allowed in the same circumstances and under the same conditions as force in general
A place is said to be blockaded when communication by water is cut off, and ingress and egress rendered dangerous by the presence of blockading warships A definition of blockade will be found in Oppenheim, *International Law*, Vol II,1912, Ch. III, p 450 Being a naval operation, it is not necessary further to allude to it in this work
[7] Bombardment by naval forces in time of war is legislated for in a special Convention, which is referred to in footnotes where the provisions contained in it vary from the laws of war on land A naval force may bombard an undefended place if the local authorities refuse, after summons, to comply with requisitions for supplies and provisions necessary for immediate use (Convention respecting Bombardments by Naval Forces in time of War, art 3)
[8] In the Great War, 1914–1918, the increased depth of the battle area often made it difficult to discriminate between defended and undefended localities.

120. A fortress or other fortified place is *primâ facie* considered to be defended, and may be bombarded unless there are visible signs of surrender [1]

121. Once a fortress or defended locality has surrendered, only such further damage is permitted as is demanded by the exigencies of war, such as the removal of the fortifications, the demolition of military buildings, destruction of stores, and measures for clearing the foreground It is not permissible to burn public buildings or private houses in such a place simply because it has been defended

122. No legal duty exists for the attacking force to limit bombardment to the fortifications or defended border only On the contrary, destruction of private and public buildings by bombardment has always been, and still is, considered lawful, as it is one of the means to impress upon the local authorities the advisability of surrender

123. A town which is defended by detached forts, though they are at a distance from it, is liable to bombardment, for the town and forts form an indivisible whole [2] The town may, perhaps, contain workshops and provide supplies which are invaluable to the defence, and may serve to shelter a portion of its garrison when not on duty

Notice of bombardment

124. If military exigencies permit, the commander of an attacking force must do all in his power to warn the authorities before commencing a bombardment, unless surprise is considered to be an essential element of success There is, however, no obligation to give notice of an intended assault [3]

Exodus of non-combatants

125. There is no rule which compels the commander of an investing force to allow all non-combatants, or even women, children, aged, sick, and wounded, or subjects of neutral Powers, to leave the besieged locality The fact that non-combatants are besieged together with combatants, and that they have to endure the same hardships, may and often does exercise pressure on the authorities to surrender It is therefore left to the consideration of the besieging commander whether or not he will permit such individuals to leave [4] A temporary resident is not entitled to different treatment from a permanent resident

126. A diplomatic envoy of a neutral Power, on account of his personal immunity, should not be prevented from leaving, and this applies perhaps to a consular officer of a neutral Power If he voluntarily chooses to remain, he must suffer the same treatment as other inhabitants He cannot claim permission to leave whilst hostilities are in progress, but the besieging commander should

[1] Thus it would have been legal to have bombarded Pretoria in June, 1900, as it was provided with forts which showed no signs of surrender

[2] Some writers assert the contrary, though the general practice of belligerents is indicated in the text There is, however, no doubt that a commander incurs no responsibility for any unavoidable damage caused by a bombardment

[3] Hague Rules, 26 Notice of the intended bombardment of Paris and La Fère, in 1870, was not given, but as a rule the besieged is given notice with a view to sparing the civil population

[4] In recent years—for instance, at Port Arthur—the offer to permit women, children (boys under 16), the aged, and subjects of neutral Powers to leave has sometimes been made At Port Arthur the conditions the Japanese laid down were that a statement of the approximate numbers of such persons classified by categories should be furnished, that the persons should be brought to a certain place at a certain time, that each person should only have the right to bring one package of ordinary size, which should be liable to examination if judged necessary and that this piece of baggage should not contain letters or documents relating directly to the war under penalty of confiscation, and that the conditions must be accepted or refused *en bloc* (Ariga, 1908, p 277)

Ch XIV

allow his withdrawal as soon as and whenever the circumstances and conditions of the particular case allow it [1]

127. All persons dwelling in the zone that will usually exist between the opposing forces in the first stages of a siege are treated as inhabitants of the invested locality Humanity, however, makes it desirable that the commander of the besieging army should, if the circumstances and conditions of the case permit, allow them to withdraw into the fortress [2]

128. Private individuals who attempt to leave the fortress without obtaining the necessary permission are liable to be fired on, and may be sent back into the besieged place, or detained and put on their trial as suspected persons

129 Should the commander of a besieged place expel the non-combatants or any portion of them in order to lessen the number of those who consume his stores of provisions, it is lawful, although an extreme measure, to drive them back, so as to hasten the surrender

130. It is not necessary to cease or relax fire because the enemy sends women and children out of his lines in order to get them to a place of safety, or to implore compassion, but fire must not be intentionally opened in their direction

Communication with invested locality

131. No person has the right to demand permission to enter a besieged locality, and if a private individual attempts to enter he should be detained, and may be put on his trial as a suspected person

132. The investing force has an absolute right to forbid all communication between a besieged locality and the outside How far this rule applies to communications from diplomatic envoys to their home Governments is an open question The commander concerned should report to, and ask instructions from, his Government [3]

Public buildings, hospitals, &c

133. Although the bombardment of the private and public buildings of a defended town or fortress is lawful, all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected [4]

134. It is the duty of the besieged to indicate such buildings or places by distinctive and visible signs which must be notified to the enemy beforehand [5]

135. To indicate hospitals and other medical establishments the emblem of a red cross on a white ground is authorised As this

---

[1] For further examination of the position of diplomatic agents and consuls, see paras 132, 503 and 504 below

[2] At the siege of Port Arthur the Japanese gave the inhabitants of this zone—neutral Chinese—three days' notice to leave or to remain (Ariga, 1908, p 273)

[3] On the request of the diplomatic representatives of neutral States, who were shut up in Paris, that they might be permitted to send out a courier at least once a week, Count Bismarck replied in a despatch dated 27th September, 1870, as follows —

"The authorisation of exchange of correspondence with a besieged fortress is not, in general, in accordance with the customs of war, and although we willingly authorise the transmission of open letters of the diplomatic agents, provided their contents are unobjectionable (*sans inconvénient*) from a military point of view, I cannot admit that the opinion of those who consider the interior of the fortifications of Paris as a suitable centre for diplomatic relations has a good foundation" (*Kriegsbrauch*, 1902, p 20)

[4] Hague Rules, 27 The introduction of long range artillery, aircraft, &c, makes it difficult to ensure immunity for such buildings, but they should not be bombarded deliberately

[5] Hague Rules, 27 Signs visible by aircraft are specially important, and the nature of the signs adopted for this purpose should be notified to the enemy authorities

emblem must not be used for any other purpose[1] some other visible sign must be employed to indicate other privileged buildings [2]

136 Edifices for which inviolability is thus claimed must not be used at the same time for military purposes, as, for instance, for offices and quarters, or for signalling stations or observatories [3] If this condition is violated, the besieger is justified in disregarding the sign [4]

137 Accusations have frequently been made at sieges that the rule concerning the immunity of hospitals had been deliberately disregarded The complaints were probably due to the fact that buildings used for medical purposes were scattered over a town, and that they were thus liable to be struck by chance or erratic shots It is therefore desirable that the sick and wounded should, if possible, be concentrated in one and the same quarter, and in one remote from the defences and the defending troops, or, by arrangement with the besieger, in neutralized ground [5]

138. The giving over to pillage of a town or place, even when taken by assault, is forbidden [6]

Pillage.

(ii) *The Means of Carrying on War by Stratagem (Ruses)*

Definition.

139 Ruses of war are the measures taken to obtain advantage of the enemy by mystifying or misleading him They are permissible provided they are free from any suspicion of treachery or perfidy and do not violate any expressed or understood agreement Belligerent forces must constantly be on their guard against, and prepared for, legitimate ruses, but they should be able to rely on their adversary's good faith and his observance of the laws of war [7]

Good faith and perfidy.

140 Good faith is essential in war, for without it hostilities could not be terminated with any degree of safety short of the total destruction of one of the contending parties

141 Should it be found impossible to count on the loyalty of the adversary, there is grave danger of war degenerating into excesses and indiscriminate violence, to avoid which has been the aim of the modern laws of war

142. The border line between legitimate ruses and forbidden treachery has varied in different ages, and military practice in the matter has frequently differed from the theories of writers Many of the doubtful cases, however, which arose when troops, from the nature of their weapons, could only engage at close range, can now seldom or never occur

Treachery.

143 It is expressly forbidden by the Hague Rules to kill or wound by treachery individuals belonging to the hostile nation or army [8]

---

[1] Geneva Convention, arts 18–23 See para 210 *et seq*

[2] The Convention respecting Bombardment by Naval Forces in time of War provides (in art 5) that the sign shall consist of "large stiff rectangular panels divided diagonally into two painted triangular portions, the upper portion black, the lower portion white"

[3] Hague Rules, 27

[4] Thus the bombardment of Strasburg Cathedral in 1870 is held to have been justified, because an artillery observation station was established on its tower

[5] As, for instance, at Intombi, during the siege of Ladysmith

[6] Hague Rules, 28

[7] Hague Rules, 24 This reads "Ruses of war are considered permissible" According to the debate which took place at the Conference, however, this article is not to be taken to imply that every ruse is permissible A ruse ceases to be permissible if it contravenes any generally accepted rule (Hague Conference, 1899, p 146)

[8] Hague Rules, 23 (*b*) As, for example, by calling out, "Do not fire, we are friends," and then firing a volley, or shamming disablement or death and then using arms.

Ch XIV

Legitimate ruses

144. Among legitimate ruses may be counted —surprises, ambushes, feigning attacks, retreats or flights, simulating quiet and inactivity, giving large outposts or a strong advanced guard to a small force, constructing works, bridges, &c, which it is not intended to use, transmitting bogus signal and telegraph messages, and sending bogus despatches and newspapers with a view to their being intercepted by the enemy, lighting camp fires where there are no troops, making use of the enemy's signals, bugle and trumpet calls, watchwords and words of command, pretending to communicate with troops or reinforcements which have no existence, moving landmarks, putting up dummy guns or laying dummy mines, removing badges from uniforms, clothing the men of a single unit in the uniform of several different units, so that prisoners and dead may give the idea of a large force

145. It is not illegitimate to employ spies,[1] or even to corrupt enemy civilians or soldiers by bribes in order to induce them to give information, to desert, to surrender, to rebel, or to mutiny, or to give false information to the enemy, for a belligerent State can take measures to secure itself against such offences [2]

Improper ruses

146. It would be contrary to modern practice to attempt to obtain advantage of the enemy by deliberate lying when there is a moral obligation to speak the truth, for instance, by declaring that an armistice had been agreed on when such was not the case But, to give another instance, it would not be illegitimate for a few men to summon a force to surrender on the ground that it was surrounded, or to threaten bombardment although no guns have actually arrived

147. Prisoners of war should not volunteer false statements Should they, however, be plied with questions which, if answered correctly, might injure their army, they would be justified in deceiving the interrogator, and could not be punished for so doing [3]

148. To demand a suspension of arms and break it by surprise, or to violate a safe conduct,[4] or any other agreement in order to obtain advantage is an act of perfidy and as such forbidden

Improper use of Geneva Cross

149. The improper use of the distinctive signs of the Geneva Convention is forbidden [5] The Red Cross flag must not be used to cover wagons employed for the transport of ammunition and non-medical stores A hospital train must not be used to facilitate the escape of combatants A gun or rifle must not be used from a tent flying a Red Cross flag, nor must a hospital or any other building, for which protection is demanded by flying the Red Cross flag or other symbol, be used as an observatory or military office or store It would not be legitimate to take advantage of the respect due to the wounded and dead to feign disablement or death in order to await a convenient opportunity for destroying an obstacle or screen

Improper use of flag of truce

150. The improper use of a flag of truce[6] and of signals of surrender is forbidden The flag must not be used merely to obtain time to effect retreat or obtain reinforcements A surrender must

[1] Espionage is dealt with in para 155 *et seq*
[2] Although many writers dissent, military practice has always sanctioned such acts
[3] *Kriegsbrauch*, 1902, p 16, footnote See also paras 66–8
[4] See para 328
[5] Hague Rules, 23 (*f*) See para 210 *et seq*
[6] Hague Rules, 23 (*f*) See para 229 *et seq*

not be feigned in order to take the enemy at a disadvantage when he advances to secure his prisoners. The fact that such acts are forbidden does not, however, absolve an officer from the necessity of taking proper precautions against them [1]

151. In practice it has been considered a legitimate ruse to utilize the informal suspensions of arms for the collection of wounded and dead, which sometimes take place during a battle, to execute movements unseen by the enemy [2]

Use of flags, uniform, &c

152 The employment of a national flag, military insignia, and uniform of the enemy for the purpose of ruse is not forbidden,[3] but the Hague Rules prohibit their *improper* use, leaving unsettled what use is a proper one and what is not. Theory and practice are unanimous in forbidding their employment during a combat, that is, the opening of fire whilst in the guise of the enemy. There is, however, no unanimity with regard to the question whether the uniform of the enemy may be worn and his flag displayed for the purpose of effecting approach or retirement [4]

153 Although no such opportunities of closing with an enemy by exhibiting his flag are possible in land warfare as in naval warfare, the small national flags which in some armies are carried to mark the infantry firing line, might be used to mislead an enemy. Owing to the long ranges at which fire is now opened, it would as a rule be of very little service to a large force to adopt the enemy's uniform, yet the use of it might be made at night and by small bodies and individual scouts [5]

154 If, owing to want of clothing, it becomes necessary to utilize apparel captured from the enemy, his badges should be removed before the articles are worn [6]

V.—Espionage and Treason [7]

Legal means of obtaining information.

155 The employment of measures necessary for obtaining intelligence with regard to the enemy and the theatre of war is formally sanctioned by the Hague Rules [8]

[1] During the operations of the French troops in Morocco, during 1910, when the French had by surprise turned the enemy's wing, a single Arab advanced with a white flag, and during the delay that ensued his party were enabled to reinforce the threatened point.

[2] Thus at 1 p.m. on the 7th March, 1905, during the battle of Mukden, a group of Russians bearing Red Cross and white flags advanced towards the 1st Japanese Army and asked for a suspension of arms for several hours to remove the wounded and dead. The Japanese agreed, as they had many wounded, but the suspension was made without any defined agreement (*Sans entente bien définie*). In the evening, when the Japanese reopened fire, there was no reply, and it was found that the Russians had retired during the suspension of arms. Professor Ariga considers this was a legitimate ruse, although he calls it "unprecedented" (Ariga, 1908, p. 255).

[3] Hague Rules, 23 (*f*).

[4] *Kriegsbrauch*, 1902 (p. 24) thinks that the use of the enemy's uniform and flag is entirely forbidden by the Hague Rules. The French Manual, 1893 (p. 19), states that actual practice tolerates their use as described in the text.

[5] Such persons, if captured in their enemy's uniform, would, however, be liable to trial as spies. (See para. 161 *et seq.*) If they use their arms they may be tried as war criminals. (See para. 441 *et seq.*) Cases have occurred of the greatcoats and headdresses only of the enemy being made use of; these constitute enemy uniform.

[6] Articles of uniform which are distinctive of a particular army, such as the *béret* of the French *Chasseurs des Alpes* or the Turkish fez, should not be made use of unless in case of absolute necessity.

[7] In this section only such cases of treason are dealt with as are closely allied with espionage, other forms of treason are considered in para. 445 *et seq.*

[8] Hague Rules, 24. This article is not, however, to be taken to imply that every means of obtaining information is allowable; measures cease to be permissible if they contravene any other article of the Rules (Hague Conference, 1899, p. 146). It would not, for instance, be lawful to compel inhabitants of occupied territory to furnish information about the enemy's army, as this is forbidden by Rule 44.

156. The ordinary means of obtaining information are reconnaissances by individuals or bodies of troops, questioning inhabitants and prisoners, examination of captured documents and papers, and the employment of spies or secret agents

157. The collection of information openly by combatants clad in a distinguishable uniform is a recognised branch of the art of war, and it can be provided against by firing on the persons engaged in it or taking them prisoners The acquirement of information by secret methods is controlled by laws of war which require some consideration

Punishment for obtaining information by stealth

158. It is lawful to employ spies and secret agents, and even to gain over by bribery or other means enemy soldiers or private enemy subjects [1] Yet the fact that these methods are lawful does not prevent the punishment, under certain conditions, of the individuals who are engaged in procuring intelligence in other than an open manner as combatants Custom admits their punishment by death, although a more lenient penalty may be inflicted [2]

159. The offence is punishable whether or not the individuals succeed in obtaining the information and conveying it to the enemy

Definition of spy

160. Although any person who makes or endeavours to make unauthorised or secret communications to the enemy, or to collect information secretly for him, is ordinarily spoken of as a spy, the Hague Rules provide a definition of spy as regards land warfare which does not cover all such cases For this reason the subject must be dealt with under the two headings of espionage and treason

161 According to the Hague Rules[3] a person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent with the intention of communicating it to the hostile party

162 The Hague Rules give several examples of persons who cannot be accounted spies,[4] for instance, soldiers not wearing disguise who have penetrated into the zone of operations of the hostile army, and despatch bearers, whether soldiers or civilians who carry out their mission openly It is also expressly mentioned that persons sent in balloons either for the purpose of carrying despatches or maintaining communication are not as such liable to be treated as spies [5]

163. The principal characteristic of the offence of espionage is dissimulation of the object pursued

164. It follows that an officer or soldier who is discovered in the enemy's line dressed as a civilian, or wearing the enemy's uniform,

[1] Many writers dissent from this, but military custom has always sanctioned it

[2] The French Code, for instance, states that in the case of individuals not soldiers the court may, if there are extenuating circumstances, reduce the punishment

[3] Hague Rules, 29

[4] Hague Rules, 29 These examples are not intended to be exhaustive —(Hague Conference, 1899, p 146)

[5] During the Great War 1914–1918, it was generally recognised that acts of personnel in correctly marked aircraft performed while in the air were not deemed espionage Any acts of espionage committed after leaving the aircraft by members of the crew or passengers transported by it remain subject to the provisions of the Hague Rules

may be presumed to be a spy, unless he is able to show that he had no intention of obtaining military information [1]

165. The fact that a person acting as a spy is in the naval or military service of his State does not screen him from punishment should he be apprehended by the enemy Nor does the fact that he is in uniform make it impossible for him to be a spy [2]

War treason

166. The Hague Rules do not refer to cases in which inhabitants of invaded or occupied territory, or enemy subjects residing in or visiting the territory of a belligerent, furnish, or attempt to furnish, information to the enemy Such persons may be technically outside the zone of operations They may without using any disguise merely report what they see, or what they obtain by the use of paid agents, and they may forward information by post or special messenger Thus they might not in any way come under the definition of a spy as laid down in the Hague Rules [3]

167. Such persons should be charged with war treason[4], for although treason as such is not mentioned in the Hague Rules, belligerents are by customary international law empowered to punish treason by death Indeed in every case where it is doubtful whether the act consists of espionage, once the fact is established that an individual has furnished or attempted to furnish information to the enemy, no time need be wasted in examining whether the case corresponds exactly to the definition of espionage [5]

168 Subjects of neutral Powers resident in or visiting an invaded or occupied territory, can claim no immunity from the customary laws of war which threaten punishment for communication with the enemy

Trial of spies

169. A spy even when taken in the act, must not be punished without previous trial [6]

Immunity for completed acts of espionage

170. A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, that is, after he has completed an act or attempted act of espionage, incurs no responsibility

---

[1] A civilian who came from the enemy's lines and attempted to return there, evading the outposts, might equally be presumed to be a spy, unless he can show that he has no intention of obtaining military information

[2] A soldier admitted to the enemy's lines under the privileges of the Red Cross of a flag of truce, or of a safe conduct might take advantage of opportunity afforded him of obtaining information

[3] In 1914–1918 it was the practice to treat them in all respects as spies, while making due allowance for the attendant circumstances in awarding punishment

[4] See para 441 *et seq*

[5] Usually when in the course of hostilities one of the belligerents takes possession of territory abandoned by his adversary, his first care will be to prevent inhabitants giving information with regard to his forces and movements With this object in view he will notify the inhabitants by proclamation or other means that any individual who sends information to the army or government of his country with a view to injure the occupying army will be guilty of treason and will be punished with death But even in the absence of such a proclamation an individual may be punished as a war traitor for all unauthorised or secret communication with the enemy

If the act is committed by anyone in the home territory the laws of the land usually provide for its punishment Thus in England a person can be tried for high treason on the counts of traitorously compassing, imagining and intending the deposition and death of the Sovereign and of traitorously adhering to, aiding and comforting the Sovereign's enemies The leading case is that of the French Colonel De la Motte (State Trials, Vol XXI), who was resident in London, and was, in 1781, tried for collecting and forwarding to his Government reports with regard to the number of British ships and forces It was then laid down that whilst a foreigner is under the protection of the laws of this kingdom, he owes allegiance to it equal to that of any natural born subject, and that the fact that this allegiance is local and temporary is of no consequence in law

[6] Hague Rules, 30 Still less can anyone else be punished without previous trial, which in every case is indispensable (Hague Conference, 1899, p 146)

Ch XIV — for his previous acts of espionage, and must be granted the privileges of a prisoner of war [1]

171 This immunity for previous acts does not apply to persons guilty of treason, for they may be arrested at any place or any time [2] And it is not necessary for traitors to be caught in the act in order that they may be punished

Assistance to spies

172 Assisting or favouring espionage or treason and knowingly concealing a spy may be made the subject of charges, such acts are by the customary laws of war equally punishable

173 Neither sex nor age affords any immunity from the operation of the laws with regard to espionage and treason

VI —THE SICK, WOUNDED AND DEAD

International agreements

174 The treatment of the sick and wounded of armies, the privileges of the personnel charged with their care, the special immunities of the establishments and buildings in which they are attended, and the obligations with regard to the dead are dealt with in the "Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field" of the 6th July, 1906, generally called the "Geneva Convention"[3] The duties of neutral Powers as regards sick and wounded who are permitted to enter their territories are dealt with in the "Convention concerning the Rights and Duties of Neutral Powers and Persons"[4]

(1) *The Sick and Wounded*

Care of sick and wounded obligatory

175. The first and most important obligation is that sick and wounded persons belonging or officially attached to armies must be respected and taken care of, without distinction of nationality, by the belligerent in whose power they may be [5]

176 As this obligation might prove too onerous for a victor left in possession of a battlefield covered with the wounded not only of his own but also of the enemy's army, it has been agreed that a belligerent who is compelled to abandon sick or wounded to his foe must, so far as military exigencies permit, leave behind with them a portion of his medical personnel to take care of them, and the necessary material [6]

177 There is no obligation to tend inhabitants or other persons not officially attached to armies, who may have been wounded by chance, or accident, as a result of the hostilities in progress [7]

[1] Hague Rules, 31 Though he incurs no responsibilities for previous acts of espionage, the immunity applies only to such acts and does not extend to other infractions of the law of war (Hague Conference, 1899, p 146) Thus if he had killed anyone whilst effecting his return, he might be tried for murder

[2] This was the Japanese practice in Manchuria (Ariga, 1908, pp 396–7) But a civilian who had regained part of the country not occupied by the enemy, after spying in invaded or occupied territory, must be given the benefit of the immunity, for Rule 31 does not confine it to spies who are soldiers

[3] Printed as App 4 The original Convention of 22nd August, 1864, still holds good between Powers which were signatories of it and have not ratified or adhered to the later Convention (See art 31 of the 1906 Convention)

[4] See para 493 *et seq*

[5] Geneva Convention, art 1 (para 1) A wounded man who continues to act in an actively hostile manner is not entitled to claim protection

[6] Geneva Convention, art 1 (para 2)

[7] The absence of any provision for the care of such persons has been regarded as a weak point in the Geneva Convention During the Russo-Japanese War, both at Liao yang and Mukden, the number of inhabitants—men, women and children—who were injured was very considerable It is desirable that the principles of the Convention should be applied to such cases, although they are not specifically mentioned in it

Sick and wounded are liable to be made prisoners

178. Sick and wounded who are captured are prisoners of war, they have no privileges different from those of unwounded and healthy prisoners beyond that of proper medical attendance In particular they have no right to claim exchange or release because they are unfit for active military service Exchanges or releases, however, may be made, or sick and wounded may be handed over to a neutral State, by mutual agreement between commanders [1]

Search for and protection of wounded

179. After an engagement the commander in possession of the field must take measures to have search made for the wounded and to protect them against acts of pillage and maltreatment [2]

180 Measures must also be taken to punish very severely any such acts whether committed by persons subject to military law or by civilians [3]

Nominal rolls to be sent to enemy

181 A nominal roll of all wounded and sick who have been collected must be sent as early as possible to the authorities of the country or army to which they belong The proper channel for sending this information to the enemy is the Prisoners of War Information Bureau [4]

Privileges of inhabitants who give assistance

182. Under article 5 of the Geneva Convention of 1864 inhabitants who assisted the wounded could claim to be treated as neutrals, and those who took wounded into their houses were exempted from having troops quartered on them, as well as from part of the contributions of war These privileges were not continued by the Convention of 1906 For it had been found that so far from ameliorating the condition of the wounded, they had had the effect of encouraging the inhabitants to withdraw wounded men from proper medical attendance and to move them when they had best been left undisturbed They had also led to more serious abuses inhabitants took wounded under their charge not only in order to protect their homes but to save from capture members of their family and others who were hidden in the house, in some cases these persons feigned to be wounded soldiers

183. To soften the apparent harshness of this change, it has been agreed that if a competent military authority finds it necessary to appeal to the charitable zeal of the inhabitants, he shall grant to those who respond to his call special protection and such immunities as are possible He must, however, secure that any assistance that is rendered is given under military supervision [5] As a rule the collection and removal of wounded are best performed by requisitioned rather than by voluntary labour, for it can be more easily regulated and controlled Wherever there is plenty of voluntary labour there must also be abundance of local resources available for requisition, so that no wrong is done to the wounded by restricting voluntary help on the part of the local inhabitants

[1] Geneva Convention, art 2 As regards the action of the neutral State in such a case, see para 498 below

[2] Geneva Convention, art 3

[3] Geneva Convention, arts 3 and 28 Great Britain signed and ratified the Convention under reserve of art 28 as it was not possible to commit Parliament to any particular course for which legislation was not already available Subsequently, however, it was decided that the existing military law was sufficient for the purpose described in this article subject to certain slight amendments to the Army Act (ss 175 and 176), which were duly carried out in the Army (Annual) Act, 1912, and the reservation to art 28 was withdrawn on 7th July, 1914

[4] Geneva Convention, art 4 (para 2)
For details of the Bureau, see paras 102–12

[5] Geneva Convention, art 5

Ch XIV

(II) *The Medical Personnel*

Privileges of the medical personnel

184. In order that the sick and wounded may receive proper attention with as little disturbance as possible, all the units and establishments of the medical service, whether mobile or fixed and their personnel and army chaplains, must be protected and respected in all circumstances by the belligerent forces Further, the personnel if it falls into the hands of the enemy, must not be held as prisoners of war [1] There is, however, no just cause for complaint of the violation of the Convention if in the execution of their duty members of the medical personnel and army chaplains are accidentally killed or wounded, they are only protected from deliberate attack [2]

185 To obtain the above privileges, the personnel must be exclusively engaged in the collection, transport, and treatment of the wounded and sick, or in the administration of the medical units and establishments [3]

Harmful acts

186. The privileges accorded naturally cease if medical units and establishments are made use of to commit acts harmful to the enemy, for instance, to shelter combatants, to conceal guns, or to carry on espionage, or if the personnel take part in a combat [4] Certain acts, referred to in the following paragraphs, which in the past were considered to be of a harmful nature,[5] do not now deprive a medical unit of the protection afforded by the Convention [6]

Arms

187 It is expressly permitted that the medical personnel and medical orderlies may be armed and may use their arms for their own defence, or for that of the patients under their charge, against marauders and such like [7]

Armed Guards

188 In some armies it is the practice to use trained soldiers as medical orderlies, while in others it is not, it is therefore expressly permitted that a piquet or sentinels taken from a combatant arm may be used as a guard to a medical unit This guard, however, must be furnished with an authority in due form,[8] so as to ensure that the privileges of the guard of a medical unit, which are, whilst it is so employed, identically the same as those of the medical personnel, are not obtained improperly [9]

[1] Geneva Convention, arts 6 and 9

[2] The words "neutral," "neutrality," and "neutralised," which were used in the 1864 Convention in connection with the medical personnel, are not employed in the 1906 Convention, by which the personnel is only entitled to be 'respected and protected' It cannot, naturally, be made immune from the effects of shell and bullet fired at ranges at which badges and uniform are not distinguishable

[3] Geneva Convention, art 9 Drivers of the Royal Army Service Corps who are on the establishment of field ambulances, and thus "exclusively engaged" on the transport of sick and wounded, are entitled to protection under this Article The fact that they are "exclusively engaged" is indicated by the wearing of the Red Cross brassard referred to in para 214

[4] See para 149 The offenders not only lose their privileges, but are liable to punishment as war criminals, see para 441 *et seq*

[5] *E g*, in the South African War, during which the Geneva Convention of 1864 was still in force

[6] Geneva Convention, art 7

Members of the medical personnel who take part in a combat—and instances of their doing so have occurred, through excitement, or through a medical officer taking command in the absence, or on account of the disablement of other officers—should remove the Red Cross badge referred to in para 214 Otherwise, if captured, their conduct may be made the subject of enquiry as an abuse of the Emblem under art 23 of the Hague Rules Permission to resume the badge should usually be accorded if it is asked for

[7] Geneva Convention, art 8 (1)

[8] *Mandat* in the original French, *i.e*, a written statement signed by a responsible authority The members of such a guard need not wear the badge referred to in para 214

[9] Geneva Convention, art 8 (2) and art 9 (para 2).

Arms of wounded

189 The fact that the arms and ammunition belonging to wounded men are found in a medical unit or hospital must not be construed to constitute an act harmful to the enemy Every endeavour should, however, be made to hand over such articles to the proper department as early as possible [1]

(iii) *Voluntary Aid Societies*

Position of Voluntary Aid Societies

190 Under certain conditions, the personnel of Voluntary Aid Societies which may be employed in the units and establishments of armies, is assimilated to, and placed on the same footing as that of, the Army Medical Service [2]

Recognition and authorisation

191 These conditions are — that the Societies must be duly recognised and authorised by their Governments, that the names of the Societies must be notified to the enemy before any of their personnel is employed, and that the personnel must be subject to military law [3]

192 So many irregularities, and even acts of hostility, have been committed in past wars by members of Voluntary Aid Societies that commanders should always take care to ensure that the above conditions have been complied with before permitting such persons to assist the medical service

Voluntary Aid Societies of neutral countries

193 The offers of assistance from the Voluntary Aid Societies of neutral States may be accepted, provided that the Societies obtain the consent of their own Government before offering their services, and the authorisation of the belligerent Government which they wish to assist, and the latter Government notifies the fact of the authorisation to its adversary before making any use of them In these circumstances the personnel of the medical units of Voluntary Aid Societies of neutral States must be granted all the privileges accorded to the Voluntary Aid Societies of the belligerent concerned [4] It is not necessary to obtain the consent of the adversary to utilize their services [5]

(iv) *Captured Medical Personnel*

Privileges and duties of captured personnel

194 Although the personnel of medical units and establishments may not be treated as prisoners of war, yet it is not free to act or move without let or hindrance should it fall into the hands of the enemy If called upon it must continue to carry on its duties under his directions, attending to such sick and wounded as require its services Only when its assistance is no longer indispensable must it be sent back to its own army or its own country [6]

195 Thus, the medical personnel of a force which capitulates may be detained to attend to the sick and wounded included in the surrender, and may be sent back gradually

[1] Geneva Convention, art 8 (3)
[2] Voluntary Aid Societies are popularly called Red Cross Societies.
[3] Geneva Convention art 10
[4] Geneva Convention, art 11
[5] Geneva Conference, *Acts* p 115
[6] Geneva Convention, art 12

Ch XIV

196 Further, it is not left to the captured personnel to choose the time or route of its return, which is settled by the captor and is dependent on military exigencies [1]

197 The personnel on being returned is entitled to take with it such effects, instruments, arms, and horses as are the private property of its members [2]

198 In interpreting the above obligations it must be borne in mind that they are designed to secure that members of medical units shall not be in a position to take back useful information to their army They are not meant to afford an excuse for depriving the enemy of the services of his medical personnel for an indefinite length of time

Limitations on freedom of movement

199. The fact that they may be detained and not permitted to return when and how they wish is sufficient penalty to prevent medical units and individual members of the medical personnel proceeding anywhere they please in a theatre of war for the purpose of collecting, succouring, or removing wounded and sick If they persist in approaching when their presence is not desired, and refuse to halt when summoned to stop, it would be lawful, as an extreme measure, to fire upon them [3]

Pay and allowances

200. Whilst members of the enemy's medical personnel are in his hands, a belligerent must grant them the same allowances and the same pay as are given to persons holding similar rank and status in his own army [4]

(v) *Medical Material*

Differentiation in treatment

201. Although all the medical personnel must be released in case of capture, a distinction is drawn between the treatment of the material of mobile medical units,[5] of fixed medical establishments and of convoys for the evacuation of sick and wounded

Mobile medical units

202 Mobile medical units must be released complete with their material, including their teams, whether their means of transport and their drivers belong to the army or are requisitioned The conditions of release are the same as those laid down for the medical personnel As far as possible the personnel and material should be restored at the same time [6] They should not indeed be separated unless the circumstances are such that the return of the personnel is immediately feasible, but delay must, on account of physical or other difficulties, occur before the material can be sent off

[1] Geneva Convention, art 12 This clause was introduced into the Convention of 1906 to justify the usual practice in war Under the Convention of 1864 captured personnel could, and did, demand to be sent back at once to the outposts of its own army The inconvenience of this from a military point of view was so serious that the request was not always complied with Thus, during the South African War members of the medical personnel captured by the forces of the Republics were returned *via* Delagoa Bay, and in the Russo-Japanese War some captured by the Japanese at Ta shih chiao and Mukden were sent back *via* Ying kou (Ariga, 1908, pp 197, 206, 207)

[2] Geneva Convention, art 12 (para 3)

[3] Nothing in the Geneva Convention gives medical units immunity from search A Red Cross train or any other unit may, just like a ship, be summoned to halt by firing a shot across its course

[4] Geneva Convention, art 13

[5] That is to say, those which are "intended to accompany armies into the field" (Geneva Convention, art 6) Under this term are included,—besides the usual wheeled vehicles,—railway trains and boats used in internal navigation, which are specially fitted up for removing the sick and wounded, as well as any material belonging to the medical service for fitting up ordinary vehicles, trains, and boats Geneva Convention, art 17 (2) and Geneva Conference *Actes*, pp 138, 140

[6] Geneva Convention, art 14

203. A belligerent is, however, permitted to use the material in captured mobile medical units for the treatment of the sick and wounded of his own army or those of the enemy's army who are in his power [1]

204. There is no obligation to provide teams to facilitate the return of the material should a captured unit have lost all or part of its own animals by casualties If, however, military exigencies permit, every assistance should be rendered for the sake of the sick and wounded [2]

Fixed medical establishments

205. The buildings of fixed medical establishments, hospitals, and depôts remain in the power of the captor, for, from their nature, they cannot be sent back to the enemy They may not, however, be used for other than medical purposes so long as they are necessary for the wounded and sick, unless in cases of urgent military necessity, and then only provided arrangements are previously made for the welfare of the wounded and sick found in them [3]

206. As a hospital or other fixed medical establishment would be useless without its material, this follows the fate of the buildings and becomes the property of the captor [4]

Convoys

207. Convoys used for evacuating sick and wounded must be treated generally in the same way as mobile medical units—that is, their personnel and material must be restored This rule is, however, subject to the following special provisions —

(i) A commander who intercepts a convoy may, if military exigencies demand, break it up and take the military vehicles in it (other than those of the medical service, which must be restored) with their teams [5] He may also take and use, subject to the general laws of war, any requisitioned transport with it, including railway material and boats He may also, as circumstances require, detain, requisition the labour of, or release any civilian personnel accompanying it

(ii) If he thus breaks up a convoy he must take charge of the sick and wounded in it They are, as previously stated, liable to be retained as prisoners of war

(iii) He must treat as if it were medical personnel the whole of the military personnel detailed for the purpose of transport or guard of the convoy, provided it is furnished with an authority in due form

Depots

208. Army medical material found elsewhere than in mobile medical units or convoys of evacuation is liable to capture

Material of Voluntary Aid Societies

209. Material belonging to Voluntary Aid Societies which are admitted to the privileges of the Geneva Convention is not completely assimilated as regards treatment to the material of the Army Medical Service It must in all circumstances be regarded as private property But whether it is found in a mobile medical

---

[1] Geneva Convention, art 14.

[2] Thus, after the battle of Mukden, the Japanese provided sufficient transport for 60 members of the captured Russian medical personnel to enable them to return direct to their army The remaining 710 persons, however, for whom no transport could be found, had to rejoin by making use of the railway into Chinese territory (Ariga, 1908, pp 205–7)

[3] Geneva Convention, art 15 Thus it would be permissible to fortify and garrison a hospital building, provided the sick and wounded were removed to another house

[4] Geneva Convention, art 15.

[5] See para 202

Ch XIV — unit, or in a fixed medical establishment, or in a convoy of evacuation, or captured elsewhere in the theatre of war, it can always be requisitioned In this case, unless it is paid for in cash, a receipt must be given for it [1]

(vi) *The Medical Emblem*

The Red Cross on a white ground

210 The mark which has been adopted to indicate the medical service of armies is a Red Cross on a white ground [2] This sign, by the provisions of the Geneva Convention, must not be used except to protect and indicate the medical units and establishments and the personnel and material accorded privileges by the Geneva Convention [3]

Permission of military authority

211. In no case can the sign be recognised unless it is used with the permission of competent military authority The permission is signified either by a written authorisation, or by an official stamp on the sign [4]

The flag

212 Medical units and establishments must hoist the Red Cross flag It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs, unless the unit falls into the hands of the enemy In this situation the Red Cross flag alone will be flown [5]

213. The medical units belonging to neutral countries which have been authorised to afford their services under conditions already mentioned are not permitted to fly their own national flag They must fly the flag of the belligerent to whose armies they are attached , and they must in other respects conform to the instructions in the last paragraph [6]

The brassard

214 The persons protected by the Geneva Convention,[7] in order to secure the privileges conferred by it, must wear fixed permanently to the left arm an armlet (brassard) with the Red

[1] Geneva Convention, art 16 No exception is made as regards the material in mobile medical units, which, if it belongs to the Army Medical Service and not to a Voluntary Aid Society, must be returned (art 14) See paras 201 and 202 M Renault, the *Rapporteur* of the *Comité de redaction* of the text of the Convention, however, in his report holds the opposite view and considers that art 16 does not override art 14 (*Actes*, p 257) No decision was, however, given on the matter by the Conference, at which M Renault's report was neither read nor discussed

The difficulties of applying this clause will be great, for in some armies the Red Cross Societies provide a considerable proportion of the transport and other material of the regular field medical units (see note to para 215) Although not so stated in the Convention, the medical material of Voluntary Aid Societies should only be requisitioned for the needs of the army medical service and not for those of the fighting troops

[2] Turkey, however, uses a Red Crescent, and Persia a Red Sun In addition to flying the Red Cross flag, military hospital ships must be "painted white outside, with a horizontal band of green about one metre and a half in breadth," and officially recognised hospital ships equipped by private individuals or societies white with a similar horizontal band of red (Hague Convention, 1907, for the Adaptation of the Principles of the Geneva Convention to Maritime War)

[3] Geneva Convention, arts 18, 23 and 27 Great Britain signed and ratified the Convention under reserve of arts 23 and 27 In 1911, however, the Geneva Convention Act was passed, and the reservations to arts 23 and 27 were withdrawn on 7th July, 1914 The Geneva Convention Act, 1911, makes it unlawful "for any person to use for the purposes of his trade or business, or for any other purpose whatsoever, without the authority of the Army Council, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours of Switzerland, or the words 'Red Cross' or 'Geneva Cross'"

[4] Geneva Convention, arts 19, 20 and 21

[5] Geneva Convention, art 21 A rigid *plaque* may be used instead of a flag (Geneva Conference, *Actes*, p 196) There is no indication how the two flags are to be associated In most armies the two flags are flown on separate poles which are sometimes crossed

[6] Geneva Convention, art 22

[7] That is to say, those engaged exclusively in the collection, transport, and treatment of the wounded and the sick, and in the administration of medical units and establishments and the personnel of Voluntary Aid Societies of the belligerents and neutrals who fulfil the conditions laid down in paras 190–93

Cross on a white ground, delivered and stamped by competent military authority [1] Such persons must, if they do not wear a military uniform, be in possession of a certificate of identity [2]

Marking of material.

215 The material of the medical service must, in order to obtain the benefits of the Convention, be marked with the Red Cross on a white ground [3]

216 Cases with regard to the treatment of sick and wounded which have not been specifically provided for or mentioned in this chapter must be dealt with conformably to the general principles enunciated in the Geneva Convention [4]

(vii) *The Dead*

Examination, protection, and burial of the dead

217 The dead must be protected against pillage and maltreatment [5]

218 The military identification marks or tokens found on the dead must be sent to the authorities of the army or country to which they belong as early as possible [6]

219. Before the dead are buried or cremated they must be carefully examined to see that life is extinct [7]

220 The articles of personal use, valuables, letters, &c , found on a field of battle or left by wounded or sick who die in medical establishments or units must be collected and transmitted to the persons interested, through the authorities of their own country [8]

VII —Intercourse between Belligerents

(1) *Non-hostile Relations in General*

Necessity and convenience of intercourse

221 Although the outbreak of war between States brings all the usual non-hostile intercourse to an end and closes the official means of intercommunication by diplomatic channels, it is sometimes unavoidable, and often convenient for commanders to open communication with the enemy for military purposes Further-

---

[1] Geneva Convention, art 23 Under the Geneva Convention of 1864 (art 7) the brassard could be slipped on and off as it was merely "allowed" (*admis*) and no directions were given as to how it should be worn It must now be "fixed" (*fixe*), because it would be gravely inconvenient if it could be put on and taken off too easily (Geneva Conference, 1906, *Actes*, pp 194–261)

[2] There is no authorised form for certificates of identity The use of certificates may lead to frauds unless there are marks on them by which the bearer can be recognised as the rightful owner A certificate without such mark of recognition must be carefully scrutinized and steps taken to verify the rights of the bearer to be in possession of it Finger prints, photographs, and signatures are the most suitable recognition marks, but there may be difficulty as regards entering finger print records or photographs, and in some countries signatures may not always be obtainable There should, however, be no difficulty in noting distinguishable marks, such as scars on the face, loss of fingers or portions of fingers, &c , and the apparent age, height, colour of eyes and hair

[3] If the material is marked with the Geneva Cross only it cannot well be accepted as private property belonging to a Voluntary Aid Society, as the Cross is the distinctive mark of the medical service of armies (Geneva Convention, arts 18 and 19) To obtain the extra privileges referred to in para 209 the material of Voluntary Aid Societies should be marked, in addition to the Geneva Cross, with the name of the Society or some other means of identification

The size of the Cross is not laid down It was proposed at the Geneva Conference, 1906, that all the vehicles of the medical service should be painted white and should have on them as large a Red Cross as possible Practical and economic objections led to the proposal being rejected (*Actes*, p 194) Red Cross marks visible by aircraft are specially important

[4] Geneva Convention, art 26

[5] *Ibid*, art 3

[6] *Ibid*, art 4 The Prisoners of War Information Bureau is the proper channel for the transmission (See paras 102–112) See also Field Service Regulations, Vol I, 1923 (Provisional), sec 186, p 230 and sec 209, p. 254

[7] Geneva Convention, art 3 There is, however, no obligation to bury or cremate them, although the principle that even the enemy's dead should be given burial is generally admitted

[8] Geneva Convention, art. 4. Thus also would appear to be the duty of the Prisoners of War Information Bureau.

Ch XIV

more, humanity and convenience sometimes induce them for special reasons to grant certain relaxations in regard to the total cessation of the usual intercourse between the belligerent nations

222. It is essential in all these non-hostile relations that the most scrupulous good faith should be observed by both parties,[1] and that no advantage should be taken which is not intended to be given by the adversary

Summary of means of non hostile relations

223. The ordinary kinds of non-hostile relations are comprised under the headings of parlementaires and flags of truce, armistices, capitulations, passports and safe-conducts, safeguards, and cartels [2]

(ii) *Parlementaires and Flags of Truce*

Parlementaires

224 The usual agents in the non-hostile intercourse of belligerent armies are known as parlementaires [3]

225 Their duties include every form of communication with the enemy in the field For example, the conveyance of a letter, or of a simple verbal message, a summons to surrender, negotiations for suspension of hostilities or for capitulation, settlement of the exchange of prisoners Arrangements may be made through parlementaires for the appointment of plenipotentiaries or agents for any purposes of special importance [4]

Inviolability

226. Whilst in the performance of their duties, provided their conduct is correct,[5] they are entitled to complete inviolability [6]

227 It is of the utmost importance that every soldier in an army, from the highest to the lowest, should be thoroughly acquainted with the privileges of parlementaires and with the proper mode of receiving them, so that no untoward incident can possibly arise

Credentials of parlementaire

228. According to the Hague Rules, a person to be regarded as a parlementaire must be authorised by one of the belligerents to enter into communication with the other and must present himself under cover of a white flag [7]

Signification of the white flag

229. Since time immemorial a white flag has been used as a signal by an armed force which wishes to open communication with the enemy This is the only signification that the flag possesses in International Law The hoisting of a white flag, therefore, means in itself nothing else than that the one party is asked whether it will receive a communication from the other It may, perhaps, only indicate that the party which hoists it wishes to make an arrangement for the suspension of arms for some purpose, but it may also mean that the party wishes to negotiate for surrender Everything depends on the circumstances and conditions of the

[1] For good faith in other matters see para 140 above

[2] See paras 105–106 as regards intercourse concerning wounded and prisoners

[3] It has been thought desirable to adopt this word, for which the ancient verb "to parley" would seem good authority, from the Hague Rules it is current in all other armies in addition to an expression for "flag of truce" The use of the latter term by British manuals in the leading, as he is seldom the actual bearer of the flag See note to arts 32, 33, 34 of the Hague Rules in App 6 to this chapter

[4] The punishment for sending a flag of truce to the enemy "treacherously or through cowardice" or "without due authority" is given in A A 4 (3) and 5 (4)

[5] See Hague Rules, 33 and 34, and para 251 below

[6] Hague Rules, 32

[7] Hague Rules, 32

particular case For instance, in practice, the white flag has come to indicate surrender if hoisted by individual soldiers or a small party in the course of an action Great vigilance is always necessary, for the question in every case is whether the hoisting of the white flag was authorised by the commander

230. In consequence, when a white flag is hoisted the adversary need not necessarily cease fire [1] It is only by sending a parlementaire that an arrangement can be come to It is absolutely necessary that the belligerent who hoists the white flag, because he wishes to communicate, should halt and cease firing, for otherwise the enemy is not certain that the hoisting of the white flag is authorised

231 Fire must not intentionally be directed on the person carrying the white flag or persons near him [2] If, however, the persons near a flag of truce which is exhibited during an engagement are incidentally killed or wounded, it furnishes no ground for complaint [3] It is for the parlementaire to wait until there is a propitious moment, or to make a detour to avoid the dangerous zone The proper time to send a parlementaire is during the intervals of active operations, only in cases of extreme urgency should one be sent during an engagement

232 No provision is made for opening communication with an enemy during the hours of darkness, when a white flag cannot be seen [3]

233 The authorisation given to the parlementaire should be in writing and signed by the commander of the force [4] The authorisation

234 The commander to whom a parlementaire is sent is not obliged in every case to receive him [5] There may be a movement in progress the success of which depends on secrecy,[6] or it may, owing to the state of the defences, be undesirable to allow an envoy to approach a besieged locality In direct contrast, however, to a former rule it is now no longer permissible—except in case of reprisals for abuses of the flag of truce—for a belligerent to No obligation to receive parlementaires

[1] This is the view taken by all the authorities, *e g*, Ariga, 1908, p 274, Longuet, 1901, p 233, Holtzendorff, 1885–1889, iv, p 423, *Kriegsbrauch*, 1902, p 29, American Instructions 1863, art 112 The following instructions were issued by General Baron Nogi at the siege of Port Arthur, 1904 —

a During the bombardment of a fortress, although a particular fort hoists a white flag, there is no necessity to cease firing on that fort Bombardment must be continued until an agreement is come to by the arrival of a parlementaire A special order to cease fire will then be given by the commander of the army

b The same course will be pursued if all the forts hoist a white flag, but in this case a report will be made as soon as possible to headquarters Whilst waiting orders fire will be continued

c If during a bombardment a parlementaire is seen leaving the enemy's lines, fire must not on any account be stopped or relaxed in the direction from which he comes, but he must not be fired on intentionally (Ariga, 1908, p 274)

[2] See sub para *c* of the last footnote

[3] During the pursuit after the battle of Mukden a body of Russian troops came up in the night behind a Japanese force and was heavily fired on To indicate his desire to surrender

officer who was present

[4] The authorisations used in the Russo Japanese war were usually in the following form — "I authorise by these presents Major General to Signed Commander in Chief of the Japanese Army besieging Port Arthur" (Ariga, 1908, p 304)

[5] Hague Rules, 33

[6] Thus, after the battle of Montebello, in 1859, the French refused to receive parlementaires from the Austrian lines, as it was essential to conceal certain movements

Ch XIV

declare beforehand, even for a specified period, that he will not receive parlementaires [1]

235. It is permissible for a commander to declare subject to what formalities and conditions he will receive a parlementaire and to fix the hour and place at which he should appear [2]

236. An unnecessary repetition of visits need not be allowed

Party accompanying the parlementaire

237. The number of persons who may accompany the parlementaire to the enemy's lines, unless special authorisation for additional ones is given,[3] is limited to three a trumpeter, bugler, or drummer, a flagbearer, and an interpreter These are entitled to the same inviolability as the envoy himself [4]

238 The parlementaire may however, come alone, carrying the white flag himself It is, however, advisable that he should at least have a trumpeter or bugler with him, for otherwise his character might not be understood quickly enough to prevent danger to himself [5]

Conduct of the parlementaire

239 The parlementaire, mounted or on foot, as may be convenient, provided with the necessary authorisation, and accompanied by the attendants permitted to him, should approach the enemy's outposts or lines at a slow pace [6] As soon as he reaches a position where he can be seen and heard, the trumpeter, bugler, or drummer should sound, and the flag should be waved

240. He should then advance at a walk towards the line, obeying any directions that may be signalled or given to him by the party sent out to meet and conduct him [7]

241 He has no right to enter the line at any point that he may wish, but may be directed to a piquet or detached post detailed to deal with traffic through the outposts If the distance to be traversed is considerable, he may be given an escort to it, or instructed to reach it by retiring and approaching by another route

242 If signalled or ordered to retire, he must do so at once If he does not do so within reasonable time he loses his inviolability, and is liable to be fired on or to be made prisoner If he does retire, he may not be intentionally fired on or interfered with in any other way A battle need not, however, be brought to a standstill on his account, and if he is incidentally killed or wounded no blame can be attached to the belligerent concerned

---

[1] *Kriegsbrauch* 190' (p '7), and many text books published after the first Hague Conference of 1899 still teach the former rule as valid However, the contrary is clearly apparent from the report of the Hague Conference of 1899 (p 147) On the other hand, it would seem permissible for a belligerent to resort to reprisals and to declare that he will not receive parlementaires in case the enemy is guilty of a gross abuse of the flag of truce See para 452 *et seq*

[2] Thus at the siege of Port Arthur, General Baron Nogi stipulated that the Russian parlementaire "should arrive at the first line of the Japanese army at the entrance of Shui shih ying, on the main road from Port Arthur to Chin Chou, on 17th April, 1904, before the first minute of 10 a m ' (Arch 1908 p 277)

[3] This should be obtained in writing

[4] Hague Rules, 32

[5] It is quite clear from the report of the Hague Conference, 1899 (p 147), that the parlementaire may come quite alone, carrying the flag of truce himself *Kriegsbrauch*, 1902 (p 26), lays down that the parlementaire must be ' clearly recognisable by usual known signs (white flag or in emergency a white handkerchief, &c) and calls (bugle and trumpet calls, roll of the drum) visible and audible from afar "

Kriegsbrauch, 1902 (p 26), adds "horse holders" to the persons already named who may accompany the parlementaire, but there is no authority for this, or for granting them inviolability The party should be strictly limited to the numbers allowed by the Hague Rules, unless special authorisation is given

[6] Several unfortunate incidents have occurred owing to the parlementaire arriving at or leaving the enemy's lines at a gallop and being fired on in error

[7] For the detailed instructions as regards the conduct of the outposts, see Field Service Regulations, 1924, Vol II, Section 59, p 90

Arrival in enemy's lines

243. On arriving in the vicinity of the piquet or detached post, the parlementaire should dismount with his party, leave it to wait for him, and proceed alone on foot to the officer on duty and state his wishes His attendants should not attempt to enter the lines with him, and they must obey any directions given to them by the enemy

244. A parlementaire cannot, as a matter of strict right, claim to pass the outposts, nor can he demand to be conducted into the presence of the commanding officer His message, if written, may be transferred to the officer receiving him, who should give a receipt for it, if it is verbal, the officer may demand that it should be reduced to writing, or delivered orally to such person as may be designated to receive it

Courtesies

245 The greatest courtesy should be observed on both sides If there is any conversation, the subject of the military situation should not be touched on, and great care should be taken to avoid giving or asking for information A parlementaire is not, however, forbidden to see and afterwards to report what his enemy does not hide

246 The parlementaire should be treated with all the honours due to his rank, and, if thought desirable for his protection, a guard or escort should be provided for him

247 Unless other instructions have been received, or the parlementaire has only a letter to deliver, the commander-in-chief should be informed through the ordinary channels so that the necessary orders may be obtained The parlementaire must wait until these arrive

Measures of precaution

248. All measures necessary to prevent the parlementaire from taking advantage of his mission to obtain information are allowable [1] Care should be taken that he and his party are prevented from communicating with anyone except the persons nominated to receive them If permission is given for the parlementaire to enter the lines for the purpose of negotiation, or if the officer of the piquet or post, or any superior officer, thinks it desirable for any special reason to send him to the rear, he may, and invariably should, be blindfolded, and be taken to the destination by a circuitous route

249 The parlementaire should be permitted to retire and return with the same formalities and precautions as on arrival

Detention of parlementaires.

250 A commander has by the Hague Rules the right of detaining a parlementaire temporarily if the latter abuses his position [2] In addition, a commander has, by a customary rule of International Law, the right to retain a parlementaire so long as circumstances require, if the latter has seen anything knowledge of which might have ill consequences to the other army, or if his departure would have coincided with movements of troops whose destination or employment he might guess

Misconduct of parlementaires.

251. A parlementaire loses his right of inviolability if it is proved in a positive and incontestable manner that he has taken advantage

[1] Hague Rules, 33 This applies equally to the members of the party who accompany him.
[2] Hague Rules, 33.

Ch XIV — of his privileged position to provoke or commit an act of treason [1] He can then be put on his trial

252. Any measures taken against a parlementaire or his party should at once be reported to the enemy

Improper use of the white flag

253. The improper use of the flag of truce is particularly forbidden [2] It constitutes an abuse of the flag of truce if the force which sends a parlementaire does not halt and cease fire whilst the parlementaire is approaching and is being received by the other party

254. It further constitutes an abuse of the flag of truce if a white flag is made use of for the purpose of making the enemy believe that a parlementaire is about to be sent, when there is no such intention, and of carrying out operations under the protection granted by the enemy to the pretended flag of truce

255. Every abuse of the flag of truce entitles the injured party to reprisals [3]

(iii) *Armistices*

Nature and kinds of armistices

256. During the continuance of war belligerent forces have sometimes occasion to suspend active operations within the whole or part of the region and theatre of war The mutual agreements made for such temporary cessations of hostilities are known, in the wider sense of the term, as armistices Although all armistices are essentially alike, in so far as they consist in cessation of hostilities, three different kinds must be distinguished, namely, suspensions of arms, general armistices, and partial armistices [4]

257 The Hague Rules[5] distinguish only between general and local armistices, apparently comprising both suspensions of arms and partial armistices under the term "local armistices"

Suspensions of arms

258 A suspension of arms is essentially a military convention of very short duration, concluded between commanders of armies or detachments in order to arrange some pressing local interest most frequently to bury the dead, or to collect and succour the wounded,[6] or sometimes to exchange prisoners, or to permit conferences, or to enable a commander to communicate with his Government or a superior in order to request or obtain orders [7]

---

[1] Hague Rules, 34 Although a parlementaire cannot in strictness commit an act of treason as regards the enemy, the word treason has been maintained in the Hague Rules because in some penal codes the instigator of an act of treason is considered an accessory — (Hague Conference, 1899, p 147) In the translation of art 34 of the Hague Rules, *trahison* is, in error, rendered "treachery, not "treason" See App 6 to this chapter

[2] Hague Rules, 23(*f*) See para 150

[3] See para 234 above and para 452 *et seq*

[4] Six expressions have in the past been used in the British Army to signify a cessation of hostilities falling short of peace —Truce (as in the "History of the War in South Africa," Vol II, p 501), local truce, armistice, cessation of hostilities (as in the convention made after Majuba in 1881), cessation of arms (as in the negotiations preceding the surrender at Saratoga), and suspension of arms Yet they do not appear to have been employed with any exactitude, and even a further expression, a "cease fire for three hours" has not been unknown Other languages have no exact terminology either the Germans speak of *Waffenruhe* and *Waffenstills and*, without exactly distinguishing between them, and *Kriegsbrauch*, 1902, uses the term *Waffenstillstand* only The French instructions distinguish between *armistices* and *suspensions d armes* It has been found advisable to follow the practice of the more authoritative publicists in distinguishing three different kinds of armistices as in the text

[5] Art 37

[6] *E g*, at the siege of Port Arthur authority was given to the divisional generals of the Japanese army to arrange suspensions of arms for the removal of the dead, if they judged fit, without reference to the commander-in chief (Ariga, 1908, p 294)

[7] Thus a suspension of arms was agreed upon at the siege of Belfort on 13th February, 1871, in order to allow the commandant to receive instructions from the French Government (see App 16), and on 9th August, 1898, the Governor of Manila requested a suspension of arms from Admiral Dewey which would allow him to receive instructions from Madrid

259. A suspension of arms applies only to the troops under the command of the officers who agree to it

260. Suspensions of arms have nothing to do with the war generally, or with political purposes, since they only serve a pressing military interest of local importance For this reason every commander of a force is, so far as the enemy is concerned, supposed to be competent to agree upon a suspension of arms, and no ratification on the part of superior officers or other authorities is required Such an agreement is therefore in all circumstances and under all conditions binding, although a subordinate commander who enters upon it without instructions may be held responsible by his superior

General armistices

261. A general armistice[1] suspends the entire military and naval operations of the belligerents It is a formal interruption of the war throughout the whole region and theatre of war, although for special reasons small parts of the belligerent forces and small parts in the theatre of war may be excluded from a general armistice [2] General armistices are of a combined political and military character They usually precede the negotiations for peace, but may be concluded for other purposes

262. Since a general armistice is of vital political importance, only the belligerent Governments themselves, or their commanders-in-chief, are competent to agree upon it, and ratification is always necessary Should an armistice which has been agreed upon by a commander-in-chief not find ratification on the part of his Government, hostilities can, after due notice to the enemy, at once be resumed without breach of faith [3] General armistices are frequently arranged by diplomatic representatives [4]

Partial armistices;

263. A partial armistice suspends operations between certain considerable portions only of the belligerent forces, and within a fixed considerable zone only of the region and theatre of war A partial armistice may be concluded for the military forces only, or for the naval forces only, for cessation of hostilities in the colonies only, for cessation of hostilities between two of the belligerents in case more than two are parties to the war It is,

---

[1] See Hague Rules, 37

[2] Thus the armistice of Portsmouth (U S A), of 5th September, 1905, was a general one The armistice of Paris, of 28th January, 1871, was likewise a general one, although military operations in the departments of the Doubs, the Jura, and the Côte d Or were excluded The assertion of *Kriegsbrauch*, 1902 (p 42), that this armistice was not a general one, cannot stand in face of the fact that the first words of art 1 of the convention concerning it stipulate it to be "*un armistice général*" (see Official Account of Franco German War (German original), 2 Theil, 2 Band Anlage, No 156)

[3] The text is in distinct contrast to para 52 of Ch XIV of the fourth edition of this Manual The section referred to ran as follows "A power to conclude an armistice is essential to the fulfilment by a commanding officer of his official duties, and therefore he is presumed to have had such a power delegated to him by the sovereign without any special command This presumption of authority is so strong that it cannot be rebutted by any act of the sovereign, If an officer makes an armistice in disobedience to orders received from his sovereign he is punishable by his sovereign, but the sovereign is bound by the armistice, inasmuch as the enemy cannot be supposed to have known of the limitation of authority imposed on the officer" In face of the fact that theory and practice are united upon the rule that a general armistice concluded by a commander-in-chief requires ratification on the part of the Government, it is impossible to adhere to the opinion thus expressed

[4] The armistice at the close of the Franco-German War was concluded by diplomatic representatives—Count von Bismarck and Jules Favre, the general armistice at the close of the Russo Japanese War was concluded at Portsmouth (U S A.) by diplomatic representatives, but the detailed conditions for the armistice in Manchuria were settled by the military authorities The armistice with Germany in 1918 was signed by Marshal Foch and Admiral Wemyss on behalf of the Allied and Associated Powers, and by Herr Erzberger, Secretary of State, Count v Oberndorff, Minister Plenipotentiary, Major-General v Winterfeldt and Captain Vanselow (German Navy) on behalf of Germany (See App 17)

Ch XIV — however, always a condition that a considerable part of the forces and the region of war must be included, and that the cause for which it has been concluded is not only some pressing local interest, as in the case of a suspension of arms, but one of a more general character, such as a general exhaustion of the opposing belligerent forces in one part of the theatre of war, the outbreak of a virulent infectious disease in the opposing camps, an earthquake, or any other cause, the requirements of which cannot be satisfied by a mere suspension of arms, but do not demand a general armistice

264. Commanders-in-chief of the forces concerned are presumed to be competent to conclude partial armistices, and ratification on the part of their Governments is not required unless specially stipulated in the convention for the arrangement of a partial armistice Commanders, however, are responsible to their own Governments in case they agree upon partial armistices without having special authorisation for that purpose

General rules regarding armistices

265. The rules which follow are common to suspensions of arms, general armistices, and partial armistices [1]

266. An armistice is not a partial or temporary peace, it merely suspends hostilities without putting an end to the war, and only suspends them to the extent agreed upon by the commanders concerned

267. If an officer makes an armistice containing stipulations too favourable to the enemy, the engagement cannot be invalidated on that account

268 On the other hand, an officer who concludes an armistice can enter upon engagements with regard to such points only as are within the range of the conduct of the war itself A commander cannot agree to the transfer of sovereignty over a territory, or stipulate for permanent rights to be conferred on the inhabitants of a country Such powers are neither within the range of the conduct of the war nor necessary for the success of the operations of war [2]

269. An officer has likewise no power to agree to such a clause in an armistice as concerns troops or a district not under his command [3]

Commencement of armistices.

270. An armistice binds the contracting authorities from the date at which it is concluded It must, however, be published in all the places to which it relates, for the purpose of controlling the acts of individuals It is the duty of the contracting authorities, therefore, to notify an armistice officially and in good time to all commanders and to the troops Hostilities are suspended immediately after the notification, or at a fixed time, as may be arranged [4]

[1] For the sake of brevity, the word "armistice" alone will, therefore, be used in the remainder of this chapter to include all three

[2] Thring, p 298

[3] General armistices being of vital political importance, belligerents may arrange any matters they think fit in them, as, for instance, evacuation of certain territory, surrender of a certain fortress, and the like Thus the Paris armistice of 28th January, 1871, which was granted to the Government of National Defence in order to permit it to hold elections and ascertain whether the country desired that the war should continue, or if not, on what conditions peace should be made, contained the conditions of the surrender of Paris The armistice proposed in Korea at the close of the Russo Japanese War contained a clause fixing the evacuation of certain territory

[4] The armistice beween the Allies and Germany in 1918 (see App 17) came into force at the eleventh hour of the eleventh day of the eleventh month.

271. Should an officer, ignorant of the fact that an armistice has been made, commit an act of hostility by capturing towns or taking prisoners, he is not punishable for the act, although the State to which he belongs is bound to restore them Nor can individuals, or the State, be held responsible for any deaths or damage arising out of such an act, unless they have been guilty of negligence or breach of faith in making known the armistice

272. No one is bound to believe a notification by the enemy that an armistice has been concluded History furnishes many an example giving warning against too easy credulity in this respect [1]

Form of armistices

273. A special form for the convention of an armistice is not prescribed [2] Wherever possible the agreement should be in writing, in order to avoid complications and to have a record, should differences of opinion arise Every endeavour should be made to give very great precision to the statement and to draft it with absolute clearness As soon as it is signed, the stipulations of the convention for the armistice are absolutely binding upon the contracting parties, and must be observed with the utmost strictness It is of the utmost importance that the meaning of the instrument should in no way be arbitrarily interpreted by either party [3]

274. It is advisable that the convention for an armistice should be drawn up in duplicate in the languages of both belligerents, each side retaining a copy in each language [4]

Duration of armistices.

275 The duration of an armistice may be for a definite or indefinite time, and with or without a further period of notice of expiration

[1] Such an example is, for instance, the approach by the French to the bridge over the Danube at Florisdorf on 13th November, 1805, under pretence that there was a suspension of arms pending completion of the negotiations for peace (*Mémoires du Général Rapp*, p 59) Another example is the following —Blucher, with 5,000 men, escaped from General Lasalle at Weissensee, on 16th October, 1806, by sending a parlementaire to assure him that a six weeks' armistice had been concluded, which was not the case (Despatch No 2587, with Lasalle's report, Murat to Napoleon, in *Lettres et documents pour servir à l histoire de Joachim Murat*," Vol IV) Notifications have, however, erroneously been made in perfect good faith Thus, during the operations between the troops commanded by General von Manteuffel and General Clinchant in the south east of France on the 29th January, 1871, a French general staff officer handed to the commander of the 14th German Division a despatch from General Clinchant, to the effect that an armistice for twenty-one days had been concluded on the 27th January, and that this was to be notified to the enemy No armistice was concluded until the 28th, and then the operations of these particular troops were excluded from its effects (*Kriegsbrauch*, 1902, p 43)

[2] The armistices agreed on by the Japanese and Russian plenipotentiaries at Portsmouth (U S A ,)on 5th September, 1905, the protocol of the conditions of the armistice concluded in Manchuria on 13th September, 1905, and the convention for the suspension of arms at the siege of Belfort, 13th February, 1871, as well as certain forms drawn up by Lord Thring, are given for reference in Apps 10 to 16 at the end of this chapter The armistice agreed upon between the Allies and Germany in 1918, dated the 11th November, 1918, is set out in App 17

[3] The dangers of indefiniteness in matters connected with an armistice may be illustrated by the incident at the attack on Rome in 1848 On 17th May, 1848, a verbal arrangement for an armistice without fixed details was made by M de Lesseps, acting for the French, and the Roman authorities On the 1st June, General Oudinot, the French commander, wrote to General Rosselli, commanding in Rome, that he had received instructions to recommence operations at once But in consideration of the French residents in Rome, he continued, "je différe l'attaque de la *place* jusqu 'à lundi matin " (5th June) The Roman officers interpreted this to mean that the French commander would not commit any hostile act until the morning of the 5th June, but he took it to signify merely that he would not attack the permanent fortifications of Rome until that time, and was free to commence operations anywhere short of them Consequently, in the early hours of the 3rd June, the French surprised and captured two villas in the outpost position covering the enceinte of Rome, and thereby determined almost without a shot the fall of the city (*Garibaldi's Defence of the Roman Republic*, by G M Trevelyan, 1907, pp 344, 345)

[4] Cases have occurred in which belligerents have agreed to use the language of a particular nation instead of their own.

Ch XIV — **276.** *If its duration is indefinite the belligerent parties may* resume operations at any time,[1] provided always that the enemy be notified so that the recommencement of hostilities may not be a surprise [2]

277. If the duration of an armistice is definite and fixed, hostilities may be commenced without previous notice at the moment it expires

278. An armistice commences, unless another time is expressly mentioned, at the moment it is signed, the date and hour of the completion of signing should therefore be recorded on it

279. In the case of a short armistice the number of hours should be stated [3] If an armistice is agreed on for a number of days it terminates at midnight of the last day [4] It is always necessary, in order to prevent misunderstandings, to state that the armistice commences at a certain hour on one day and ends at a certain hour on another day, for otherwise the commencement and termination are uncertain [5]

280. It is advisable, especially in the case of a short armistice, for the belligerents to agree to indicate the commencement of the cessation of hostilities by some signal for example, by each party hoisting a flag, and keeping the flags hoisted until the termination of the armistice, and lowering them simultaneously

281. An armistice may be prolonged under the same conditions as it was concluded

Actions forbidden and permitted during armistices

282 During an armistice the belligerent forces which it affects must of course cease fire, they must not attempt to gain ground, in a siege they must not push on with parallels and saps In a word, all offensive measures of whatever nature, and any action or movements which the enemy might have been able to prevent, are forbidden The belligerent forces are, however, permitted to do anything which will tend to the improvement of the situation after the expiration of the armistice and assist the continuation of the struggle, unless they are expressly prohibited by the text or sense of the agreement For instance, troops may be trained new forces recruited, arms and ammunition manufactured, reinforcements and supplies brought up,[6] and troops shifted from one position to another inside the lines

283 The question what defensive measures—for instance, what repairs of fortifications—may without perfidy be undertaken during an armistice has been much debated, and is one on which various

---

[1] Hague Rules, 36

[2] Hague Rules, 36 This says, "provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice" It might possibly be interpreted to mean that if no time is mentioned hostilities may be resumed at any moment, but such an interpretation would not be admissible

[3] An armistice made for 24 hours on the 1st January at 6 p m ends on 2nd January at 6 p m

[4] Thus an armistice concluded at any hour on 1st January for 21 days expires at midnight of the 21st/22nd January An armistice concluded for 21 complete days would terminate at the same hour as the commencement after the number of complete days had elapsed

[5] Supposing an armistice is made from the 1st May to the 1st August, without mentioning hours, questions have been raised whether the days named are both included or both excluded The usual mode of reckoning time in England in legal documents is to include the first day and to exclude the last Consequently in the above case, according to English law, the truce begins at the moment on which the 30th April ends and ceases at the moment at which the 1st August begins, that is, midnight 31st July/1st August (Thring, p 299) Some publicists, however, exclude the first day and include the last

[6] In the armistice concluded at Portsmouth (U S A) between Japan and Russia, it was stated in art 4 that "during the armistice no reinforcements may be sent to the theatre of war Those who are on the way from Japan may not be sent north of Mukden, and those on the way from Russia may not be sent south of Harbin" Ariga, 1908, p 548)

opinions have been held It is best settled by a definite arrangement [1] As it is impossible to check what goes on within the enemy's territory behind his lines, it is useless to impose elaborate conditions, the execution of which cannot be verified

284. If an armistice is declared without conditions, nothing more than a total cessation of hostilities along the front of both positions is required

285. The conclusion of an armistice gives a besieged fortress no right to introduce provisions either for the garrison or civil population It may, however, be arranged to supply them so that at the end of the armistice the forces are in the same position as at the beginning [2]

286. The situation in occupied territory[3] remains the same during an armistice as during hostilities

Prisoners

287. It is usual to return any prisoners or property that may be captured in any action that takes place by ignorance or accident after the conclusion of an armistice [4] There is no obligation to return deserters who come over during an armistice Although to receive and harbour them has by some writers been declared to be an implied act of hostility, the practice of war takes a contrary view

Espionage.

288. It is not necessary to discontinue espionage during an armistice,[5] but the risks incurred by the perpetrators are the same as at other times

Neutral zone.

289. In the terms of the armistice there should be fixed a neutral zone, between so-called lines of demarcation, sufficiently wide to prevent any sort of conflict between the troops No persons having the least connection with the armies should be permitted to enter this zone on any pretext, except as parlementaires or their parties, or by agreement for collection of dead and wounded [6] It must, however, be emphasized that such neutral zone does not exist unless it be specially stipulated by the armistice

290. In order to create a zone it may be necessary for one side or both sides to evacuate territory [7]

Intercourse during armistices

291. A road or roads should be fixed by which all communications between the two armies must pass during the armistice

---

[1] In drawing up the protocol of the armistice concluded in Manchuria on the 16th September, 1905, it was proposed by the Russian envoy to forbid all "acts of hostility" This was considered too vague by the Japanese, and to avoid all difficulty it was arranged that each adversary should do what he liked inside his front line, except acts of combat and the sending of reinforcements (as mentioned in the last footnote) All acts, offensive and defensive, were permitted so long as they did not touch the enemy's line In the suspension of arms concluded at Belfort on the 13th February, 1871, it was merely agreed that "the two parties will rest in their present positions" In the armistice after Majuba, in 1881, it was agreed that "each side promises to make no forward movement in advance of its present position, neither by armed parties nor by scouts, but each retains its liberty of movement within its own lines"

[2] The armistice proposed at Paris in November, 1870, was not concluded, as the Germans refused to permit revictualment The leading case is the armistice of Trevisa, 1801, in which it was permitted to send provisions to the garrison at Mantua every ten days The amount was fixed at 15,000 rations of flour and 1,500 of forage, and other food in proportion The inhabitants were allowed to receive the necessary provisions from time to time, but the French army was left free to take such measures as should be judged necessary to prevent the quantity exceeding the estimated daily consumption in proportion to the population

[3] For definition of "occupied territory," see para 341 below

[4] See, however, para 300 below

[5] For example, it is stated in General Baron von Müffling's *Aus meinen Leben* Yorke's translation, p 299) that Blücher's system of espionage continued at work during the armistice of August, 1813

[6] In the case of a suspension of arms for this purpose it may be sufficient to fix a line instead of a zone It is generally desirable to define the zone or line on maps

[7] This was proposed in the armistice between the Japanese and Russians in Korea For the terms of the armistice with Germany (1918), see App 17

Ch XIV

292. As a state of war continues to exist during an armistice, and as the goings and comings of the inhabitants in the positions of the two armies, and in the neutral zone, may offer inconvenience and facilitate espionage, it rests entirely with the contracting parties to settle in the terms of the armistice how far the relations imposed by war between the belligerent forces and the inhabitants of occupied territory and between the inhabitants of the belligerent countries are modified [1]

293 If nothing is said about inhabitants, each party has an absolute right to settle the question according to his own convenience in the territory over which he has power Usually the intercourse between the two territories remains suspended just as during actual hostilities

Violations of armistices

294 Any serious violation of an armistice by one of the parties gives the other party the right of denouncing it, and in cases of urgency hostilities can even be recommenced at once,[2] although a certain time between giving notice of cessation and resumption of hostilities may have been stipulated for The violation must, however, be a grave one to justify a denunciation, and still graver to authorise an immediate resumption of hostilities [3]

295. A deliberate advance or pushing on of works beyond the line agreed upon,[4] the seizure of any point outside the lines, or the utilization of the occasion to withdraw troops from an unfavourable position commanded by the enemy,[5] or any violation of an express condition would, as a rule, constitute a grave breach

296. It would be perfidy to denounce an armistice for a motive or under a pretext more or less specious and to surprise the enemy without giving him time to put himself on his guard

297. Unless there be great urgency, there should always be a delay between denunciation and resumption of hostilities

298. The existence of an armistice is no reason for the relaxation of vigilance in the service of protection, or of the readiness of troops for action, or for exhibiting positions to the enemy which he could not detect during combat [6]

299. The violation of the terms of an armistice by individuals does not entitle the injured party to do more than demand the

[1] Hague Rules, 39
[2] Hague Rules, 40
[3] Hague Conference, 1899, p 148
[4] Thus, on the 13th August, 1813, during the armistice which was to expire on the 17th August, Blücher received information from various commanders that French patrols had entered the neutral zone, and that requisitions were being carried out in it He considered himself absolved from respecting it, and issued orders to advance into it that evening, but not to cross the enemy's line unless attacked (*Herbstfeldzug*, 1813, by Major Friedrich, p 259)
[5] The withdrawal of troops who are out of sight of the enemy is not perfidy, and may in certain circumstances be considered a ruse Should knowledge of the move come to notice, it would not as a rule afford cause for immediate resumption of hostilities unless specially forbidden in the agreement. If the situation is such that a withdrawal unhindered (as at Mukden, see para. 151, footnote) would be of great advantage to the enemy, the armistice should be refused.
[6] At the second battle of Fredericksburg, 5th May, 1863, the Federals discovered the weakness of General Barksdale's force during a suspension of arms to collect the wounded after the second repulse This knowledge gave them courage to persevere and succeed (Military Memoirs of a Confederate, by General E P Alexander, p 351)
In the suspension of arms at Wynne's Hill, during the relief of Ladysmith, many of the burghers of the South African Republic stood up and thus disclosed the position of their trenches, which until then had not been located by their opponents (History of the South African War, Vol II, p 602)

punishment of the offenders and compensation for the losses sustained, if any [1] There is no justification in such circumstances for a renewal of hostilities, unless the behaviour of these individuals is approved of or sanctioned by their superiors If, however, the violation of the armistice by individuals acting on their own initiative be repeated, and it should become evident that the adversary is unable to repress such abuses, there might be no other way, after proper protest, to obtain redress except by denouncing the armistice

300. Soldiers captured in the act of breaking an armistice must be treated as prisoners of war, since the responsibility for such a violation lies not with them but with the commander [2] Should an individual soldier be captured who without orders committed a hostile act during an armistice, he may conveniently be handed over to his commander for punishment

(iv) *Capitulations*

Nature of capitulations.

301. Capitulations are agreements entered into between the commanders of armed forces of belligerents concerning the terms of surrender of a body of troops, a fortress or other defended place, or of a particular district of the theatre of war Surrenders of territory are sometimes designated as evacuations [3]

302. The commanders of armed forces are presumed to be invested with powers to agree to capitulations, but they are responsible to their Governments should they exercise these powers in cases other than those of necessity [4]

303. Capitulations are, both in character and purpose, purely and exclusively military agreements, involving the abandonment of resistance by the portion of the enemy's forces which capitulates, and, as a rule, their becoming prisoners of war Capitulations should therefore contain nothing but military stipulations The questions at issue in the case of the surrender are the immediate possession of the place and the fate of the troops The capitulation must therefore be limited to these questions in their local military sense, but conditions concerning the inhabitants and their privileges may nevertheless be inserted [5]

Irregular stipulations

304. Stipulations in a capitulation to the effect that the surrendering troops shall never again bear arms against the forces of the conquering State, or that the sovereignty of a place or territory shall change hands would be invalid, inasmuch as power for such extensive purposes belongs only to the sovereign power of the State and cannot ever be presumed to be delegated to commanders [6] Such stipulations can become valid only on condition

[1] Hague Rules, 41
[2] See, however, para 287, above
[3] *E g*, the evacuation of Portugal by the French under the terms of the Convention of Cintra, 1808
[4] See para 310 below
The punishments for shamefully delivering up any garrison, place, post, &c , or doing any act calculated to imperil the success of H M forces (which might include granting too lenient terms to the enemy) are dealt with in the Army Act, s 4
[5] See para 320 below.
[6] Thring, p 301.

Ch XIV

Competent authorities

that they are ratified by the political authorities of both belligerents [1]

305 The surrender of a place or force may be arranged by the political authorities of two States without the intervention of the military authorities[2], in this case the convention may contain other than military stipulations

306 The competence of a commander to accept conditions of capitulation is limited to the troops immediately under his command and does not necessarily extend to detached forces, or to all the forts of a fortress To avoid misunderstandings, capitulations should invariably state to what extent detached forces and outlying defences are included in the surrender of the main body [3]

307 Similarly the competence of a commander to grant conditions of capitulation is limited to those the fulfilment of which depends entirely upon the forces under his command [4] If he agrees, without the instructions of his Government, to conditions the granting of which is not implied in his powers, or the fulfilment of which depends upon forces other than his own, and upon superior officers, they may be repudiated

308 Great care must therefore be taken before concluding any capitulation to ascertain that the competence of the opposing commander to complete the convention is unequivocal [5]

309 Should one of the parties insist on the condition that the consent of the sovereign or his Government must be obtained, this ought to be definitely stated in the convention In these circumstances the party granting such conditions should be careful

[1] The Convention of the capitulation of Verdun, 8th November, 1870, stipulated in art 1 that the surrender was made on the express condition of the retrocession of the fortress and town to France at the conclusion of peace This exceeded the powers of the contracting commanders, and created no obligation for their respective governments

The text of the Convention is given in von Tiedemann's *Festungskrieg*, 1870–1, p 129 It is not given in the German official history of the war

[2] As, for instance, the surrender of the forts and garrison of Paris, which was included in the general armistice of the 28th January, 1871 signed by Count Bismarck and M Jules Favre

[3] Hague Conference, 1907, *Acles*, Vol III, p 25 The inclusion of Vedel's division and other French troops in Andalusia, in the capitulation of Dupont at Baylen, 1808, is an example of the practice

[4] Thus, the Spanish authorities who signed the Convention of Andujar (Baylen) exceeded their powers by promising to send Dupont's army home by water As the British fleet commanded the sea and was blockading Rochefort, the port which the capitulation assigned for the landing of the captive army, the concurrence of the British authorities was necessary before the Spaniards could carry out the agreement

[5] The capitulation of El Arish of the 24th of January, 1800, made between the French General Kléber and the Turkish Grand Vizier, and approved by the British Admiral, Sir Sydney Smith, is an illustration of an invalid convention It was agreed that the French Army should evacuate Egypt, and be transported to France in vessels provided by the Turkish Government Sir Sydney Smith was, however, only a local commander, and junior to Lord Keith, commanding the British Mediterranean fleet The latter had on the 8th January, 1800, received from his Government secret orders not to agree to any capitulation stipulating the free return of Kléber's troops to France Yet Sir Sydney Smith did not receive instructions based on these orders until the 22nd of February, after he had approved of the terms General Kléber was notified by Lord Keith of the orders of the British Government, and he recommenced hostilities The British Government, however, on being informed of Sir Sydney Smith's action, though disapproving of it, confirmed the convention on the 28th March, 1800 Menou, the successor of Kléber who had meantime been assassinated by an Arab, refused, as hostilities had been recommenced, to carry out the original convention (*Kleber, sa vie, sa correspondance*, p 444 *et seq* Alison, History of Europe, chapter XXXIV)

The capitulation of Dresden, agreed between General Gouvion St Cyr and Generals Count Klenau and Tolstoi, on the 11th November, 1813, which permitted the French garrison to return to France there to await exchange, was invalidated on the 19th November by Prince Schwarzenburg, on the grounds that it was not approved of by the allied sovereigns, Klenau and Tolstoi were removed from their commands, and the French became prisoners of war A similar fate befell the capitulation of Dantzig, agreed between General Rapp and the Duke of Wurtemburg on the 29th November, 1813 Owing to the ease and rapidity of communication such mistakes should not be possible in modern warfare

to provide against any disadvantage resulting from non-ratification

310. Abuse by a commander of the power vested in him does not of itself render invalid any compact which he may make with the enemy If, however, he surrenders when he might have continued the defence, or upon worse terms than he might have made, or if he grants too lenient terms, he is accountable to his own Government for his misconduct [1]

Surrenders

311. As capitulation means the act of surrendering to an enemy upon stipulated terms, individual soldiers or parties of soldiers who throw down their arms and surrender do not capitulate, but surrender purely and simply Yet it may occur that small detached parties, or even individual soldiers, intend to surrender upon stipulated terms, in such a situation they are necessarily left to their own discretion, and the senior of the party or the individual, so far as concerns the party or his own person, may do everything which a commander might do with respect to himself and the troops under his command

Negotiations

312. Negotiations for surrender may emanate from either side The intention to surrender is frequently indicated by the hoisting of a white flag, and parlementaires are then sent to arrange for a suspension of arms and draw up and sign the capitulation [2] In many cases, however, the negotiations have been carried on without interruption of hostilities, and the white flag has been hoisted subsequently by arrangement as the sign of surrender

Form of capitulations

313 No rules exist regarding the form of capitulations They may therefore be concluded either orally or in writing, but for the reasons given in the section on armistices,[3] it is most desirable, except in the case of unconditional surrenders, that they should be in writing In the convention every condition, including the time and manner of execution, must be laid down in the most precise and unequivocal words Usually the terms are given in a number of articles, while the details of execution and local interests are dealt with in an appendix [4]

314. In the terms of a capitulation the fate of the capitulating troops or of the surrendered fortress may be settled in the most varied manner, from unconditional surrender[5] to mere evacuation of territory under honourable conditions

---

[1] See para 302 above

Marshal Bazaine was tried and convicted for the capitulation of Metz The granting of the Convention of Cintra to Marshal Junot in 1808 was the subject of a court of inquiry

[2] See page 224

At Sedan, 1870, and at Manila, 1898, when the white flag was hoisted on the walls by the defenders, parlementaires were sent from the attacking forces Official account of the Franco-German War, PartI, Vol II, p 402, and Report of General Wesley Merritt (Report of Major-General Commanding the Army), 1898, p 43

The question of the significance of the white flag and the action to be taken when it is exhibited has been discussed in para 229 *et seq*

[3] See para 273 above The terms of the capitulation of Port Arthur are given in App 18 at the end of this chapter

[4] *E g*, in the capitulations of Metz and Port Arthur

The last article in the capitulation of Verdun, 1870, was the following —"Special points which may require settlement shall be arranged for in an appendix which shall have the same force as the present convention"

[5] As in the case of Pfalzburg on the 12th December, 1870 After a four months' siege, provisions being exhausted, Commandant Taillant destroyed his artillery, rifles, and ammunition, and everything that the enemy could utilize for the purpose of war or exhibit as a trophy, and then informed the enemy that he surrendered at discretion Other instances are the surrender of Osman Pasha after the final sortie from Plevna on the 10th December 1877, and of General Cronje at Paardeburg in February, 1900.

Ch XIV

Honours of war

315. The expression " with the honours of war," which is sometimes used in capitulations, is usually construed to include the right to march with colours displayed, drums beating, bayonets fixed, and swords drawn, but the details of such arrangements should be precisely stated in the articles [1]

Unconditional surrenders

316. Even if a capitulation is unconditional the victor has nowadays no longer the power of life and death over his prisoners, and is not absolved from observing the laws of war towards them

Military honour

317 The Hague Rules only contain one article on the subject of capitulations, and this enacts that they must take into account the rules of military honour [2] The Hague Rules require, therefore, supplementing by the customary rules of warfare

Matters requiring mention

318. The principal questions to be settled in the terms of a capitulation are —the fate of the capitulating troops and of any persons who may have assisted them, the handing over of material, the disarming of the troops, the pointing out of the mine defences, the evacuation and taking possession of the place, and the arrangements for the care of the sick and wounded Usually the troops are formally declared to be prisoners of war, but the surrender may be made conditional on the situation being altered by the arrival of a relieving force within a certain period of time [3]

319 Provision may be made that the surrendering force shall not in every detail be treated as prisoners of war—for instance, that officers shall be allowed to retain their side arms [4] It may also be stipulated that the officers or soldiers shall be released on parole[5], that officers shall be permitted to retain the services of servants, that inhabitants who have assisted the troops as combatants or otherwise shall not be punished, and shall be released on giving up their arms[6], that civil officials are free to leave, that civil and military archives shall remain in custody of the officials of the vanquished party When the evacuation or surrender of territory is the subject of the convention it may be desirable to make special provision respecting the inhabitants [7]

320 It may be necessary to arrange for taking over the civil government and government property, to fix the exact time of the transfer of authority, to arrange for lists of the prisoners to be made and for the repatriation of prisoners, and to stipulate that

[1] The most favourable terms in the Franco German War were granted to the garrison of Belfort under Colonel Denfert Rochereau, who surrendered under instructions from his Government

" In recognition of their brave defence the garrison are allowed free withdrawal with the honours of war They will take away the eagles, colours, arms, horses, carriages, and the military telegraph apparatus, as also the baggage of the officers and kits of the men and the archives of the fortress " (Official Account of the Franco German War, Part V, Vol III, App CLXXII)

[2] Hague Rules, 35 (first paragraph)

[3] As at Ulm, in 1805 art 5 of the terms of surrender, which reads —" If before midnight 25th October (inclusive) Austrian or Russian troops relieve the town from any side or gate the garrison may leave freely, " &c

[4] It should be distinctly stated whether or not this allows them to wear their swords at all times during captivity

[5] It is very undesirable to ask for favourable terms for officers which do not apply to the men

[6] This was done at Metz and at Port Arthur As regards the private property of prisoners of war which is not portable, see para 71 *ante*

[7] The capitulation of the Cape of Good Hope to the British in 1795 provided for the preservation enjoyed by the inhabitants of the Colony, the recognition of the paper currency, the maintenance of public worship ,the immunity of private and public property, and the modification of taxation (Bulletins of the Campaign, 1795, pp 160—1)

certain forts or positions shall be handed over at once as a pledge of the fulfilment of the capitulation [1]

Handing over

321 The handing over of forts, arms, and material, and the transfer of authority can best be arranged by committees composed of members of both armies [2]

Damage and destruction after capitulation

322 It is a customary rule of International Law that as soon as a capitulation has been signed the vanquished commander must abstain from all destruction, damage, and injury of the works, war material, and stores, unless he is entitled to interfere with them by the conditions of surrender [3] Nothing, however, prevents a commander who intends to surrender from destroying fortifications, war material and stores, the possession of which might assist the enemy, providing he does so before signing the capitulation [4]

Breaches of capitulation.

323. Once the terms of capitulation are settled they must be scrupulously observed by both parties[5], a serious breach of the accepted conditions of a capitulation entitles the adversary to an immediate renewal of hostilities without further notice

Denunciations

324 A capitulation may be denounced if a party to it formally refuses to execute any clause which has been agreed upon, and it may be cancelled if it was obtained by a breach of faith [6] It

---

[1] As was done at the capitulations of Paris in 1871 and Port Arthur in 1904

[2] In the appendix to the terms of surrender of Port Arthur, four committees were appointed, each to secure the execution of a particular article of the Convention The first committee dealt with arms, ammunition, and material of war, and was subdivided into four sub committees which settled respectively (i) forts, batteries arms, ammunition, &c, of the land forces, (ii) war vessels and shipping, (iii) supplies, (iv) removal of dangerous objects The second committee dealt with personnel, the third with the sick and wounded and the fourth with the civil administration, finances, and the civil inhabitants (Ariga, 1908 pp 310–12)

The terms of the capitulation of Port Arthur, being drafted in accordance with the best precedents, are given in App 18 in the original English text The following conventions for capitulation are, among others, worthy of study —

Saratoga, 1777	(See Trevelyan's American Revolution, Part III, p 224 *et seq*)
Cape of Good Hope, 1795	(See Bulletins from the London Gazette, 1795 p 160)
El Arish, 1800	(See Kléber's *Correspondance* by Pajol, 1851 p 430)
Ulm, 1805	(See Alomberte and Colin s *Campagne de* 1805 *en Allemagne*, p 851 *et seq*)
Cintra, 1808	(See Oman's Peninsular War, Vol I, p 625)
Baylen, 1808	(See Oman's Peninsular War, Vol I, p 621)
Dresden, 1813	(See *Mémoires de Gouvion St Cyr*, Vol IV, p 484 *et seq*)
Dantzig, 1813	(See *Mémoires du Général Rapp*, p 434 *et seq*)
Sedan, 1870 Strasburg, 1870 Metz, 1870 Paris, Belfort, 1871	(See Official Account of the Franco German War)
Potchefstroom, 1881	(See Correspondence respecting affairs of South Africa C 2950 1881, Nos 50, 63)
Manila, 1898	(See Annual Report of the U S A War Department for year ending 30th June, 1898, pp 43 and 49)

[3] Art 144 of the Military Code of the United States expressly denies to the capitulator the right "to demolish, destroy, or injure the works, arms, or ammunition in his possession during the time which elapses between the signing and the execution of the capitulation"

[4] The court of inquiry on the surrender of Metz blamed Marshal Bazaine for not having destroyed his material of war before signing the capitulation, as it proved of service to the enemy in continuing the war *Procès Bazaine*, p 11 See para 314, footnote above, for Commandant Taillant s action at Pfalzburg in 1870

[5] Hague Rules, 35

Such deliberate violations of the terms of capitulation as were committed by the Government of the United States with regard to the British troops who surrendered at Saratoga in 1777, by the Southern Italian Bourbons with regard to the garrisons of the Neapolitan citadels In 1797, and the Junta of Seville with regard to the French troops who surrendered at Baylen in 1808, are unlikely to be repeated

[6] The capitulation of Potchefstroom in 1881, which was obtained by a "breach of faith" on the part of Commandant Cronje in failing to notify to the garrison the conclusion of a cessation of hostilities as agreed on by the two commanders in chief, was annulled by desire of the Boer Government as soon as it was notified to them, and authority was given to re garrison the place (See the letter of General Joubert and the joint letter of Messrs Kruger, Pretorius, and Joubert to Sir Evelyn Wood in Correspondence respecting affairs of South Africa (C 2950), 1881, Nos 50 and 63)

Ch XIV

may not, however, be annulled because one of the parties has been induced to agree to it by ruse, or from motives for which there is no justification, or by his own incapacity or feebleness

Annulment

325 A capitulation which took place after a general armistice has been agreed upon, and of which the parties to the capitulation had had no knowledge, is null and void, unless the armistice stipulated cessation of hostilities from the time when notification reaches the different forces concerned, and not from the date of signature [1]

(v) *Passports, Safe-conducts, Safeguards, and Cartels*

Passports

326 A passport is a document given by a commander of belligerent forces to enemy subjects or others to enable them, within a limited or unlimited period, to travel free and unmolested within the district occupied by his forces The passport may permit the bearer to travel either alone or accompanied by friends, and with or without servants and effects

327. Passports may be granted by a commander on his own initiative, or by arrangement with the enemy or with a neutral Power, and only if granted by such arrangement do they come within the scope of International Law

Safe-conducts

328 A safe-conduct is a document given by a commander of belligerent forces to enemy subjects or others authorising them, during a limited or unlimited period, to go into places which they could not reach without coming into collision with armed forces actively operating against the enemy—for instance, to visit or leave a besieged town

329 A safe-conduct may, however, also be given to goods, and it comprises then the permission for such goods to be carried unmolested from or to a certain place—for instance, from or into a besieged town Like passports, safe-conducts only fall within the scope of International Law when granted by arrangement with the enemy or a neutral Power

Passes and permits.

330 The expressions "pass" and "permit" have in recent years been employed in the place of the older terms with, as a rule, the same distinction, although "pass" has sometimes had the signification of a general permission to do certain things, while "permit" has been confined to permission to do a particular act

331. The exact term used, however, is of no great importance, provided that every particular with regard to the extent of the indulgences conferred by the document is enumerated with precision in it The person to whom it is granted is inviolable as long and in so far as he strictly complies with the conditions imposed upon him

332 Both passports (passes) and safe-conducts (permits) for individuals are non-transferable On the other hand, safe-conducts (permits) for goods, though they only apply to the articles named in them, may be transferred from one person to

[1] The capitulation of Manila was signed by the local commanders in chief on the 14th August, 1898, but a general armistice had been agreed to by the Governments of Spain and the United States on the 12th August Notice of this, however, did not reach the Philippines until the 16th August, owing to the interruption of the cable The Spaniards contended that the capitulation had become void, but this the United States Government denied, maintaining that the protocol concerning the armistice had stipulated suspension of hostilities, not from the date of signature, but from the date of receipt of notification on the part of the respective commanders (See Moore's Digest, 1906, Vol VII, p 324)

another, provided they do not designate the individual who is to introduce or remove the goods

Revocation and forfeiture

333 Passports, as well as safe-conducts, may be revoked for good reasons of military expediency by the authority who issued them or his superior Until revoked they are binding not only upon the person who granted them, but also upon his successors The reasons for revocation need not be given, but revocation must never be used as a means of securing the person of the holder, who is always to be allowed to withdraw in safety Such passports and safe-conducts as have been granted only for a limited time cease to be available with the expiration of the period designated

334 If the holder commits any wrongful act, such as using the opportunity given by a passport or safe-conduct to obtain military information, or exceeds the terms of indulgence, the privilege may be withdrawn Further, if the holder is considered by any person in authority to be behaving in a suspicious or irregular manner he may be arrested and the case investigated

Safeguards

335 A safeguard is a party of soldiers posted or detailed by a commanding officer for the purpose of protecting some person or persons, or a particular village, mansion, or other property Safeguards, like passports and safe-conducts, only fall within the scope of International Law when posted by arrangement with the enemy

336 Soldiers on duty as safeguards are inviolable on the part of the enemy, and it is customary, if they fall into his hands, to send them back to their army as soon as military exigencies permit Enemy safeguards which have been posted without previous arrangement ought, nevertheless, to be treated in the same way, provided that the circumstances of the case prove that their posting was *bonâ fide*

337 The term "safeguard" is also employed to mean a written order left by an advancing commander with an enemy subject, or posted upon enemy property, requesting the succeeding commander to grant protection to the individual or property concerned

Cartels

338 A cartel, in the wider sense of the term, is used to signify a convention concluded between belligerents for the purpose of permitting certain kinds of non-hostile intercourse which would otherwise be prevented by the conditions of war For instance, communication by post, trade in certain commodities, and such like, may be agreed upon by a cartel As used in a strictly military sense, however, a cartel means an agreement for the exchange of prisoners of war [1]

Cartel ships

339. A cartel ship is a vessel engaged in the exchange of prisoners or in carrying official communications to the enemy Such a ship is considered inviolable, but must not engage in any hostilities or carry any implements of war except a signal gun [2]

---

[1] See para 111

[2] The word "cartel" has been used for the ship itself, as in the following extract from the *Times* of 17th November, 1807, reprinted on 17th November, 1907 —

"After the recent declaration in the Paris papers that no further intercourse with England could be on any account permitted, and that even the sailing of the Cartels between Morlaix and Plymouth would be prohibited, the town was somewhat astonished yesterday by the report of the arrival of a French Flag of Truce in the Downs A schooner, bearing the National flag, was said to have passed by Dover, at three o'clock on Sunday, under a press of sail, and came into the Downs soon after, accompanied by the 'Calypso' sloop of war The Deal letters of yesterday afford no satisfactory information upon this subject"

Ch XIV

VIII —Occupation of Enemy Territory

(1) *Establishment of Occupation*

General effects

340 The military occupation of enemy territory initiates a special relationship between the occupant and the population[1] involving on each side certain rights and duties It affects the general administration of the territory, the persons of the inhabitants, both private and public property, and has various other grave consequences The subject is legislated for in the Hague Rules, articles 42 to 56

Definition

341 According to these Rules "Territory is considered occupied when actually placed under the authority of the hostile army The occupation extends only to the territories where such authority has been established and is in a position to assert itself "[2]

342 This definition is not precise, but it is as precise as a legal definition of such a kind of fact can be, and there should, in practice, be no great difficulty in understanding it

Invasion

343 Invasion is not necessarily occupation, although as a rule occupation will be coincident with invasion[3] Reconnoitring parties, flank guards, raiding or flying columns, and similar bodies which move on or retire after carrying out their special mission, cannot, however, be said to occupy the country which they have traversed They certainly occupy every locality of which they are in possession and where they set up a temporary administration, but such occupation ceases the moment they move on or retire[4]

Occupation must be effective

344 Occupation must be actual and effective, that is, there must be more than a mere declaration or proclamation that possession has been taken,[5] or that there is the intention of taking possession It does not take effect merely because the principal forces of the country have been defeated On the other hand, to occupy a district it is not necessary to keep troops permanently stationed in every isolated house, village, or town It is sufficient that the national forces should not be in possession, that the inhabitants have been disarmed, that measures have been taken to protect life and property and to secure the prevalence of order, and that, should it be necessary, troops can within reasonable time be sent to make the authority of the occupying army felt It is a matter of indifference by what means and in what ways the authority is exercised, whether by fixed garrisons or flying columns, by large forces or by small The manner would usually vary with the density of the population

345 The fact that there is a fortress or defended zone still in possession of the national forces within an occupied district does

---

[1] That is, persons who do not take an active part in the military operations, and are not attached to the army, in particular women and children, the aged, workmen, and cultivators of the soil

[2] Hague Rules, 42

[3] Early's invasion of Maryland, in July, 1864, is an instance of invasion without occupation After the armistices were signed with Germany, Austria Hungary and Turkey in 1918, the Allied Powers occupied territories in those countries and administered them in accordance with the Hague Rules for a military occupation These occupations were in many cases continued after peace was signed the same conditions obtaining

[4] Although the rules here discussed apply primarily in "occupied territory," they should be observed as far as possible in territories through which troops are passing and even on the battlefield

[5] Thus it would not be sufficient to post a notice in one part of a district and declare that the whole district was thereby occupied

not make the occupation of the remainder invalid, provided such fortress is invested [1] The consent of the inhabitants is in no case necessary, it suffices that they have not risen in arms, but have passively submitted

Suggested test of occupation

346 It has been proposed as a test of occupation[2] that two conditions should be satisfied firstly, that the legitimate Government should, by the act of the invader, be rendered incapable of publicly exercising its authority, secondly, that the invader should be in a position to substitute his own authority for that of the legitimate Government These conditions afford in most cases a useful guide, but it must not be forgotten that article 42 of the Hague Rules stipulates distinctly that the authority of the occupant must actually have been established

Proclamation of occupation

347 In the interests of the inhabitants it is most desirable, though in strict law not necessary, that the invader should take measures to make known by proclamation the fact of the establishment of occupation and the area over which it extends He should at the same time summarize the effects which result from the new state of affairs [3]

Exhibition of authority

348. It is also desirable, if the locality concerned is not held by an armed force after establishment of occupation, that the authority claimed should continue to be exhibited in some visible manner, for instance, by the presence of a commissioner, or of post or telegraph officials, by the occasional visits of a few troops, or by the enforcement of a system of passes

Test of commencement of occupation

349. The test of the commencement of occupation is the establishment of the occupant's authority by the presence of a sufficient force following on the cessation of local resistance in consequence of the surrender, defeat or withdrawal of the enemy's forces, and the submission of the inhabitants In practice the moment may be difficult to determine, but considerable latitude should be allowed

350. Occupation must not only be acquired but maintained If the invader is driven out of a district by the enemy or voluntarily evacuates it, or if the district frees itself from the exercise of his authority by a *levée en masse*, so that the legitimate government is able to resume its authority, occupation at once ceases

Maintenance of occupation

351. Occupation does not necessarily cease because the occupant, after having disarmed the inhabitants and made arrangements for the administration of the district, marches on to encounter the enemy, leaving only a few troops behind

352. Occupation does not become invalid through the existence of rebellion on the part of the inhabitants, or through occasional successes of guerilla bands Even a momentary triumphant

---

[1] Thus when Alsace was declared occupied on the 14th August, 1870, the fortresses in that province were still uncaptured, but except for the sieges it had ceased to be the theatre of active operations

[2] French Manual, 1893, p 67

[3] The practice in this matter in past wars appears to have been variable Frequently the inhabitants were only warned to behave peaceably, not to communicate with the enemy, and to comply with requisitions, as, for instance, when the British troops entered France in 1813 and 1815 (Wellington Despatches, VIII, p 159, see App 19 at the end of this chapter) In 1870, the Germans generally, but not always, proclaimed military jurisdiction directly they took possession of a locality by reading or posting a notice (sometimes only one notice in a canton) which gave a list of offences against the troops for which the penalty of death would be inflicted (Brenet, 1902, p 187) In 1894, in China, the Japanese proclamations were similar to those issued by the Duke of Wellington (Ariga, *La guerre Chino Japonaise*, ch IV, p 43) For further examination of the subject see paras 446 and 447.

Ch XIV

rebellion is not sufficient to interrupt or terminate occupation, provided that the authority of the legitimate government is not effectively re-established, and further provided that the occupant takes at once such measures as immediately suppress the rebellion If, however, the power of the occupant is effectively displaced for any length of time his position towards the inhabitants is the same as before occupation

(ii) *General Effects of Occupation*

Occupation is not subjugation

353 The occupation of enemy territory during war creates a condition entirely different from subjugation through annexation of the territory During the occupation by the enemy the sovereignty of the legitimate owner of the territory is only temporarily latent, but it still exists and in no way passes to the occupant The latter's rights are merely transitory, and he should only exercise such power as is necessary for the purposes of the war, the maintenance of order and safety, and the proper administration of the country

354 It is no longer considered permissible for him to work his will unhindered, altering the existing form of government,[1] upsetting the constitution and the domestic laws, and ignoring the rights of the inhabitants

355. The occupant, therefore, must not treat the country as part of his own territory, or consider the inhabitants as his lawful subjects He may, however, demand and enforce such measure of obedience as is necessary for the security of his forces, the maintenance of order, and the proper administration of the country

Allegiance.

356. The victor is distinctly "forbidden to force the inhabitants of occupied territory to swear allegiance to him,"[2] for they remain the subjects of their sovereign and continue to have patriotic duties to their country

Effects of occupation on the inhabitants

357 The occupant can claim certain services from the inhabitants and may impose upon them such restrictions as he judges necessary He can, under certain conditions, use, requisition, seize and destroy their property, and they may in various other ways have to suffer under the effects of the war [3]

Restoration of tranquility

358. The authority of the power of the State having passed *de facto* into the hands of the occupant, the latter has the duty to do all in his power to restore and ensure, so far as possible, public order and safety [4]

(iii) *Administration of Occupied Territory*

Cessation of ordinary functions of government

359. The legislative, executive and administrative functions of the national government, whether of a general, provincial, or local character, cease on occupation The civil servants and other officials of the local government may, if the occupant tacitly or expressly consents, continue to perform their ordinary routine

[1] As the French armies did at the end of the 18th and commencement of the 19th century

[2] Hague Rules, 45 It is unnecessary to make them take an oath to abstain from hostilities, commonly called an oath of neutrality, for they can be punished, as will be seen, for any departure from the attitude of non interference in the war

[3] See, as regards inhabitants, para 46, neutral persons resident in occupied territory, para 502, and property, para 405 *et seq*

[4] Hague Rules, 43 See also App 20 and App 22 (d)

duties, but except in case of military necessity they cannot be compelled to do so

360 In most cases the higher officials will have fled or, if still present, will refuse their assistance,[1] and an administration has therefore to be formed[2], but officials of local authorities, not directly depending on the central political power, such as those of counties, municipalities, boroughs, and parishes, will generally remain, and their services may conveniently be utilized as agents of order

Legal position of occupant

361. It is of little consequence whether the government imposed by the invader is called military or civil government,[3] for in either case it is a government imposed by the necessity of war and, so far as it concerns the inhabitants or the rest of the world, the laws of war alone determine the legality of its acts

Suspension of certain laws and privileges

362. Political laws and constitutional privileges are as a matter of course suspended during occupation for instance, the laws affecting recruitment[4] and those concerning suffrage, the right of assembly, the right to bear arms, and the freedom of the press Special orders may, however, be necessary to make the suspension of the laws known to the population of the occupied territory, for example, an order forbidding able-bodied men of military age to quit the occupied territory [5]

---

[1] For the duties of officials of occupied territory, see para 393 *et seq*

[2] In the Great War, 1914–1918, when the Germans invaded and occupied the greater part of Belgium, by a decree dated 26th August, 1914, Field Marshal Baron von der Goltz was appointed Governor General of Belgium, and on the same date Herr von Sandt was made chief of the civil administration

By an order of December 3rd, 1914, General von der Goltz was superseded by General von Bissing, who served until his death in 1916, when he was succeeded by General Falkenhausen, who filled the position until the withdrawal of the German armies in the autumn of 1918 Upon the Governor General was conferred not only the executive but also the legislative power

With the establishment of German authority in Belgium, many Belgian officials refused to continue at their posts, although there was no such general exodus as took place in France in 1870–1871

The governmental organisation set up in Belgium was divided into two sections, the military section and civil section, both located in Brussels

The military section was under the direction of the Chief of the General Staff and had charge of matters concerning the army and national safety, including the police, which embraced such matters as communications, surveillance of the Dutch frontier, measures against espionage, passports, military courts, and many others The civil section was under the direction of a "Verwaltungschef" Its relations were mainly with the civil authorities of the Belgian Government It exercised a certain supervision over matters of justice, public works, agriculture, finance, and the like Belgian functionaries who continued in the exercise of their duties were largely under the direction of the chief of the civil section Belgian legislation remained in force unless expressly modified by the German authorities

By a decree dated 3rd March, 1917, Belgium was divided into two administrative districts, one embracing the Flemish part (the provinces of Antwerp, Limburg, East and West Flanders, and the districts of Brussels and Louvain), the other the more distinctly Walloon portions (the provinces of Hainault, Liege, Luxemburg, Namur, and the district Nivelles) The former district was to be administered from Brussels, the latter from Namur, and over each a German director was appointed

This measure was denounced by the Belgians as an attempt to divide the Belgian people, and many officials resigned their posts (Garner, Vol II, 1920)

[3] It should be noted that by British practice martial law is proclaimed in British territory, military government in an enemy's country The regulations of the United States provide for martial law in an enemy's country

In the Great War, 1914–1918, in Palestine, after the capture of Jerusalem by the British forces, a military administration was established to govern the territory under British occupation

In 1918, after the final advance, the occupied enemy territory was divided into three administrative areas, each in charge of a chief administrator directly responsible to the Commander-in-Chief

The system of administration was in accordance with the Laws and Usages of War as laid down in the Manual of Military Law, and no departure from the principles laid down was permitted

In the occupied parts of Turkey, as far as possible the Turkish system of government was continued

[4] The Germans in France, 1870–1, prevented conscription in the occupied districts.

[5] Hague Rules, 43

Laws generally continue in force

363 Neither the ordinary civil nor criminal jurisdiction in force in the home territory of the occupant is considered to extend over occupied territory [1]

364 Therefore the civil and penal laws of the occupied country continue as a rule to be valid, the courts which administer them are permitted to sit, and all crimes of the inhabitants not of a military nature or not affecting the safety of the army are left to their jurisdiction

365 The officers, men, and followers of the occupying force are not answerable to the jurisdiction of these courts, they are dealt with by the military law of their army [2]

Power to alter and suspend laws

366. If demanded by the exigencies of war, it is within the power of the occupant to alter or suspend any of the existing laws,[3] or to promulgate new ones, but important changes can seldom be necessary and should be avoided as far as possible

367 The commander of an occupying army is expressly prohibited from declaring, either in his own name or in that of his Government, extinguished, suspended, or unenforceable in a court of law, the rights and rights of action of enemy subjects [4]

The courts

368 The ordinary courts of justice and the laws they administer should be suspended only when the refusal of the judges and magistrates to act[5] or the behaviour of the inhabitants makes it necessary In such case the occupant must establish courts of his own and make this measure known to the inhabitants

Collection of taxes and rates

369 The financial administration passes into the hands of the occupant, but all fiscal laws remain operative If he collects the taxes, dues, and tolls payable to the State, he is in consequence bound to defray the expenses of the administration of the occupied territory to the same extent as the national government was liable [6] The collection must be made, as far as is possible, in accordance with the rules in existence and the assessment in force The occupant is entitled to appropriate to the use of the army any balance remaining over after the disbursement of these expenses The occupant may use local rates only for the purposes for which they are raised

370 The inhabitants of occupied territory expose themselves to the punishments for war treason if they contribute to funds which enable their legitimate government to prosecute the war [7]

371. The invader should not change the way of collecting taxes unless compelled to do so by the flight and ill-will of the officials If a breakdown occurs for this reason,[8] it is a good practice to allot the total sum usually paid among the districts, towns, communities, and parishes, to impose a head tax designed to bring in the same amount, and to make the local authorities responsible

---

[1] The German military code (*Militärstrafgesetzbuch* of 20th June, 1872, para 161) made the following provision for the punishment of offences in occupied territory "A foreigner or a German who, in foreign territory occupied by German troops, commits an act punishable by the laws of the Empire, against German troops or their followers or against any authority established by order of the Emperor, shall be punished exactly as if he had committed it in federal territory"

[2] Thring, 1899, p 315

[3] He will naturally alter any laws, the application of which would be detrimental to his military interests

[4] Hague Rules, 23 (*h*)

[5] See para 401, second footnote

[6] Hague Rules, 48

[7] See para 441 *et seq*

[8] For the duty of officials in occupied territory see para 393 *et seq*.

for its collection, by imposing a fine upon them for delay, or by otherwise bringing pressure to bear on them

New taxes forbidden

372. The occupant must not create new taxes, as that is the right of the legitimate sovereign, and temporary possession does not confer it,[1] but, as will be seen, he may raise money by contribution [2]

Commercial intercourse

373. The occupant may place such restrictions and conditions upon all commercial intercourse with the occupied territory as he may deem suitable for his military purpose He may likewise remove existing restrictions, for instance, suspend the customs tariff in force [3]

Censorship and correspondence

374. He may impose censorship, limit or prohibit telegraphic and postal correspondence, and need not give facilities in these matters to the inhabitants unless the exigencies of war permit it, and unless the native officials render assistance [4]

Control of press

375 Existing press laws need not be respected The publication of newspapers may be prohibited, or permitted under restrictions [5] The circulation of newspapers issued in unoccupied parts of the country and in neutral countries may be stopped

Restrictions on movement

376 All means of transportation, public and private, come under the authority of the occupant, and, if he does not seize and utilize them, he may limit their operation [6]

377. He may withdraw from individuals the right to change residence, restrict freedom of internal movement, forbid visits to certain districts, and immigration, and insist on all persons providing themselves with an identification pass

Religious observances

378 Public worship must be permitted and religious convictions respected [7] If the salaries of the clergy are paid by the State they must be continued [8] The clergy must refrain from reference to politics, and if they use their position to incite the population to resistance or revolt they may be dealt with as war criminals [9]

Education.

379. Similarly schools and educational establishments must be permitted to continue their ordinary activity, provided that the teachers refrain from references to politics and submit to inspection and control by the authorities appointed If these conditions are not complied with the establishments may be closed [10]

---

[1] There is no reason why he should not suspend certain taxes Thus in 1870 the Germans in France suspended the tobacco monopoly (Loening, 1872, p 629)

[2] See para 423 below

[3] The Germans in France, 1870–1, suspended the French custom tariff as between the occupied districts and Germany (Loening, 1872, p 629)

[4] The Germans in France, 1870–1, after the French postal officials refused assistance, took over the service and received letters, but did not distribute them Sometimes these were handed over *en bloc* to the Maire, who arranged for their delivery by the former postmen, in other cases it was necessary to call personally for them The rate of postage was raised 50 per cent (Brenet, 1902, p 171)

[5] The Germans in France, 1870–1, demanded that the names of the manager, editor, proprietor, and administrator should be reported at the prefecture, that two signed copies of the journal should be deposited before publication, that no news about the operations, except that which was communicated by the General Staff, should be issued, and that German official notices should be inserted gratuitously It was forbidden to publish articles of a hostile tendency, or criticisms of the authorities

[6] Hague Rules, 53 For further information as to transport see para 415 below

[7] Hague Rules, 46

[8] Provided that the occupant collects the taxes, &c, payable to the State Hague Rules, 48

[9] See para 441 below

[10] The Germans in France 1870–1, closed three lycées the heads of which refused to permit inspection

Ch XIV

Medical and sanitary organisation

380. Hospitals, asylums, and similar institutions must be kept open All the usual sanitary measures must be continued and such additional precautions ordered as may be considered necessary, the inhabitants being compelled to carry them out The use of water, fuel, and illuminants may, if necessary, be limited on account of their value as war supplies

Police duty

381. In case of necessity the inhabitants may be called on to do police duty, to assist the paid police force in the maintenance of public order, to aid in the extinction of fires or to do any other duty that may be required of citizens for the public good

(iv) *Effects of Occupation on the Population* [1]

Limitation on obedience to be demanded from inhabitants

382. It has already been stated that obedience to the occupant is one of the implied conditions of the special position accorded to the peaceful inhabitants Practically they must give to his administration the same obedience, short of acknowledging his sovereignty, which they rendered to their own Government before the occupation The claim to obedience is, however, limited by the three rules (i) that " a belligerent is forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country even if they were in the service of the belligerent before the commencement of the war "[2], (ii) that the services demanded of inhabitants shall be " of such nature as not to involve them in the obligation of taking part in military operations against their own country "[3], and (iii) that " a belligerent is forbidden to compel the inhabitants of territory occupied by him to furnish information about the army of the other belligerent, or about its means of defence "[4]

Rights of inhabitants

383 It is the duty of the occupant to see that the lives of inhabitants are respected,[5] that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with, and generally that duress, unlawful and criminal attacks on their persons, and felonious actions as regards their property are just as punishable as in times of peace

Duties of inhabitants

384 In return for this considerate treatment it is the duty of the inhabitants to behave in an absolutely peaceful manner to carry on their ordinary pursuits as far as is possible, to take part in no way in the hostilities, to refrain from every injury to the troops of the occupant, and from any act prejudicial to their operations, and to render obedience to the officials of the occupant Any violation of this duty is punishable by the occupant [6]

[1] The case of neutral persons resident in occupied territory is dealt with in para 465 *et seq*

[2] Hague Rules, 23, last paragraph

[3] Hague Rules, 52

[4] Hague Rules, 44 This rule excludes the impressment of guides (Hague Conference, 1907, *Actes*, Vol III, pp 123–126) It is really a special case of Rule 23 (last paragraph), but because the means of acquiring information has thus been expressly limited, it is not to be understood that acts which have not been particularly specified are on that account permissible Certain countries have made reserves in regard to this Article, and therefore adhere to the ancient right of forcing inhabitants to act as guides In practice patrols will seek information as heretofore It has long ceased to be the custom to extort information under threat of death, the value of intelligence supplied under compulsion being very small (Hague Conference, 1907, *Actes*, Vol III, pp 136–141)

[5] Hague Rules, 46 See also App 22 (ii) The respect for their lives means that they must not be arbitrarily killed, and that they shall not be executed without trial

[6] See para 441 *et seq*

Collective punishment

385 No collective penalty,[1] pecuniary[2] or otherwise, may, however, be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible

Reprisals

386 If, contrary to the duty of the inhabitants to remain peaceful, hostile acts are committed by individual inhabitants, a belligerent is justified in requiring the aid of the population to prevent their recurrence and, in serious and urgent cases, in resorting to reprisals [3]

387 An act of disobedience is not excusable because it is committed in consequence of the orders of the legitimate Government, and any attempt to keep up relations with that Government or to act in understanding with it, to the detriment of the occupant, is punishable as war treason

Requisitions of personal services of inhabitants

388 The personal service of the inhabitants may be requisitioned for the needs of the army Thus professional men and tradesmen, such as surgeons, physicians, pharmacists, electricians coach builders, smiths, carpenters, butchers, bakers, &c , employees of gas, electric light, and water works, and of sanitary boards may be called on to render service in connection with their ordinary vocations The officials and employees of railways, canals, river steamship companies, telegraphs, telephones, postal and similar services, and drivers of transport, whether employed by the State or private companies, may similarly be requisitioned to perform their professional work, provided the services required do not directly concern the operations of war against their own country [4]

389 The occupant can requisition labour to restore the general condition of the country to that of peace, *e g* , to repair roads, bridges, railways, and to bury the dead and collect wounded Inhabitants owe obedience when called on to carry out measures for the ordinary purposes of government, and, as already stated,[5] to do police and similar work

390 It is unusual and would be generally impolitic to requisition the services of inhabitants for the superintendence or organisation of labour or work Yet the authorities may be ordered to provide the number of labourers required for legitimate purposes

---

[1] Hague Rules, 50 Yet this does not prejudice the question of reprisals See para 435 *et seq*

The Japanese in Manchuria by proclamation ordered the inhabitants of a village to concert to prevent the destruction of a telegraph line and a railway within the limits of the village, and notified that the entire village would be liable to a fine in case of damage occurring Professor Ariga, however, states that the Japanese went no further than menace, and that he knows of no case of a collective punishment being really executed (Ariga, 1908, p 388) It would, of course, be contrary to the Hague Rules to inflict a collective punishment on a village because a bridge for which it had been made responsible was destroyed by a raiding party of the belligerent forces , but if certain inhabitants concealed such a party on their property they might as individuals be punished

[2] The levies imposed by Germany in the portions of France and Belgium which she occupied in the Great War, 1914–1918 were, therefore, illegal

[3] See para 452 *et seq*

[4] Hague Rules, 52 This would not exclude their being employed to remove wounded or to bring up baggage, supplies and stores

[5] See para 386 The distinction between such requisition of personal services as is permitted or not, is a delicate question on which there is some difference of opinion In order to prevent any misunderstanding it was proposed at the Hague Conference, 1907 (*Actes* Vol III, pp 120–22), to insert the words " as combatants " after " take part " in Hague Rule, 23, leaving the belligerents free to demand any other service of inhabitants The proposal was, however, rejected Professor Ariga considers an order to repair roads as "irreproachable in law" (Ariga, 1908, p 433, footnote)

Ch XIV

391. The prohibition to compel inhabitants to take part in the operations of war against their own country excludes their being requisitioned to construct entrenchments and fortifications,[1] although nothing prevents their being offered payment to induce them to undertake such work voluntarily It would, however, not be wise to use inhabitants indiscriminately for such purpose, since they might convey to the enemy information as to the nature of the works

Payment for services

392. Services for legitimate purposes may, if necessary, be obtained by force, and the refusal to work may be met by punishment As a rule, however, it will be more politic to offer good wages, because these frequently prove an irresistible attraction in time of war

(v) *The Situation and Duties of Officials in Occupied Territory*

Continuance in office

393. Whether government and local officials should voluntarily remain at their posts, and whether the occupant should continue them in their posts if they consent to stay, will depend on their particular functions and other circumstances The occupant, except when forced by military necessity, must not compel such persons to remain in office against their will

394. Usually such officials will receive instructions from their Government as to the course of action to be pursued,[2] but in the absence of such instructions they will use their own judgment For the safety of life and property some should remain to hand over civil authority to the invader [3]

Municipal officials

395 In the past government officials have usually withdrawn, whereas local municipal officials have often remained It is recognised that they will at times best fulfil their moral duty towards their own people if they continue in office in the presence of the invader [4] For if they withdraw there will be disorder and confusion , while if they remain at their posts order and safety are better secured They should not, however, be called on to act as intermediaries of the occupant, if by so doing they would forward military operations

Effect of flight of officials

396 The general desertion of the officials must occasion the occupant great difficulties He has to create new organs to execute his decisions, and, as his employees know neither the country nor the people, it will be only after a considerable lapse of time that they can familiarise themselves with their new charge The inhabitants rather than the invader will suffer by the withdrawal of the judges, magistrates, sanitary and police authorities, and there would be no object in the staff of museums and libraries abandoning their posts Railway, postal, telegraph, and telephone

[1] Hague Conference, *Actes*, Vol III, pp 120–22

[2] The Prussian regulations for the Landsturm, 1813, laid down; " If a town is occupied by the enemy the authorities will be considered suppressed and no one is bound to obey them " In 1866, when Prussia invaded Bohemia the Austrian Government ordered all functionaries, including the police, to abandon the territory

In Alsace Lorraine, in 1870, the higher functionaries left, but many of the subordinate ones remained, until a decree of Gambetta, 1st November, 1870, ordered them to abandon their employment under penalty of loss of their pensions (Loening, 1872, p 641)

[3] In particular the police, temporary or otherwise The complete withdrawal of the Russian administration from Dalny, in 1904, before the arrival of the Japanese, resulted in the looting of the town by the Chinese inhabitants (Ariga, 1908, p 352)

[4] Hague Conference, 1899, p 148

officials, whether State or otherwise, will, however, almost necessarily cease work Ch XIV

397. Unless their own acts render their removal necessary, the occupant will in most cases invite officials to remain at their posts, promising to them their salaries

Assurances of fidelity

398 The occupant may require such officials as continue at their posts to take an oath to perform their official duties conscientiously As such an oath, however, might be objected to by the officials as well as by the population, it will, as a rule, be advisable not to require an oath but merely to ask for an assurance that they will loyally fulfil the service confided to them and will place no obstacle in the way of the occupying force [1]

399 The occupant need not enquire into the credentials of officials found in authority at the moment of occupation

Resignation

400 It is not a hostile act for an official to resign after having taken service under the occupant or having continued in it

Removal

401 The occupant being the administrator of the country can remove and instal officials [2] Even judicial functionaries may be deposed if they refuse obedience to the occupant [3]

Salaries

402 The salaries of officials who continue to do duty must be paid by the occupant if he collects the taxes of the occupied territory [4]

Offences

403 Such wrongful acts of officials as constitute ordinary crimes are to be punished according to the law of the land, but any act to the disadvantage or damage of the occupying army may be dealt with as war treason [5]

404 If an official is considered dangerous to the interests of the occupant, he may, according to the merits of the case, be removed, made a prisoner of war, or expelled from the occupied territory

IX —Treatment of Enemy Property [6]

Booty,

405 The unlimited right to seize and take enemy property of every kind no longer exists [7]

---

[1] The Germans in France 1870–1, demanded the following declaration of the French postal officials "I am ready to obey without opposition the orders of the postal authorities established in the French occupied territory by the German troops, and I promise to avoid all that can injure the interests of the German Powers and their armies" In consequence the French officials declined to assist (Bonet 1902, p 171)

[2] When the French occupied districts were disturbed in January, 1871, by the rumours of the success of Bourbaki's movement the Germans considered it necessary to discharge a number of French officials (Loening, 1872, p 642)

[3] During the occupation of Nancy in 1870–1 all the French judges of the Court of Appeal at Nancy were removed by the invader and replaced by Germans, because no arrangement could be come to with regard to the form of words to be used in delivering judgment After the fall of the Empire and the proclamation of the French Republic, the Court commenced to pronounce its verdicts "In the name of the French people and Government" As Germany had not yet recognised the Republic, the German authorities ordered the Court to use the formula "In the name of the High German Powers occupying Alsace and Lorraine," but gave it to understand that if it objected to these words, they were prepared to accept "In the name of the Emperor of the French," as Napoleon III had not abdicated The Court, however, refused to pronounce its verdicts otherwise, and suspended its sittings Bluntschli (*Völkerrecht*, para 547, third edition, 1878) correctly maintains that the most natural solution of the difficulty would have been to have used the neutral formula "In the name of the Law"

[4] Hague Rules, 48

[5] See para 441 below

[6] See instructions for the requisitioning of supplies, stores, animals, labour, &c, laid down in Field Service Regulations, Vol I, 1923 (Provisional), p 198

[7] Whenever booty is still admissible and therefore taken, it becomes the property of the State and not of the individuals who capture it The former practice by which booty was sold and the proceeds divided amongst the captors has vanished As to property on the battlefield see para 433 below

General rule as to interference with property

406 The destruction or seizure of enemy property is forbidden, whether it belongs to private individuals or to the State, unless the damage or taking is imperatively demanded by the necessities of war [1]

(1) *Private Property*

General rules as to interference with private property

407. Private property must be respected, it may not be confiscated or pillaged, even if found in a town or place taken by assault [2] This prohibition in its ordinary sense is no new rule, but has for a long time past been embodied in the regulations of every civilized army, for nothing is more demoralizing to troops or more subversive of discipline than plundering Theft and robbery are as punishable in war as in peace, and the soldier in enemy country must observe the same respect for property as in his garrison at home The rule that private property must be respected has, however, exceptions necessitated by the exigencies of war In the first instance, every operation, movement, or combat occasions damage to private property Further, the right of an army to make use of and to requisition certain property is fully admitted [3] What is forbidden is such damage, destruction, improper seizure or taking of property as is not required in the interests of the army, and as would, therefore, increase the sufferings of the population in war

408 Generally, therefore, no damage may be done that is not required by military operations, but even total destruction of property is justifiable if it is required by the exigencies of war

Real estate

409. The real estate of individuals may not be appropriated or alienated, nor may it be used, let or hired for private or public profit [4]

410 The temporary use of real estate for the wants of the army is justified, even though such use may endanger its value Thus apart from the necessary use of land in war for marching, encampments, and construction of entrenchments, the inhabitants may be compelled to accommodate the troops and the sick and wounded in their houses, and army animals in their stables and sheds Buildings may be used for the purposes of reconnaissance, cover, defence, &c, and if it is necessary, houses, fences and woods may be demolished, cut down, and removed to clear a field of fire or to provide material for bridges, fuel, &c, imperatively needed by the army

Compensation.

411 Neither rent for the use of property, nor compensation for damage caused by the necessities of war can be claimed. If time allows, however, a note of the use or damage should be kept, or given to the inhabitant, so that in the event of funds being provided by either belligerent at the close of hostilities to compensate the inhabitants, there may be evidence to assist the assessors

Billeting

412. In quartering troops in private dwellings some rooms should be left to the inhabitants, the latter should not be driven into the streets without shelter If for military reasons, whether

[1] Hague Rules, 23 (*g*)
[2] Hague Rules, 28, 46 and 47
[3] Hague Rules, 52 and 53
[4] This prohibition includes the private property of ruling families so far as it has really this character and is not State domain

for operation purposes or to protect men and horses from the weather, it is imperative to remove the inhabitants, endeavours should be made to give them notice and provide them with facilities for taking their indispensable baggage with them

Unoccupied buildings

413. When buildings of absent owners are made use of, care should be taken that they are reasonably treated The fact that the owners are away does not authorise pillage or damage [1] A note should be left if anything is taken There is, however, no obligation to protect abandoned property, for to do so might require a very numerous body of men

Destruction by way of reprisal

414. The custom of war permits as an act of reprisal the destruction of a house, by burning or otherwise, whose inmates, without possessing the rights of combatants,[2] have fired on the troops Care must, however, be taken to limit the destruction to the property of the guilty

Personal property First category Seizure

415. As to private personal property, this falls for war purposes into two categories The first category comprises all such things as are susceptible of direct military use These may be seized, but they must be restored at the conclusion of peace, and indemnities must be paid for them [3] Under this category fall appliances adopted for the transmission of news by land, sea, or air, such as cables,[4] telegraph and telephone plant, all kinds of transport whether on land, at sea,[5] or in the air, such as horses, motors, bicycles, carts, carriages, railways and railway plant,[6] tramways, ships in port, river and canal craft, aircraft of all descriptions, depôts of arms, whether military or sporting[7], and in general all kinds of war material [8] No actual stipulation is made in the Hague Rules to oblige the belligerent who effects the seizure to give a receipt, but the fact of seizure should obviously be established in some way, if only to give the owner an opportunity of claiming the compensation expressly provided for

---

[1] The opinion expressed by Bluntschli (*Völkerrecht* para 652, third edition, 1878) that "When the soldier finds the door of his billet locked and provisions intentionally spoilt or hidden, necessity compels him to burst open doors and search for food, and in righteous anger he may occasionally smash a mirror or two and stoke the fire with the furniture," is contrary to the Hague Rules, as such damage is not "imperatively demanded by the necessities of war", it is not permitted in any disciplined army (See A A, 6 (3) (*d*))

[2] See para 452 *et seq*

[3] Hague Rules, 53 By which party such indemnities are to be paid should be settled in the terms of the peace treaty Unless the question is properly settled in the peace treaty, vexatious and interminable correspondence will occur

[4] The following special rule with regard to cables in occupied territory is given in art 54 of the Hague Rules —"Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity They also must be restored at the conclusion of peace, and indemnities paid for them" It was, however, explained at the Hague Conference, 1907 (*Actes*, Vol III, p 15), that 'this article is only to be taken to refer to what passes on land, without touching the question of the seizure or destruction of submarine cables in the open sea" This reservation detracts from its importance, since if the destruction or seizure of a cable were necessary, steps might be taken to cut it or work it at a point outside the three mile limit The rule applies to both government and private cables Thus the British Navy, within 12 hours of the declaration of war against Germany in 1914, had cut the cable communications between Germany and all overseas countries except Sweden, Norway and Turkey in Asia

[5] Except in cases governed by maritime law See Hague Conference, 1907, *Actes*, Vol III, p 27 where the possibility of troops seizing ships in port and river craft is alluded to

[6] At the close of the war, 1870-1, the Germans retained all railway rolling stock belonging to private companies, and a mixed commission was instituted which fixed the compensation to be divided between them (Brenet, 1902 p 166) As regards railway material coming from the territory of neutral powers, see para 507 *et seq*

[7] Inhabitants may be called upon to give up any arms and ammunition in their possession, even antique, valuable, and curious weapons, if circumstances demand it

[8] War material in its widest sense means anything that can be made use of for the purpose of offence and defence, it also includes the necessary means of transport

Private property Second category Requisitioning

416. The second category of private personal property covers all such articles as are not susceptible of direct military use, but are necessary for the maintenance of the army Under this category fall such things as food and fuel supplies, liquor and tobacco, cloth for uniforms, leather for boots, and the like The taking of such articles is forbidden unless they are actually required for the needs of the army [1] They must be duly requisitioned, and the amount taken must be in proportion to the resources of the country [2]

Payment for requisitions

417. Articles requisitioned should be paid for in ready money, but if this is not possible a receipt must be given for them, and the payment of the amount due must be made as soon as possible [3]

Method of requisitions

418 Requisitions can only be demanded on the authority of the commander in the locality occupied,[4] but it is not necessary that his order for the requisition should be produced, as the articles taken must be paid for or a receipt given The assistance of the local authorities of the invaded territory may be invoked to obtain the supplies [5] When it is impossible to obtain this assistance special parties under an officer should be detailed to collect what is required Except in cases of emergency no one under the rank of commissioned officer is, by the regulations of practically all armies, permitted to requisition

419. Requisitions of supplies may be made in bulk, that is, a community may be called on to supply certain quantities, or a return may be called for from inhabitants giving the amounts in their possession of which a proportion may then be requisitioned, or the householders may be requisitioned to feed or partly feed the soldiers quartered on them, and any other way that is con-

---

[1] Hague Rules, 52

[2] *Ibid*, 52

The expression "needs of the army" was adopted deliberately at the First Hague Conference as having a more restricted meaning than the "necessities of the war" might be held to convey Luxuries, such as wine and tobacco, which add to the comfort and efficiency of the army, may be requisitioned, but not such articles as watches and jewellery 'Occupied territory is not to be systematically exhausted" (Hague Conference, 1899, p 149) The quantity of food to be left in the possession of inhabitants must be decided by the commander ordering the requisition, who will be guided by local conditions The usual practice is to leave at least three days' supply of food for a household, and rather more than that at outlying farms or villages (See Field Service Regulations, Vol I, 1923 (Provisional) p 198)

[3] Hague Rules, 52

The practice of war which prevailed before the agreement upon the above article by the civilized Powers was to defer payment until the end of the war, to make allowance for the value requisitioned in the indemnity agreed on in the terms of peace and to leave each side to settle with its own subjects In the version of the Rules, drawn up at the First Hague Conference of 1899, it was merely laid down that requisitions should "as far as possible be paid for in ready money" or a receipt should be given, and it was assumed that "the question of the payment of receipts will ordinarily form the subject of an article in the terms of peace" (Hague Conference, 1899, p 151) The Rules drawn up in 1907 have made the former practice and rule obsolete, if a cash settlement is not possible, payment of sums due on account of requisitions must be made as soon as possible, and "as far as possible during the hostilities" (Hague Conference, 1907, *Actes*, Vol III, p 26) Under these Rules therefore a requisition receipt is an acknowledgment of a debt and a promise to pay The system of cash payment for requisitions is recommended as often less irksome to the population and generally more politic, if only to prevent the people from concealing their supplies The army of occupation can procure cash by means of contributions in money (see below, para 423), which can be levied evenly upon the population, whereas when requisitions are made without payment they may bear heavily on chance individuals (Hague Conference, 1899, p 150)

It may be more convenient in occupations which follow an armistice, such as those in 1918, to add the money paid for requisitioned articles to the amount of the indemnity claimed in the treaty of peace, If payment for requisitions is for any reason deferred to the end of the war, payment should be arranged for in the indemnity clauses of the peace treaty, otherwise much acrimonious correspondence on requisitions will occur

[4] Hague Rules, 52, and Hague Conference, 1899, p 150

[5] Requisitions will always be made by a demand on the form prescribed (A F F 780), which may be altered to suit local conditions (Field Service Regulations, 1923, Vol I (Provisional), p 201.)

venient may be employed provided the above-mentioned rules are observed

Billeting

420. The right to billet troops on the inhabitants follows the right to requisition

Fixing of prices

421. The prices to be paid for requisitioned supplies may be fixed by the commander of the occupying force The prices of commodities on sale may also be regulated, and limits may be placed on the hours and places of trading

Destruction of supplies

422. Supplies in the hands of private inhabitants may not be destroyed simply for fear that the enemy should make use of them later on [1]

Contributions

423 Cash, over and above taxes, may be requisitioned from the inhabitants, and is then called a "contribution" The occupant may not, however levy a contribution for the purpose of enriching himself, and it can only be applied to the needs of the army or of the administration of the territory in question [2]

424. A contribution should not be exorbitant[3] and may no longer be used as a means of pressure or of punishment [4] It is chiefly useful to distribute the burden of requisition between towns and the supply-producing country districts, cash contributed in the former being used to purchase produce in the latter

425. A contribution may not be collected except under a written order and on the responsibility of a commander-in-chief The collection must be made as far as is possible on the basis of the assessment of taxes in force at the time,[5] and a receipt must be given to every individual contributor [6]

(ii) *Public Property*

Real property of a State

426. Real property belonging to the State which is of a military character, such as forts, arsenals, dockyards, magazines, barracks, and stores, also railways, canals, bridges, piers, and wharves, remain absolutely in the hands of the occupant until the end of the war They may be damaged or destroyed in the interest of the military operations

427. Real property belonging to the State which is essentially of a civil or non-military character, such as public buildings and offices, land, forests, parks, farms, and mines, may not be damaged unless its destruction is imperatively demanded by the exigencies of war The occupant becomes the administrator and usufructuary of the property, but he must not exercise his rights in such a wasteful or negligent way as will decrease its value, for he has not the absolute right of disposal or sale [7]

428 The occupant may, however, let or utilize public land and buildings, sell the crops on public land, cut and sell timber, work the mines, but he may not make a contract or lease extending beyond the conclusion of the war, and the cutting or mining must

---

[1] Only in case of a general devastation may such supplies, like other property, be destroyed, (see para 434 below)

[2] Hague Rules, 49

[3] The victor is not justified in covering the cost of the war, even when it has been forced on him, by raids on the capital of private individuals (*Kriegsbrauch*, 1902, p 63)

[4] Hague Rules, 50, definitely forbids collective pecuniary punishment

[5] Hague Rules, 51 For collection of taxes, see para 371 above

[6] Hague Rules, 51

[7] Hague Rules, 55, which says such property must be administered "in accordance with the rules of usufruct", that is, the occupant has the *usus* (=use) and the *fructus* (=products)

Ch XIV

not exceed what is necessary or usual, and must not be an abusive exploitation

Property of local governments

429 Special exception, however, is made in favour of property belonging to local, that is to say, provincial, county, municipal and parochial authorities This as well as the property of institutions dedicated to public worship, charity, education, science, and art, such as churches, chapels, synagogues, mosques, almshouses, hospitals, schools, museums, libraries, and the like, must be treated as private property [1] Troops, sick and wounded, horses, and stores may therefore be housed in buildings of the above character, but such use is only justifiable if it is a military necessity Any seizure, destruction, or wilful damage to the property of such institutions, or to historic monuments, or works of science and art is forbidden [2] Thus, it would not be improper to place sick and wounded in a church if no accommodation could immediately be found elsewhere, but a consecrated building should not be used for the purpose of barracks, stables, or stores, unless it is absolutely necessary [3]

Movable property of a State

430. Movable property belonging to the State is, like private property, divided, as regards its treatment, into two categories Cash, specie, funds, and realisable securities which are strictly the property of the State,[4] and all property directly susceptible of military use, such as means of transport, appliances for the communication of news, depôts of arms, stores and supplies,[5] may be taken possession of as booty The public income and taxes raised in occupied territory may also be disposed of, but in this case the regular expenditure of the administration must be borne by the occupant [6]

Other public property

431 Other movable public property, not directly susceptible of military use, as well as that belonging to the institutions mentioned above which is to be treated as private property,[7] must be respected and cannot be appropriated for instance, crown jewels, pictures, collections of works of art, and archives, although papers in connection with the war may be seized even when forming part of archives

Property whose ownership is doubtful

432. Where there is any doubt whether certain property is public or private, as may frequently occur in the case of stores and supplies obtained from contractors, it should be considered to be public property unless and until its private character is distinctly proved [8]

[1] Hague Rules, 56, para 1

[2] Hague Rules, 56, para 2 See para 436 below As regards the arrangements for sparing such institutions during a bombardment, see para 135 above

[3] In 1870 the Germans housed 9,000 French prisoners in the Cathedral of Orleans (Letters of Major von Kretschman, Latreille's French translation, p 312)

[4] Hague Rules, 53 Banks may be ordered not to part with funds and securities until the ownership is determined Art 53 excludes the seizure of funds belonging to a government savings bank, or to private individuals or companies The occupant would be liable for the deposits in Government savings banks of persons residing in the occupied territory The Germans in France, 1870–1, long before the meeting of the First Hague Conference, recognised this liability Depositors of 50 francs and less were paid in full, but those whose balances exceeded this amount received only a percentage (Loening, 1873, p 117)

[5] Supplies "for war purposes" (*Kriegsbrauch*, 1902, p 58)

[6] Hague Rules, 48

[7] See para 429

[8] Cases of government property being transferred to private ownership to avoid seizure have occurred in various wars

(iii) *Property on the Battlefield*

Treatment of property found on the battlefield

433. Property found or captured on a battlefield is dealt with generally in accordance with the rules given above Private enemy property on the battlefield is not, as in former times, in every case booty Horses, arms and ammunition and military papers are booty even if they are the property of individuals, but cash, jewellery, and other private articles of value are not [1] There is a definite obligation that personal effects, valuables, letters, &c , found on the field must be collected and forwarded, by means of the prisoners of war information bureau, to those concerned [2]

(iv) *General Devastation*

When permissible

434 General devastation of enemy territory is, as a rule, absolutely prohibited, and only permitted very exceptionally, when " it is imperatively demanded by the necessities of war "[3] The question in what circumstances a necessity arises cannot be decided by any hard-and-fast rule [4]

X —Means of Securing Legitimate Warfare

(i) *General*

Alleged occurrence of illegitimate acts

435 Scarcely any war has taken place without complaints having been made of illegitimate acts and omissions of some kind or other having been committed by individuals or by commanders In some cases belligerent Governments themselves, owing to differences of interpretation of the laws of war, have been accused of illegitimate acts or of refusing to punish alleged illegitimate acts of their soldiers

436 The Convention respecting the Laws and Customs of War on Land foresees the possibility of illegitimate acts and lays down that —" A belligerent party which violates the provisions of the Rules (annexed to the Convention),[5] shall if the case demands be liable to pay compensation It shall be responsible for all acts committed by persons forming part of its armed forces "[6] The Rules further order that the perpetrators of the particular offences of seizure, damage or wilful destruction of churches, hospitals, schools, museums, historic monuments, works of art, &c , shall be prosecuted [7]

How legitimate war is on the whole secured.

437. As war is the last remedy of Governments for injuries, no means would appear to exist for enforcing reparation for violations of the laws of war Practically, however, legitimate warfare is, on the whole at least, secured through several means recognised by International Law Moreover, it is in the interest of a belligerent to prevent his opponent having any justifiable occasion for complaint, because no Power, and especially no Power engaged in a

---

[1] Hague Rules, 4 See paras 69–71
[2] Hague Rules, 14 See paras 102–107
[3] Hague Rules, 23 (g)
[4] For instance, in the case of a *levée en masse* on already occupied territory, when self-preservation compels a belligerent to resort to the most severe measures, a general devastation might be absolutely necessary
[5] Referred to in this chapter as the Hague Rules
[6] Art 3 of the Convention respecting the Laws and Customs of War on Land,
[7] Hague Rules, 56

Ch XIV — national war, can afford to be wholly regardless of the public opinion of the world

Two classes of means

438 These means fall into two classes according to whether or no they fall under the category of self-help To the one class belong complaints lodged with the enemy, complaints lodged with neutral States, and good offices, mediation, and intervention of neutral States To the other class belong punishment of war crimes committed by enemy soldiers and other enemy subjects, reprisals, and the taking of hostages.

(ii) *Complaints, Good Offices, Mediation and Intervention* [1]

Complaints

439 As diplomatic intercourse between the contending States is broken off during war, complaints are either sent to the enemy under protection of a flag of truce,[2] or through a neutral State which lends its good offices [3] Complaints may also be lodged with neutral States, with or without a view of soliciting their good offices, mediation, or intervention for the purpose of making the enemy observe the laws of war [4] And it may be incidentally remarked that occasionally the foreign press is made use of for enlisting foreign public opinion against the enemy [5]

Good offices and mediation Intervention

440. Good offices and mediation by neutral States for the purpose of settling differences are friendly acts, in contradistinction to intervention, which is dictatorial interference for the purpose of making the respective belligerents comply with the laws of war

(iii) *The Punishment of War Crimes*

War crimes

441. The term "War Crime"[6] is the technical expression for such an act of enemy soldiers and enemy civilians as may be visited by punishment or capture of the offenders It is usual to employ this term, but it must be emphasized that it is used in the technical military and legal sense only, and not in the moral sense For although some of these acts, such as abuse of the privileges of the Red Cross badge, or the murder of prisoners, may be disgraceful, yet others, such as conveying information about the enemy, may be highly patriotic and praiseworthy The enemy, however, is in any case entitled to punish these acts as war crimes

442. War crimes may be divided into four different classes —

(i) Violations of the recognised rules of warfare by members of the armed forces

[1] Although complaints lodged with neutral States, good offices, mediation and intervention are diplomatic means, they are of sufficient interest to soldiers to be briefly mentioned here

[2] Thus, during the siege of Port Arthur, complaints with regard to hospitals in the fortress being struck by shells were made direct through a parlementaire to General Baron Nogi (Ariga, 1908, p 286)

[3] Thus in October, 1904, during the Russo Japanese War, Japan sent a complaint to the Russian Government, concerning the alleged use of Chinese clothing by Russian troops, through the intermediary of the United States of America (Ariga, 1908, p 253)

[4] Thus in January, 1871, during the Franco German War, Germany, in a circular letter addressed to her diplomatic envoys abroad to be communicated to the respective neutral Governments, complained of twenty one cases in which it was alleged that the French had intentionally fired on the bearers of a flag of truce

[5] In the Great War, 1914–1918, all belligerents made extensive use of propaganda in the foreign press for influencing foreign public opinion in their favour

[6] The term "War Crime" has by usage in 1914–1918 been employed more especially in respect of violations of the recognised rules of warfare rather than to the remaining classes of war crimes enumerated Its more general meaning is, however, well established in International Law

(ii) Illegitimate hostilities in arms committed by individuals who are not members of the armed forces.
(iii) Espionage and war treason
(iv) Marauding

Violations of laws of war by armed forces

443. The more important violations are the following —making use of poisoned and otherwise forbidden arms and ammunition, killing of the wounded, refusal of quarter, treacherous request of quarter, maltreatment of dead bodies on the battlefield, ill-treatment of prisoners of war, breaking of parole by prisoners of war, firing on undefended localities, abuse of the flag of truce, firing on the flag of truce, abuse of the Red Cross flag and badge, and other violations of the Geneva Convention, use of civilian clothing by troops to conceal their military character during battle, bombardment of hospitals and other privileged buildings, improper use of privileged buildings for military purposes, poisoning of wells and streams, pillage and purposeless destruction, ill-treatment of inhabitants in occupied territory It is important, however, to note that members of the armed forces who commit such violations of the recognised rules of warfare as are ordered by their Government or by their commander are not war criminals and cannot therefore be punished by the enemy He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to the other means of obtaining redress which are dealt with in this chapter

Hostilities in arms by individuals not belonging to the armed forces

444 As regards illegitimate hostilities in arms on the part of private individuals, the conditions under which such private individuals may acquire the privileges of members of the armed forces have already been stated [1] If persons take up arms and commit hostilities without having satisfied these conditions, they are from the enemy's standpoint guilty of illegitimate acts, and, when captured, are liable to punishment as war criminals If such acts are committed by the inhabitants of a territory invaded by the enemy, the term " war rebellion " is usually applied

Espionage and war treason.

445 In reference to espionage and war treason, it has already been pointed out in dealing with espionage,[2] that in the Hague Rules the word " spy " has a technical meaning The obtaining, supplying and carrying of information to the enemy is not espionage, unless the individual concerned is acting clandestinely and under false pretences, but it may be war treason Thus, for instance, inhabitants of enemy territory occupied by a belligerent who give information to the enemy may be punished for war treason Many other acts, however, which may be attempted or accomplished in occupied territory, or within the enemy's lines, by private individuals or by soldiers in disguise, are also classed as war treason, although perfectly legitimate if done by members of the armed forces For instance, damage to railways, war material telegraphs, or other means of communication, in the interest of the enemy, aid to enemy prisoners of war to escape[3], conspiracy against the armed forces or against members of them, intentionally

[1] See para 22 *et seq*
[2] See para 160 *et seq*
[3] It was on this charge that the Germans condemned and shot Nurse Cavell at Brussels in 1915

Ch. XIV misleading troops in the interest of the enemy when acting as guide, voluntary assistance to the enemy to facilitate his operations (for instance, by giving supplies and money, and acting as guides), inducing soldiers to serve as spies, to desert, or to surrender, bribing soldiers in the interests of the enemy, damage or alteration to military notices and signposts in the interests of the enemy, fouling water supply and concealing animals, vehicles, supplies, and fuel in the interests of the enemy, knowingly aiding the advance or retirement of the enemy, circulating proclamations in the interests of the enemy

Neglect and disobedience of orders

446 There are many acts likely to be committed by inhabitants which are not violations of the laws of war, and not therefore war crimes, but which, nevertheless, a belligerent may forbid and punish in the interests of order and the safety of his army, such as:—failure to extinguish or exhibit lights at fixed hours, failure to take out a pass, charging over regulation prices for accommodation, furnishing liquor to soldiers, evading censorship regulations, making false accusations against troops, making false claims for damage, being in possession of army animals, stores or supplies, neglect or disobedience generally of government, police, and sanitary regulations

447 It is advisable that the inhabitants should be informed directly occupation has taken place of their duty to maintain order, to respect the commands of the occupant, and, particularly to desist from acts especially forbidden.[1]

Marauding

448 The fourth class of war criminals consists of marauders. These are individuals either civilians or soldiers, who have left their corps,[2] who follow armies on the march or appear on battle-fields, either singly or in bands, in quest of booty, and rob, maltreat or murder stragglers and wounded, and pillage the dead. Their presence, besides being a menace and danger to the belligerent they accompany, may lead to aspersions on the conduct of his army by his adversary. Their acts are considered acts of illegitimate warfare, and the punishment takes place in the interest of either belligerent

Trial of war criminals. Punishments

449 Charges of war crimes may be dealt with by military courts or by such courts as the belligerent concerned may determine. In every case, however, there must be a trial before punishment[3], and the utmost care must be taken to confine the punishment to the actual offender

Punishments

450. All war crimes are liable to be punished by death, but a more lenient penalty may be pronounced. Corporal punishment is excluded and cruelty in any form must be avoided. The punish-

[1] Professor Ariga thinks that "it is contrary to all the principles of repressive measures not to make known in advance what acts are and are not punishable. It can also be said that the object of martial law is not so much to punish as to menace and thus prevent harmful acts. For this purpose publication is necessary." (Ariga, 1908, p. 378.) See also para. 347 and note.

[2] Soldiers of the national army who take to marauding are, of course, punishable under military law. (See A.A. 6 (2) (*a*).)

[3] "Previous trial is in every case indispensable." (Hague Conference, 1899, p. 148.)

ment should be deterrent, but great severity may defeat its own ends by driving the population to rebellion[1]

451 In pronouncing a sentence of imprisonment it need not be taken into consideration whether there is a probability of the prisoner being released at the end of the war There is no right to claim release and it would not be in the interests of humanity to grant such right, for otherwise belligerents would be forced to carry out capital punishment in many more cases than is now usually necessary

(iv) *Reprisals*[2]

Nature of reprisals

452. Reprisals between belligerents are retaliation for illegitimate acts of warfare, for the purpose of making the enemy comply in future with the recognised laws of war They are not referred to in the text of the Hague Rules, but are mentioned in the Report presented to the Peace Conference of 1899 by the Committee which drew up the Convention respecting the Laws and Customs of War on Land[3] They are by custom admissible as an indispensable means of securing legitimate warfare The mere fact that they may be expected if violations of the laws of war are committed acts to a great extent as a deterrent They are not a means of punishment, or of arbitrary vengeance, but of coercion

453 The illegitimate acts may be committed by a Government, by its military commanders, or by some person or persons whom it is obviously impossible to apprehend, try, and punish

454 Reprisals are an extreme measure because in most cases they inflict suffering upon innocent individuals In this, however, their coercive force exists, and they are indispensable as a last resource

455 Although there is no rule of International Law respecting the matter, reprisals should never be resorted to by the individual soldier, but only by order of a commander

Procedure with regard to alleged illegitimate acts

456 An infraction of the laws of war having been definitely established, every effort should first be made to detect and punish the actual offenders Only if this is impossible should other measures be taken in case the injured belligerent thinks that the facts warrant them As a rule the injured party would not at once resort to reprisals, but would first lodge a complaint with the enemy in the hope of stopping any repetition of the offence or of securing the punishment of the guilty This course should always be pursued unless the safety of the troops requires immediate drastic action and the persons who actually committed the offences cannot be secured

[1] The language employed for the proceedings would usually be that of the occupant An interpreter should, if possible, be provided in case an accused person does not understand the language of the occupant It is advisable that, if possible, the proceedings should be public

Professor Ariga gives the following particulars of the military courts which dealt with the offences of inhabitants in Manchuria —

(*a*) A clear distinction was made between courts martial and military courts, in the latter it was not considered necessary to have recourse to the slow and minute procedure of courts martial

(*b*) The court consisted of officers and military or civil officials, but never of less than three members The verdict required a majority, but not unanimity

(*c*) The accused was allowed counsel

(*d*) The penalty of death was laid down for nearly all offences, but the court had full power to pronounce a less severe punishment or none at all

[2] Reprisals in time of war only are referred to here

[3] When dealing with art 50, which forbids collective punishment, the report states that the article is "without prejudice of the question of reprisals." (Hague Conference, 1899, p 151)

Ch XIV

457. Even when both direct and indirect appeal to the enemy for redress has failed it should be considered, before resorting to reprisals, whether he is not more likely to be influenced by a steady adherence to the laws of war on the part of his adversary

Collective punishment

458 Although collective punishment of the population is forbidden for the acts of individuals for which it cannot be regarded as collectively responsible,[1] it may be necessary to resort to reprisals against a locality or community, for some act committed by its inhabitants, or members who cannot be identified

Form of reprisals.

459 What kinds of acts should be resorted to as reprisals is a matter for the consideration of the injured party Acts done by way of reprisals must not, however, be excessive, and must not exceed the degree of violation committed by the enemy [2]

460 Reprisals may not be resorted to, or must at once cease, when the enemy gives satisfaction for the illegitimate acts committed by him

(v) *The taking of Hostages*

Former uses of hostages

461 The practice of taking hostages as a means of securing legitimate warfare was in former times very common To ensure the observance of treaties, armistices and other agreements depending on good faith, hostages were given or exchanged, whose lives were held responsible for any perfidy This practice is now obsolete, and if hostages are nowadays taken at all they have to suffer captivity, and not death, in case the enemy violates the agreements in question The Hague Rules do not mention hostages, and it must be emphasized that in modern times it is deemed preferable to resort to territorial guarantees instead of taking hostages [3]

[1] Hague Rules, 50

[2] During the Franco German War, 1870-1, the French captured 40 merchant ships and made their crews prisoners of war Count Bismarck, who considered it contrary to International Law to retain these men as prisoners, demanded their liberation, and when the French refused it, ordered by way of reprisals 40 French private individuals of local importance to be arrested and sent as prisoners of war to Bremen, where they were kept until the end of the war (Count Bismarck, as it happened, was decidedly wrong, for France had, as the laws then stood, in no way committed an illegal act by retaining the German crews as prisoners of war)

The Germans, in 1870–1, by way of reprisals for offences committed by inhabitants in taking part in the attack on troops, convoys, messengers, &c , exacted fines or burnt down buildings At Charmes, the town casino was burnt down as punishment for inhabitants having fired on the escort of a convoy of prisoners of war (Von Widdern, IV, 2, p 33) The village of Fontenay was burnt down and a fine of 10,000,000 francs levied on the Province of Lorraine on account of the railway bridge near the village having been destroyed with the alleged connivance of inhabitants (*Idem*, IV, 2, pp 290–303

In his proclamations of 31st May, 16th June and 19th June, 1900, Field Marshal Lord Roberts threatened reprisals for wanton damage to property and damage to railway and telegraphlines by the burning of the houses and farms in the vicinity of the places where the damage was done

During the Great War, 1914–1918, the principle of taking reprisals was condemned by the British Government, and few were taken by Great Britain The following are, however, examples of reprisals taken —

(i) In April, 1916, the German Government, in consequence of alleged bad treatment of German prisoners in the camp at Saint Angean, sent 250 French officers to a reprisal camp at Voehrenbach

(ii) In May and June, 1916, some 30,000 French prisoners of war were transferred to the Baltic and Polish provinces of Russia in consequence of alleged bad treatment of German prisoners of war in France

[3] On the surrender of Port Arthur, 1905, all the fortifications and forts on three hills and on the highlands and on the south east of them were handed over to the Japanese Army " by way of guarantee " (art 3, Takahashi, 1908, p 212)

To ensure the fulfilment of the conditions of the preliminaries of peace signed at Versailles at the end of the war of 1870–1, the Germans continued to occupy a portion of eastern France, handing it back section by section as the payment of the indemnity was completed (art, 3 of the preliminary Treaty of Peace)

Placing inhabitants on railway trains.

462. Use has sometimes[1] been made of hostages by placing prominent inhabitants on the engines of trains on the lines of communication in occupied territory for the purpose of ensuring the traffic from interruption by the native population

463. Such measures expose the lives of innocent inhabitants not only to the illegitimate acts of train wrecking by private enemy individuals, but also to the lawful operations of raiding parties of the armed forces of the belligerent, and cannot therefore be considered a commendable practice

Hostages for prisoners

464 It would appear to be legitimate to take inhabitants as hostages for the proper treatment of wounded and sick when these are left behind in hostile localities A similar course might become necessary if prisoners have fallen into the hands of irregular troops or of inhabitants who have risen in arms, since there might be fear of their maltreatment [2]

XI —Rights and Duties of Neutral Powers[3] and Persons

(1) *General Principles*

General duties of neutrality

465 Neutrality imposes duties on neutrals as well as on belligerents The duties of neutral States are —to abstain from participation in the conflict and from committing any act that favours or assists one of the belligerents in matters that affect the war, and to afford impartial treatment to all of them in permitting, granting, or refusing facilities in matters that do not directly concern operations The duties of belligerents are —to respect the territory of neutral States and not to suppress their intercourse with the enemy Neutrality can therefore be violated as well by a belligerent as by a neutral

466 The application of these principles to the relations between belligerent and neutral States gives rise to many important questions not only of a military and naval, but of a political, commercial, and maritime nature It is here, however, only necessary to consider the rights and duties of belligerents and neutrals in so far as they affect land warfare The written law concerning this is contained in the " Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land " which was agreed upon at the Peace Conference of 1907 [4]

Division of subject

467 The consideration of the subject may be divided into the following headings —neutral territory and military operations,

---

[1] In France, in 1870–1, by the Germans (see *Kriegsbrauch*, 1902, p 50, where it was praised for its complete success, " whether due to the greater watchfulness of the parishes or to its influence on the population, the safety of traffic was restored ')

A proclamation with a section authorising a similar measure was issued by Field Marshal Lord Roberts at Pretoria on 19th June, 1900 , this section was, however, withdrawn eight days afterwards

[2] In 1870-1 the Germans took hostages at Chatillon for 200 prisoners in the hands of Ricciotti Garibaldi who had threatened to kill them and at Remiremont for certain railway officials who had been carried off (Von Widdern, III, p 61 and IV, 2, p 41)

If necessary hostages may be taken to ensure compliance with requisitions, contributions, and the like, but this has nothing to do with illegitimate warfare

[3] A neutral Power is a State which is not taking part in the war

[4] This Convention, though it was signed (with reserve of three articles, 16, 17, and 18) by the British delegates at the Hague, has not yet received the ratification of H M the King Certain legislation which has not yet taken place is necessary before this act can be accomplished The contents of the Convention, with the exception of the three articles above named, are, however, binding in case of war, as on the whole they merely record the customary law of war on the subject For text of Convention see App. 7 to this chapter

Ch XIV — neutral territory and recruiting, neutral territory and supplies, neutral territory and the transmission of information, internment of belligerent forces in neutral territory, neutral territory and prisoners of war, neutral territory and sick and wounded, neutral persons and property, railway material of neutral Powers

(ii) *Neutral Territory and Military Operations*

Neutral territory may not be violated

468 The territory of a neutral Power must not be violated by belligerents[1] and must not therefore, be made a theatre of operations Belligerents are expressly forbidden to move troops or convoys, whether of military stores or supplies, across it [2] Any attack on enemy forces which may have taken refuge on it is a violation of neutrality Should, however, one belligerent violate neutral territory by marching troops across it and the neutral Power be unable or unwilling to resist the violation, the other belligerent may be justified in attacking the enemy there [3]

Internment of belligerent forces if they enter

469 A neutral State need not permit troops belonging to the forces of the belligerents to take refuge on its territory If, however, permission is given, it is the duty of the neutral State to intern such troops[4] and prevent them from taking any further part in the conflict [5]

Duties of neutral Power whose territory is threatened

470 A neutral Power must not allow, and may even resist by force, any attempt to violate its neutrality Such resistance cannot be regarded as a hostile act,[6] for it is the duty of the neutral State

471. It is quite usual, therefore, for a neutral Power, whose territory is adjacent to a theatre of war, to mobilize a portion of its forces in order to ensure the inviolability of its frontiers [7] It may in fact become the duty of the neutral Power to do so in order that one belligerent may not have an advantage over the other through an unresisted use of neutral territory [8]

[1] Neutrality Convention, art 1

[2] Neutrality Convention, art 2

[3] The circumstances under which Manchuria and Korea became the theatre of war were peculiar and exceptional, arising out of the inability of China and Korea to free themselves from Russian occupation and influence The very purpose of the war was the expulsion of the Russians from Manchuria and Korea

[4] Neutrality Convention, art 11

[5] The [illegible]

Bourbak
with a C
frontier near Pontarlier, January February 1871 (see para 486 and note below) The individual officers and soldiers who entered Belgian territory after the battle of Sedan were likewise interned

During the Great War, 1914–1918, a brigade of the Naval Division was interned in Holland (See Official History, Vol II, pp 60–61) (For details as regards internment see para 485 below)

[6] Neutrality Convention, arts 10 and 11, Hague Conference, 1907, *Actes*, Vol I, p 146 Thus, in 1806, the Danes made a cordon along the frontier near Lubeck, "with arms in their hands to make their neutrality respected" They fired on the French troops who were pursuing the Prussians (Murat to Napoleon, 6th November, 1806, *Lettres et Documents pour servir à l'histoire de Joachim Murat*, Vol IV, Despatch 2639)

[7] As Belgium and Switzerland did in 1870–1, and Holland and Switzerland in 1914–1918

[8] In December, 1870, Germany complained to the Grand Duchy of Luxemburg that no measures had been taken to prevent the violation of its neutrality, and that numerous French soldiers had passed through its territory Luxemburg, however, was able to meet the complaint by pointing out that by the Treaty of London, 1867 she was prevented from maintaining an army

(iii) *Neutral Territory and Recruiting*

Organisation of expeditions in neutral territory

472. The recruiting, formation, and organisation of hostile expeditions on neutral territory and the passage across its frontier of organised bodies of men intending to enlist, are prohibited If any persons are found attempting to cross the frontier and if their number, attitude, continuous march, or other circumstances point to the existence of an organisation which has hitherto escaped the notice of the authorities, the neutral State must be on its guard and do its best to prevent the formation of similar bodies in its territory On the other hand, a neutral State is not in duty bound to prevent the passage across its frontier of such men intending to enlist as cross the frontier singly or in small unorganised parties [1]

473 The nationality of the persons who may attempt to cross the frontier for the purpose of enlisting is not material This applies even to subjects of the belligerent States returning to their country to fulfil military duties [2]

Voluntary Aid Societies

474 It is, however, no violation of neutrality to permit medical units organised by recognised and authorised Voluntary Aid Societies to join one of the belligerents, provided that he is willing to accept their services and that he notifies the other belligerent [3]

Joining of belligerents by subjects of neutral States

475 The duty of neutrality does not compel neutral States to take measures to prevent their subjects from joining the military service of a belligerent Several States, as for instance Great Britain and the United States, have nevertheless taken such measures by their municipal legislation [4] and others, like France and the Netherlands, without actually prohibiting their subjects from joining a belligerent, impose the penalty of loss of citizenship, or of civil rights for so doing [5]

476 It is the duty of neutral Powers to restrain their military and naval officers on the active list, with the exception of medical officers, from joining a belligerent, and to recall any such officers as have been sent to the belligerents before the outbreak of war [6]

(iv) *Neutral Territory and Supplies*

Purchase of arms and supplies

477 It has already been stated that belligerent Powers are forbidden to move convoys of warlike stores and supplies across the

---

[1] Neutrality Convention, arts 4, 5, para 2, and 6, and Hague Conference, 1907, *Actes*, Vol III, p 54 Even though several persons cross the frontier together, they must be held to be acting *isolément* (art 6) so long as they do not obviously form part of an organised body recognisable as such (Hague Conference, 1907, *Actes*, Vol III, p 55)

[2] Hague Conference, 1907, *Actes*, Vol III, p 55 Thus, in 1870, Switzerland raised no objection to Frenchmen travelling through Geneva or Germans through Basle for the purpose of reaching their corps, on condition that they travelled without arms and not in uniform, but an office organised in Basle for the purpose of sending bodies of Alsatian volunteers through Switzerland to the south of France was rightly prohibited The United States raised no objection in August, 1870, to the departure from New York on British ships of a number of German subjects resident in the Republic who had been recalled to the reserve, although the recalling was carried out through the instrumentality of the German consuls

[3] Geneva Convention, art 11 See para 193 above

[4] See s 4 of the Foreign Enlistment Act, 1870 The penalty is fine and imprisonment, with or without hard labour

[5] When war occurs neutral Powers usually issue so-called "proclamations of neutrality," in which they state their full determination to observe the duties of neutrality and warn their subjects of the penalties they incur by joining or assisting the belligerents For the British proclamation at the commencement of the Russo Japanese War, in which the Foreign Enlistment Act was recited at length, see the *London Gazette* of 11th February, 1904

[6] Thus, in 1899, Germany, as soon as it was brought to notice, ordered back and punished Major Reitzenstein and other officers on the active list who had joined the forces of the South African Republic On the other hand, in 1876, Russia permitted officers in large numbers to enter the Servian Army during the war against Turkey, but she withdrew her officers in Bulgarian service on the outbreak of the war with Servia in 1887

Ch. XIV

territory of a neutral State [1] It is not forbidden, however, to obtain arms, ammunition, and stores from subjects of neutral States through the usual commercial channels Nor is a neutral Power bound to prevent such supply to belligerents on the part of companies and private individuals, of whatever nationality, settled on its territory, or stop the export or transit of warlike stores or of anything that could be of use to an army or fleet [2]

Loans

478. A neutral State is not bound to prevent its subjects from making loans to belligerents for the purpose of enabling them to continue the war [3]

Duty of neutral Powers

479. The duty of neutrality, however, forbids neutral Powers themselves to supply or to present funds or material to a belligerent

Restrictions must be impartial

480. A neutral Power is at liberty to forbid or restrict the commercial dealings of its subjects and persons resident in its territory with belligerents, but if it does so it must apply the prohibition or restriction impartially to both belligerents [4]

(v) *Neutral Territory and the Transmission of Information*

Use of posts and telegraphs

481. Neutrality is not violated by a belligerent using, and the neutral Power permitting the use in its territory of, the postal and telegraph (including wireless) and telephone services open to the public It is immaterial whether such services are operated by and belong to the neutral State, companies, or private individuals [5] This does not imply the right of using them, or permitting them to be used, in such a way as obviously to render assistance to one of the belligerents [6]

Intelligence agents

482. Although a neutral State must prevent the establishment by a belligerent of an official bureau for intelligence purposes on its territory, it need not prevent the supplying of information by private individuals resident there

Restriction must be impartial

483. A neutral Power, however, is at liberty to forbid or restrict the use on behalf of belligerents of all the facilities that have been mentioned In any case it must apply the prohibition or restriction impartially to both belligerents Should the telegraph and the other services not be owned by the State, the neutral Power is specially bound to see that impartiality is observed by the company or private owners concerned [7]

Installation of telegraph and other apparatus after outbreak of hostilities

484. Although belligerents may thus be permitted the benefit of services "opened to the use of the public," [8] they are expressly forbidden to instal after the outbreak of war, and a neutral State must prevent them from installing on its territory, any wireless

---

[1] Para 468 above

[2] Neutrality Convention, art 7, and Hague Conference, 1907, *Actes*, Vol I, pp 141, 138

[3] Neutrality Convention, art 18 (*a*) In 1904, during the Russo Japanese War, Japanese loans were floated in London and Berlin and Russian loans in Paris and Berlin

[4] Neutrality Convention, art 9 In 1870, in order to avoid controversy, Belgium and Switzerland by their municipal laws prohibited their nationals from supplying the belligerents The British Foreign Enlistment Act forbids the supply of ships and naval equipment and armaments to a belligerent

[5] Neutrality Convention, art 8, postal services are not mentioned, but are obviously not excluded, as the more expeditious means are permitted

[6] Hague Conference, 1907, *Actes*, Vol III, p 56 For instance, by keeping the offices open [illegible]

[8] This expression has been borrowed from the Wireless Telegraph Convention of 1906, and is intended to serve as a convenient test of the commercial and non-military character of an installation. (Hague Conference, 1907, *Actes*, Vol I, p 139.)

telegraphy station or any apparatus for the purpose of communicating A neutral State must also prevent belligerents from using a station or apparatus already established in time of peace on its territory, if such station or apparatus is exclusively for military purposes, and was not previously open to the public [1]

(vi) *The Internment of Belligerent Forces in Neutral Territory*

Duty of internment.

485 Neutral territory being inviolable affords sanctuary to members of the armed forces and to the war material of belligerents, and to private citizens of the belligerent States and their property It is not a violation of neutrality to receive them and, if they are pursued, to compel the other party to stand fast on the frontier A neutral Power, however, which receives belligerent troops on its territory, must intern them for the rest of the war, as far as possible at a distance from the theatre of operations[2], they are not permitted to rest, refresh, and re-equip themselves, and return to the conflict

Condition of internment

486. The neutral Power which allows individual soldiers or bodies of troops to take refuge on its territory has the indisputable right to lay down the conditions upon which they may enter In the case of large bodies of troops it is usual for the commander and a representative of the neutral Power to draw up a convention in which the exact conditions are fixed and recorded [3] The first condition will naturally be that they shall give up their arms

Position of interned troops

487 Practically the interned troops are in many respects in the position of prisoners of war, and the rules concerning prisoners of war apply to them in a general way [4] They may be kept in camps, or even confined in fortresses or in places assigned for the purpose[5] and under such guard as is necessary in order to secure that they take no further part in the war Even if no special convention has been made, the neutral Power must supply them with proper food, clothing, and assistance in sickness, recovering the cost at the conclusion of peace [6]

Parole

488 The neutral Power may allow the interned officers, but not the non-commissioned officers and men, their liberty on their

---

[1] Neutrality Convention, art 3

An international commission of jurists sitting at the Hague in the spring of 1923 prepared a draft code of the "Rules for the control of radio in time of war" These rules have not yet been ratified They are of some special importance from the point of view of neutrals and when ratified will bring the laws of war up to date as far as the science of wireless telegraphy is concerned

[2] Neutrality Convention, art 11 It may be noted here that according to the Convention for the Adaptation of the Principles of the Geneva Convention to Maritime Warfare, 1907 (which has not yet been ratified by H M the King), sick, wounded, and shipwrecked soldiers, if taken on board a neutral man of war, are in the same position as if on neutral territory But if they are on a hospital ship or a private neutral vessel they must be given up on demand of the other belligerent Once landed at a neutral port, however, they can no longer be claimed (Arts 11–15)

[3] Thus on 1st February, 1871, General Clinchant, who had succeeded to the command of General Bourbaki's army when that commander had shot himself, concluded a convention with the Swiss general Herzog By this the French Army, pursued by General Manteuffel, was permitted to enter Switzerland on condition of giving up its artillery, arms, equipment and ammunition, which were to be restored to France after peace, and on payment of the expenses incurred by Switzerland Supply and transport wagons were permitted to return to France empty, while the post and treasury wagons, as well as the military chests, were handed over to the Confederation on the same terms as the arms and equipment The text of the Convention is given in App 21 to this chapter

[4] See para 54 *et seq* Art 14 of the Hague Rules specially refers to the duty of neutrals to institute a prisoners of war information bureau when necessary

[5] Neutrality Convention, art 11, para. 2

[6] Neutrality Convention, art 12.

Ch. XIV

giving their parole not to leave the neutral territory without permission [1] No conditions, however, are laid down under which such permission is to be given, and no penalties are mentioned if the parole be broken The granting of leave to an interned officer to return to his own country, even temporarily only, for any reason, is not mentioned either, and may therefore be considered a very exceptional measure A neutral State desirous of according such permission would be well advised in the first instance to obtain the consent of the other belligerent [2]

Medical personnel

489. Members of the medical personnel serving with troops which cross into neutral territory can claim to be sent back to their army or their country as soon as their assistance is no longer indispensable for the care of the sick and wounded [3]

(vii) *Prisoners of War in Neutral Territory*

Prisoners who take refuge in neutral territory

490. Prisoners of war who succeed in escaping into neutral territory regain their liberty, but they cannot claim to remain there It rests with the neutral State whether it will grant or refuse them admission, and in the latter case whether or not it will allow them to remain on its territory If they are permitted to remain, the neutral State may compel them to make their residence in a specified locality [4]

Prisoners brought into neutral territory

491. Prisoners of war brought into neutral territory by troops which take refuge there regain their liberty, but they must be treated by the neutral Power in the same way as prisoners of war who have escaped [5]

Captured war material

492. On the other hand, captured war material found in possession of troops which take refuge in neutral territory is treated as the property of their army, [6] its origin being ignored

(viii) *Neutral Territory and the Sick and Wounded*

Passage of sick and wounded

493. A neutral Power may permit the passage of sick and wounded of belligerent armies through its territory without failing in its duties of neutrality [7]

494. There is no obligation on the part of the neutral Power to permit the passage, but if the privilege is accorded at all it must be given to both belligerents impartially [8]

Considerations of humanity

495. It is obvious that in facilitating the evacuation of sick and wounded a neutral Power can render valuable indirect assistance to a belligerent It was, however, officially explained at the Peace Conference in 1899 that the article concerned had no other meaning than " to establish that considerations of humanity and hygiene

---

[1] Neutrality Convention, art 11, para 3

[2] Hague Conference, 1907, *Actes*, Vol I, p 147 As regards parole generally, see para 96 above

[3] This follows indirectly from Geneva Convention, art 12, para 2, for if the medical personnel can claim this from the enemy, they must certainly be allowed to claim it from a neutral See also para 501 below

[4] Neutrality Convention, art 13, para 1, and Hague Conference, 1907, *Actes*, Vol I, pp 143, 144

[5] Neutrality Convention, art 13, para 2

[6] Hague Conference, 1907, *Actes*, Vol I, p 145

[7] Neutrality Convention, art 14 It will be observed that " sur son territoire " is rendered in the translation as "into its territory "Art 14 was originally art 50 of the Convention respecting the Laws and Customs of War on Land drawn up at the Hague in 1899, and the official translation of the same phrase in that Convention is " through its territory " This appears to give the sense better, for "into" might appear to preclude any idea of the sick and wounded leaving the territory

[8] Hague Conference, 1899, p 153

might determine a neutral State to permit sick and wounded soldiers to cross its territory without failing in its duties of neutrality "[1]

Consent of other belligerents

496 It does not appear to be necessary to obtain the consent of the other belligerent If, however, the passage of any considerable body of sick and wounded is contemplated, it would be advisable to inform him before according the permission [2]

Differentiation according to status of the sick and wounded

497 If the sick and wounded belong to the army of the belligerent who is transporting them through the neutral State, they may be allowed to go through to their own country [3]

498 If instead of simply transporting them through neutral territory the belligerent concerned hands them over to the neutral Power, they must be detained by this Power so as to prevent their taking further part in the military operations

499 Sick and wounded prisoners of war belonging to the adverse party who are brought into neutral territory by a belligerent may not be carried through to his territory, nor may they be liberated like prisoners of war brought into neutral territory by belligerent troops taking refuge there They must be detained by the neutral State in the same way as sick and wounded of the other party who are left in its territory [4]

Limitations as regards accompanying personnel, &c

500 If a neutral Power permits the passage of sick and wounded through its territory, it must make a condition that no combatants or war material accompany them It must, further, take such measures as may be necessary to ensure that this condition is carried out [5] This condition, however, does not exclude such personnel and material as are required for the care of the sick and wounded [6]

Medical personnel

501 The provisions of the Geneva Convention apply to sick and wounded who are interned in neutral territory [7] The position of the medical personnel with them is regulated by the conditions under which it was admitted Failing a special agreement a neutral State would be justified in detaining a sufficient number of the medical personnel to take care of the sick and wounded If, however, a sufficient number is not available it is the duty of the neutral State to supply the necessary medical attendance and hospital accommodation , the expenses must be refunded after the war by the belligerent concerned [8]

[1] Hague Conference, 1899, p 153

[2] The French Manual, 1893, p 82, says —"Neutral States abstain from authorising the transit of convoys of sick and wounded until the consent of the belligerents has been obtained."
After the battle of Sedan, the German General Staff wished to send railway trains conveying wounded to Germany through Belgium and Luxemburg , the French Minister of War, however, protested, as he rightly argued that this would free lines to bring up men and ammunition Belgium, after consulting the British Government, came to the conclusion that, if one of the belligerents objected, the giving of permission would be a breach of neutrality and therefore refused it; Luxemburg allowed it

[3] Neutrality Convention, art 14, para 2, and Hague Conference, 1899, pp 152–3

[4] Neutrality Convention, art 14, para 2

[5] Neutrality Convention, art 14, para 1

[6] Hague Conference, 1899, 2nd committee, 2nd sub-committee, sixth meeting

[7] Neutrality Convention, art 15 See paras 485–489

[8] Neutrality Convention, art. 12

(IX) *Neutral Persons*

Neutral persons in occupied territory

502. Neutral persons resident in occupied territory[1] acquire thereby, in a sense, the character of enemy persons and are on the whole not entitled to claim treatment different from that accorded to the other inhabitants It may be politic, however, to give them more favourable treatment They on their part should maintain an absolute reserve as regards the war

Diplomatic agents

503 Special instructions will usually be issued with regard to diplomatic agents and their correspondence , they must in any case be allowed to withdraw unmolested from occupied territory [2]

Consuls

504 Consuls are not diplomatic agents and cannot therefore claim any privileges due to the latter [3] Failing special instructions, they should be treated with such consideration as is due to them in consequence of their position at the head of the subjects of the neutral Power who are resident in the locality concerned

Transitory visitors

505 Subjects of neutral Powers not resident but only on a transitory visit within occupied territory can, to a certain extent, claim different treatment from that accorded to inhabitants, provided they take no part in the war For instance, they are as a rule exempt from requisitions and contributions, and, if their property is required for military ends and needs, they must be fully indemnified [4]

Punishments

506 Subjects of neutral Powers, whether resident or only on a visit in occupied territory, may be punished for offences in the same manner as enemy subjects They may be expelled or deported for just cause, but residents ought not to be expelled or deported without a special order of the Government or commander-in-chief of the occupying army [5] Such residents may under the same conditions as other inhabitants be taken into captivity

(X) *Neutral Railway Material*

Special treatment

507. Railway material originating from neutral territory, whether it be the property of the neutral Government, companies, or private persons, provided it is recognisable as belonging to them, must not be requisitioned or utilized except in so far as it is absolutely necessary It must be sent back to the country of origin as soon as possible [6]

[1] As regards neutral persons who are transitory, see para 505 below
As regards neutrals resident in British territory "we will treat them on a footing of equality with our own countrymen" British Declaration at the Hague Conference, 1907, *Actes*, Vol III, p 43

[2] It is not settled whether a neutral diplomatic agent can claim to send messengers with sealed despatches through the lines of the occupant When in 1870, during the siege of Paris, Mr Washburne, the American envoy, raised this claim, the Germans refused to acknowledge it (Washburne, 1905, p 193) For Count Bismarck's reply, see para 132, note

[3] Consuls in non-Christian States, Japan excepted, can claim the same privileges as diplomatic envoys

[4] An interesting case of this nature happened during the Franco German War, in December, 1870 The Germans seized some British colliers lying in the Seine near Rouen and sank them for the purpose of preventing French gunboats from ascending the river The owners were indemnified on the intervention of the British Government, although Count Bismarck maintained that there was no legal duty to do so Rolling stock, the property of foreign railways, which may be in a theatre of war, is dealt with below in para 507, *et seq*

[5] In such cases, if military exigencies permit, they should be given reasonable time to adjust or hand over their private affairs

[6] Neutrality Convention, art 19

508. If railway material is thus detained, the neutral Power may, likewise in case of necessity, keep and utilize a corresponding amount of material originating from the territory of the belligerent Power [1] Power to detain equivalent.

509 The retention of this material by the neutral Power must not assume the character of retaliation The right must be exercised only in case of necessity, up to the due amount, and with strict impartiality between the two belligerents No retaliation

510 Compensation must be paid on either side according to the amount of material retained and the length of time it was retained [2] Compensation

APPENDIX 1

INTERNATIONAL DECLARATION RENOUNCING THE USE, IN TIME OF WAR, OF EXPLOSIVE PROJECTILES UNDER 400 GRAMMES WEIGHT

Signed at St Petersburg, November 29, / December 11, 1868

(Translation [3])

Declaration

SUR la proposition du Cabinet Impérial de Russie, une Commission Militaire Internationale ayant été réunie à St Petersbourg, afin d'examiner la convenance d'interdire l'usage de certains projectiles en temps de guerres entre les nations civilisées, et cette Commission ayant fixé d'un commun accord les limites techniques où les nécessités de la guerre doivent s'arrêter devant les exigences de l'humanité, les Soussignés sont autorisés par les ordres de leurs Gouvernements à déclarer ce qui suit

Considérant que les progrès de la civilisation doivent avoir pour effet d'atténuer autant que possible les calamités de la guerre,

Que le seul but légitime que les Etats doivent se proposer durant la guerre est l'affaiblissement des forces militaires de l'ennemi,

Qu'à cet effet, il suffit de mettre hors de combat le plus grand nombre d'hommes possible,

Que ce but serait dépassé par l'emploi d'armes qui aggraveraient inutilement les souffrances des hommes mis hors de combat, ou rendraient leur mort inévitable,

Que l'emploi de pareilles armes serait dès lors contraire aux lois de l'humanité,

Les Parties Contractantes s'engagent à renoncer mutuellement, en

Declaration

ON the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St Petersburg in order to examine into the expediency of forbidding the use of certain projectiles in times of war between civilized nations, and that Commission, having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows —

Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war,

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy,

That for this purpose it is sufficient to disable the greatest possible number of men,

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable,

That the employment of such arms would, therefore, be contrary to the laws of humanity,

The Contracting Parties engage mutually to renounce, in case of war

[1] Hague Conference, 1907, *Actes*, Vol I, p 58

[2] Neutrality Convention, art 19, para 3

[3] This translation, as well as those of the Declarations and Conventions which follow, was issued officially

Ch. XIV cas de guerre entre elles, à l'emploi par leurs troupes de terre ou de mer, de tout projectile d'un poids inférieur à 400 grammes qui serait ou explosible ou chargé de matières fulminantes ou inflammables

Elles inviteront tous les Etats qui n'ont pas participé par l'envoi de Délégués aux délibérations de la Commission Militaire Internationale réunie à St Pétersbourg à accéder au présent engagement

Cet engagement n'est obligatoire que pour les Parties Contractantes ou Accédantes en cas de guerre entre deux ou plusieurs d'entre elles il n'est pas applicable vis à vis de Parties non Contractantes ou qui n'auraient pas accédé

Il cesserait également d'être obligatoire du moment où, dans une guerre entre Parties Contractantes ou Accédantes, une partie non Contractante ou qui n'aurait pas accédé se joindrait à l'un des belligérants

Les Parties Contractantes ou Accédantes se réservent de s'entendre ultérieurement toutes les fois qu'une proposition précise serait formulée en vue des perfectionnements à venir que la science pourrait apporter dans l'armement des troupes, afin de maintenir les principes qu'elles ont posés et de concilier les nécessités de la guerre avec les lois de l'humanité

Fait à St Pétersbourg, le vingt neuf Novembre onze Decembre mil huit cent soixante huit

among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St Petersburg, by sending Delegates thereto, to accede to the present engagement

This engagement is obligatory only upon the Contracting or Acceding Parties thereto, in case of war between two or more of themselves it is not applicable with regard to non-Contracting Parties, or Parties who shall not have acceded to it

It will also cease to be obligatory from the moment when, in a war between Contracting or Acceding Parties, a non Contracting Party or a non Acceding Party shall join one of the belligerents

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding when ever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity

Done at St Petersburg, the twenty-ninth of November, eleventh of December, one thousand eight hundred and sixty eight

Here follow the signatures of the plenipotentiaries of -

Great Britain
Austria Hungary
Bavaria
Belgium
Denmark
France
Greece
Italy
Netherlands.
Persia
Portugal
Prussia and North German Confederation
Russia
Sweden and Norway.
Switzerland
Turkey
Würtemberg

Brazil acceded in 1869

APPENDIX 2

INTERNATIONAL DECLARATION RESPECTING EXPANDING BULLETS.

Signed at The Hague 29th July, 1899

Déclaration

Les Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dument autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Decembre), 1868

Déclarent,

Les Puissances Contractantes s'interdisent l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, telles que les balles à enveloppe dure dont l'enveloppe ne couvrirait pas entièrement le noyau ou serait pourvue d'incisions

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non Contractante se joindrait à l'un des belligérants

La présente Déclaration sera ratifiée dans le plus bref délai possible

Les ratifications seront déposées à La Haye

Il sera dressé du dépôt de chaque ratification un procès verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes

S'il arrivait qu'une des Hautes Parties Contractantes dénonçat la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée

(Translation)

Declaration

THE Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St Petersburg of the 29th November (11th December), 1868,

Declare that

The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions

The present Declaration is only binding for the Contracting Powers in the case of a war between two or more of them

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non Contracting Power

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague

A *proces-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers

The non-Signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers

This denunciation shall only affect the notifying Power.

Ch. XIV — En foi de quoi, les Plenipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes

In faith of which the Plenipotentiaries have signed the present Declaration, and have affixed their seals thereto

Done at The Hague the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and of which copies duly certified, shall be sent through the diplomatic channel to the Contracting Powers

Here follow the signatures of the plenipotentiaries of —

Belgium
Denmark
Spain
Mexico
France
Greece
Montenegro
Netherlands
Persia
Rumania
Russia
Siam
Sweden and Norway
Turkey
Bulgaria

The following States subsequently acceded

Great Britain
Austria Hungary
China
Germany
Italy
Nicaragua
Portugal.
Japan
Luxemburg
Servia
Switzerland

APPENDIX 3

International Declaration Respecting Asphyxiating Gases

Signed at The Hague, 29th July, 1899

(Translation)

Déclaration

Les Soussignés, Plenipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint Pétersbourg du 29 Novembre (11 Décembre), 1868,

Déclarent

Les Puissances Contractantes s'interdisent l'emploi de projectiles qui ont pour but unique[1] de répandre des gaz asphyxiants ou délétères

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants

La présente Déclaration sera ratifiée dans le plus bref délai possible

Les ratifications seront déposées à La Haye

Declaration

The Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St Petersburg of the 29th November (11th December), 1868,

Declare that

The Contracting Powers agree to abstain from the use of projectiles the object[1] of which is the diffusion of asphyxiating or deleterious gases

The present Declaration is only binding on the Contracting Powers in the case of a war between two or more of them

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents shall be joined by a non-Contracting Power

The present Declaration shall be ratified as soon as possible

The ratifications shall be deposited at The Hague

[1] The word *unique* has been overlooked in the translation, which should read "the *sole* object which" and not "the object of which"

Il sera dresse du depot de chaque ratification un procès verbal, dont une copie, certifiee conforme, sera remise par la voie diplomatique a toutes les Puissances Contractantes

Les Puissances non Signataires pourront adherer a la présente Declaration Elles auront, a cet effet, a faire connaître leur adhesion aux Puissances Contractantes, au moyen d'une notification ecrite, adressee au Gouvernement des Pays Bas et communiquée par celui ci a toutes les autres Puissances Contractantes

S'il arrivait qu'une des Hautes Parties Contractantes denonçât la presente Declaration, cette denonciation ne produirait ses effets qu'un an apres la notification faite par ecrit au Gouvernement des Pays Bas et communiquee immediatement par celui ci à toutes les autres Puissances Contractantes

Cette dénonciation ne produira ses effets qu'à l'egard de la Puissance qui l'aura notifiee

En foi de quoi, les Plenipotentiaires ont signe la presente Declaration et l'ont revetue de leurs cachets

Fait à La Haye, le 29 juillet, 1899, en un seul exemplaire, qui restera depose dans les archives du Gouvernement des Pays Bas et dont des copies, certifiees conformes, seront remises par la voie diplomatique aux Puissances Contractantes

A *procès verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers Ch XIV

The non Signatory Powers can adhere to the present Declaration For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Government of the Netherlands, and forthwith communicated by it to all the other Contracting Powers

This denunciation shall only affect the notifying Power

In faith of which the Plenipotentiaries have signed the present Declaration, and affixed their seals thereto

Done at The Hague, the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be sent by the diplomatic channel to the Contracting Powers

Here follow the signatures of the plenipotentiaries of —

Belgium
Denmark,
Spain
Mexico
France,
Greece
Montenegro,
Netherlands
Persia
Portugal
Rumania
Russia
Siam
Sweden and Norway,
Turkey
Bulgaria

The following States subsequently acceded

Great Britain
Austria-Hungary,
China
Germany,
Italy,
Japan
Luxemburg
Nicaragua
Servia
Switzerland,

APPENDIX 4

INTERNATIONAL CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMIES IN THE FIELD

Signed at Geneva, 6th July, 1906

(British Ratification deposited at Berne, 16th April, 1907)

(Translation)

Convention pour l'Amélioration du Sort des Blessés et Malades dans les Armées en Campagne

Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field

SA Majesté le Roi du Royaume-Uni de la Grande Bretagne et d'Irlande, Empereur des Indes,

HIS Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India,

(Here follows the list of other Sovereigns and heads of States who sent Plenipotentiaries to the Conference)

Également animés du desir de diminuer, autant qu'il depend d'eux, les maux inséparables de la guerre et voulant, dans ce but, perfectionner et completer les dispositions convenues a Geneve, le 22 août, 1864, pour l'amélioration du sort des militaires blessés ou malades dans les armees en campagne,

Being equally animated by the desire of mitigating, as far as possible, the evils inseparable from war, and desiring, with this end in view, to improve and to complete the arrangements agreed upon at Geneva on the 22nd August, 1864, for the amelioration of the condition of wounded or sick soldiers in armies in the field,

Ont résolu de conclure une nouvelle Convention à cet effet, et ont nommé pour leurs Plenipotentiaires, savoir

Have resolved to conclude for this purpose a new Convention, and have named as their Plenipotentiaries, that is to say

(Here follows the list of Plenipotentiaries)

Lesquels, après s'etre communiqué leurs pleins pouvoirs, trouves en bonne et due forme, sont convenus de ce qui suit

Who, after having communicated to each other their full powers, found in good and due form, have agreed as follows

CHAPITRE PREMIER —*Des Blessés et Malades*

CHAPTER I —*The Wounded and Sick*

Article Premier

Les militaires et les autres personnes officiellement attachées aux armees, qui seront blessés ou malades, devront être respectes et soignés, sans distinction de nationalité, par le belligerant qui les aura en son pouvoir

Toutefois, le belligerant, obligé d'abandonner des malades ou des blessés à son adversaire, laissera avec eux, autant que les circonstances militaires le permettront, une partie de son personnel et de son matériel sanitaires pour contribuer à les soigner

Article 1

Officers and soldiers, and other persons officially attached to armies, shall be respected and taken care of when wounded or sick by the belligerent in whose power they may be, without distinction of nationality

Nevertheless, a belligerent who is compelled to abandon sick or wounded to the enemy shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to contribute to the care of them

Art 2

Sous reserve des soins à leur fournir en vertu de l'article precedent, les blessés ou malades d'une armee tombes au pouvoir de l'autre belligerant sont prisonniers de guerre et les règles generales du droit des gens concernant les prisonniers leur sont applicables

Art 2

Except as regards the treatment to be provided for them in virtue of the preceding Article, the wounded and sick of an army who fall into the hands of the enemy are prisoners of war, and the general provisions of international law concerning prisoners are applicable to them.

Cependant, les belligérants restent libres de stipuler entre eux, à l'egard des prisonniers blessés ou malades, telles clauses d'exception ou de faveur qu'ils jugeront utiles, ils auront, notamment, la faculté de convenir

De se remettre reciproquement, après un combat, les blessés laissés sur le champ de bataille,

De renvoyer dans leur pays, après les avoir mis en état d'etre transportes ou apres guerison, les blesses ou malades qu'ils ne voudront pas garder prisonniers,

De remettre à un État neutre, du consentement de celui ci, des blesses ou malades de la partie adverse, à la charge par l'Etat neutre de les interner jusqu'à la fin des hostilites

Art 3

Apres chaque combat, l'occupant du champ de bataille prendra des mesures pour rechercher les blesses et pour les faire proteger, ainsi que les morts, contre le pillage et les mauvais traitements

Il veillera à ce que l'inhumation ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres

Art 4

Chaque belligerant enverra, des qu'il sera possible, aux autorites de leur pays ou de leur armee les marques ou pièces militaires d'identite trouvees sur les morts et l'etat nominatif des blesses ou malades recueillis par lui

Les belligerants se tiendront reciproquement au courant des internements et des mutations, ainsi que des entrees dans les hopitaux et des decès survenus parmi les blessés et malades en leur pouvoir Ils recueilleront tous les objets d'un usage personnel, valeurs, lettres, &c , qui seront trouves sur les champs de bataille ou délaissés par les blessés ou malades décédes dans les établissements et formations sanitaires, pour les faire transmettre aux intéressés par les autorités de leur pays

Art 5

L'autorité militaire pourra faire appel au zèle charitable des habitants pour recueillir et soigner, sous son contrôle, des blessés ou malades des armées, en accordant aux personnes ayant répondu à cet appel une protection speciale et certaines immunités

Belligerents are, however, free to arrange with one another such exceptions and mitigations with reference to sick and wounded prisoners as they may judge expedient, in particular they will be at liberty to agree—

To restore to one another the wounded left on the field after a battle,

To repatriate any wounded and sick whom they do not wish to retain as prisoners, after rendering them fit for removal or after recovery,

To hand over to a neutral State, with the latter's consent, the enemy's wounded and sick to be interned by the neutral State until the end of hostilities

Art 3

After each engagement the Commander in possession of the field shall take measures to search for the wounded, and to insure protection against pillage and maltreatment both for the wounded and for the dead

He shall arrange that a careful examination of the bodies is made before the dead are buried or cremated

Art 4

As early as possible each belligerent shall send to the authorities of the country or army to which they belong the military identification marks or tokens found on the dead, and a nominal roll of the wounded or sick who have been collected by him

The belligerents shall keep each other mutually informed of any internments and changes, as well as of admissions into hospital and deaths among the wounded and sick in their hands They shall collect all the articles of personal use, valuables, letters, &c , which are found on the field of battle or left by the wounded or sick who have died in the medical establishments or units, in order that such objects may be transmitted to the persons interested by the authorities of their own country.

Art 5

The competent military authority may appeal to the charitable zeal of the inhabitants to collect and take care of, under his direction, the wounded or sick of armies, granting to those who respond to the appeal special protection and certain immunities.

Ch XIV — CHAPITRE II —*Des Formations et Etablissements Sanitaires*

Art 6

Les formations sanitaires mobiles (c'est à dire celles qui sont destinees à accompagner les armees en campagne) et les etablissements fixes du service de santé seront respectes et proteges par les belligérants

Art 7

La protection due aux formations et etablissements sanitaires cesse si l'on en use pour commettre des actes nuisibles à l'ennemi

Ne sont pas consideres comme étant de nature à priver une formation ou un etablissement sanitaire de la protection assuree par l'article 6

1° Le fait que le personnel de la formation ou de l'etablissement est arme et qu'il use de ses armes pour sa propre defense ou celle de ses malades et blessés,

2° Le fait qu'à defaut d'infirmiers armés, la formation ou l'etablissement est garde par un piquet ou des sentinelles munis d'un mandat regulier,

3° Le fait qu'il est trouvé dans la formation ou l'etablissement des armes et cartouches retirees aux blesses et n'ayant pas encore ete versées au service competent

CHAPTER II —*Medical Units and Establishments*

Art 6

Mobile medical units (that is to say, those which are intended to accompany armies into the field) and the fixed establishments of the medical service shall be respected and protected by the belligerents

Art 7

The protection to which medical units and establishments are entitled ceases if they are made use of to commit acts harmful to the enemy

Art 8

The following facts are not considered to be of a nature to deprive a medical unit or establishment of the protection guaranteed by Article 6 —

1 That the personnel of the unit or of the establishment is armed, and that it uses its arms for its own defence or for that of the sick and wounded under its charge

2 That in default of armed orderlies the unit or establishment is guarded by a piquet or by sentinels furnished with an authority in due form

3 That weapons and cartridges taken from the wounded and not yet handed over to the proper department are found in the unit or establishment

CHAPITRE III —*Du Personnel*

Art 9

Le personnel exclusivement affecte à l'enlèvement, au transport et au traitement des blessés et des malades, ainsi qu'à l'administration des formations et etablissements sanitaires, les aumôniers attachés aux armées, seront respectés et proteges en toute circonstance, s'ils tombent entre les mains de l'ennemi, ils ne seront pas traités comme prisonniers de guerre

Ces dispositions s'appliquent au personnel de garde des formations et etablissements sanitaires dans le cas prévu à l'article 8, n° 2

Art 10

Est assimilé au personnel visé à l'article précédent le personnel des Sociétés de secours volontaires dûment reconnues et autorisées par leur Gouvernement, qui sera employé dans les formations et etablissements sanitaires des armees, sous la reserve que ledit personnel sera

CHAPTER III —*Personnel*

Art 9

The personnel engaged exclusively in the collection, transport, and treatment of the wounded and the sick, as well as in the administration of medical units and establishments, and the Chaplains attached to armies, shall be respected and protected under all circumstances If they fall into the hands of the enemy they shall not be treated as prisoners of war

These provisions apply to the guard of medical units and establishments under the circumstances indicated in Article 8 (2)

Art 10

The personnel of Voluntary Aid Societies, duly recognized and authorized by their Government, who may be employed in the medical units and establishments of armies, is placed on the same footing as the personnel referred to in the preceding Article, provided always that the first-

soumis aux lois et règlements militaires

Chaque État doit notifier à l'autre soit dès le temps de paix, soit à l'ouverture ou au cours des hostilités, en tout cas avant tout emploi effectif, les noms des Sociétés qu'il a autorisées à prêter leur concours, sous sa responsabilité, au service sanitaire officiel de ses armées

mentioned personnel shall be subject to military law and regulations

Each State shall notify to the other, either in time of peace or at the commencement of, or during the course of hostilities, but in every case before actually employing them, the names of the Societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armies

Art 11

Une Société reconnue d'un pays neutre ne peut prêter le concours de ses personnels et formations sanitaires à un belligérant qu'avec l'assentiment préalable de son propre Gouvernement et l'autorisation du belligérant lui même

Le belligérant qui a accepté le secours est tenu, avant tout emploi, d'en faire la notification à son ennemi

Art 11

A recognized Society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned

A belligerent who accepts such assistance is bound to notify the fact to his adversary before making any use of it

Art 12

Les personnes désignées dans les articles 9, 10 et 11 continueront, après qu'elles seront tombées au pouvoir de l'ennemi, à remplir leurs fonctions sous sa direction

Lorsque leur concours ne sera plus indispensable, elles seront renvoyées à leur armée ou à leur pays dans les délais et suivant l'itinéraire compatibles avec les nécessités militaires

Elles emporteront, alors, les effets, les instruments, les armes et les chevaux qui sont leur propriété particulière

Art 12

The persons designated in Articles 9, 10, and 11 after they have fallen into the hands of the enemy, shall continue to carry on their duties under his direction

When their assistance is no longer indispensable, they shall be sent back to their army or to their country at such time and by such route as may be compatible with military exigencies

They shall then take with them such effects, instruments, arms, and horses as are their private property

Art 13

L'ennemi assurera au personnel visé par l'article 9, pendant qu'il sera en son pouvoir, les mêmes allocations et la même solde qu'au personnel des mêmes grades de son armée

Art 13

The enemy shall secure to the persons mentioned in Article 9, while in his hands, the same allowances and the same pay as are granted to the persons holding the same rank in his own army

CHAPITRE IV —*Du Matériel*

Art 14

Les formations sanitaires mobiles conserveront, si elles tombent au pouvoir de l'ennemi, leur matériel, y compris les attelages, quels que soient les moyens de transport et le personnel conducteur

Toutefois, l'autorité militaire compétente aura la faculté de s'en servir pour les soins des blessés et malades, la restitution du matériel aura lieu dans les conditions prévues pour le personnel sanitaire, et, autant que possible, en même temps

CHAPTER IV —*Material*

Art 14

If mobile medical units fall into the hands of the enemy they shall retain their material, including their teams, irrespectively of the means of transport and the drivers employed

Nevertheless, the competent military authority shall be free to use the material for the treatment of the wounded and sick. It shall be restored under the conditions laid down for the medical personnel, and so far as possible at the same time.

Ch. XIV

Art 15.

Les bâtiments et le matériel des établissements fixes demeurent soumis aux lois de la guerre, mais ne pourront être détournés de leur emploi, tant qu'ils seront nécessaires aux blessés et aux malades

Toutefois, les commandants des troupes d'opérations pourront en disposer, en cas de nécessités militaires importantes, en assurant au préalable le sort des blessés et malades qui s'y trouvent

Art 15

The buildings and material of fixed establishments remain subject to the laws of war, but may not be diverted from their purpose so long as they are necessary for the wounded and the sick

Nevertheless, the Commanders of troops in the field may dispose of them, in case of urgent military necessity, provided they make previous arrangements for the welfare of the wounded and sick who are found there

Art 16

Le matériel des Sociétés de secours, admises au bénéfice de la Convention conformément aux conditions déterminées par celle-ci, est considéré comme propriété privée et, comme tel, respecté en toute circonstance, sauf le droit de réquisition reconnu aux belligérants selon les lois et usages de la guerre

Art 16

The material of Voluntary Aid Societies which are admitted to the privileges of the Convention under the conditions laid down therein is considered private property, and, as such, to be respected under all circumstances, saving only the right of requisition recognized for belligerents in accordance with the laws and customs of war

CHAPITRE V — *Des Convois d'Evacuation*

Art 17

Les convois d'évacuation seront traités comme les formations sanitaires mobiles, sauf les dispositions spéciales suivantes

1° Le belligérant interceptant un convoi pourra, si les nécessités militaires l'exigent, le disloquer en se chargeant des malades et blessés qu'il contient

2° Dans ce cas, l'obligation de renvoyer le personnel sanitaire, prévue à l'article 12, sera étendue à tout le personnel militaire préposé au transport ou à la garde du convoi et muni à cet effet d'un mandat régulier

L'obligation de rendre le matériel sanitaire, prévue à l'article 14, s'appliquera aux trains de chemins de fer et bateaux de la navigation intérieure spécialement organisés pour les évacuations, ainsi qu'au matériel d'aménagement des voitures, trains et bateaux ordinaires appartenant au service de santé

Les voitures militaires, autres que celles du service de santé, pourront être capturées avec leurs attelages

Le personnel civil et les divers moyens de transport provenant de la réquisition, y compris le matériel de chemin de fer et les bateaux utilisés pour les convois, seront soumis aux règles générales du droit des gens.

CHAPTER V — *Convoys of Evacuation*

Art 17

Convoys of evacuation shall be treated like mobile medical units, subject to the following special provisions —

1 A belligerent intercepting a convoy may break it up, if military exigencies demand, provided he takes charge of the sick and wounded who are in it

2 In this case, the obligation to send back the medical personnel, provided for in Article 12, shall be extended to the whole of the military personnel detailed for the transport or the protection of the convoy, and furnished with an authority in due form to that effect

The obligation to restore the medical material, provided for in Article 14, shall apply to railway trains and boats used in internal navigation, which are specially arranged for evacuations, as well as to the material belonging to the medical service for fitting up ordinary vehicles, trains, and boats

Military vehicles, other than those of the medical service, may be captured with their teams.

The civilian personnel and the various means of transport obtained by requisition, including railway material and boats used for convoys, shall be subject to the general rules of international law.

CHAPITRE VI — *Du Signe Distinctif*

Art 18

Par hommage pour la Suisse, le signe héraldique de la croix rouge sur fond blanc, formé par interversion des couleurs fédérales, est maintenu comme emblème et signe distinctif du service sanitaire des

Art 19

Cet emblème figure sur les drapeaux, les brassards, ainsi que sur tout le matériel se rattachant au service sanitaire, avec la permission de l'autorité militaire compétente

Art 20

Le personnel protégé en vertu des articles 9, alinéa 1er, 10 et 11 porte, fixé au bras gauche, un brassard avec croix rouge sur fond blanc, délivré et timbré par l'autorité militaire compétente, accompagné d'un certificat d'identité pour les personnes rattachées au service de santé des armées et qui n'auraient pas d'uniforme militaire

Art 21

Le drapeau distinctif de la Convention ne peut être arboré que sur les formations et établissements sanitaires qu'elle ordonne de respecter et avec le consentement de l'autorité militaire Il devra être accompagné du drapeau national du belligérant dont relève la formation ou l'établissement

Toutefois, les formations sanitaires tombées au pouvoir de l'ennemi n'arboreront pas d'autre drapeau que celui de la Croix Rouge, aussi longtemps qu'elles se trouveront dans cette situation

Art 22

Les formations sanitaires des pays neutres qui, dans les conditions prévues par l'article 11, auraient été autorisées à fournir leurs services, doivent arborer, avec le drapeau de la Convention, le drapeau national du belligérant dont elles relèvent

Les dispositions du deuxième alinéa de l'article précédent leur sont applicables

CHAPTER VI — *The Distinctive Emblem* **Ch XIV**

Art 18

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the medical service of armies

Art 19

With the permission of the competent military authority this emblem shall be shown on the flags and armlets (brassards), as well as on all the material belonging to the Medical Service

Art 20

The personnel protected in pursuance of Articles 9 (paragraph 1), 10, and 11 shall wear, fixed to the left arm, an armlet (brassard) with a red cross on a white ground, delivered and stamped by the competent military authority, and accompanied by a certificate of identity in the case of persons who are attached to the medical service of armies, but who have not a military uniform

Art 21

The distinctive flag of the Convention shall only be hoisted over those medical units and establishments which are entitled to be respected under the Convention, and with the consent of the military authorities It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs

Nevertheless, medical units which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Red Cross

Art 22

The medical units belonging to neutral countries which may be authorized to afford their services under the conditions laid down in Article 11 shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached

The provisions of the second paragraph of the preceding Article are applicable to them

Ch XIV

Art 23 [1]

L'emblème de la croix rouge sur fond blanc et les mots *Croix Rouge* ou *Croix de Genève* ne pourront être employés, soit en temps de paix, soit en temps de guerre, que pour protéger ou désigner les formations et établissements sanitaires, le personnel et le matériel protégés par la Convention

Art 23 [1]

The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments and the personnel and material protected by the Convention

CHAPITRE VII —*De l'Application et de l'Exécution de la Convention*

Art 24

Les dispositions de la présente Convention ne sont obligatoires que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles. Ces dispositions cesseront d'être obligatoires du moment où l'une des Puissances belligérantes ne serait pas signataire de la Convention

CHAPTER VII —*Application and Carrying out of the Convention*

Art 24

The provisions of the present Convention are only binding upon the Contracting Powers in the case of war between two or more of them. These provisions shall cease to be binding from the moment when one of the belligerent Powers is not a party to the Convention

Art 25

Les commandants en chef des armées belligérantes auront à pourvoir aux détails d'exécution des articles précédents, ainsi qu'aux cas non prévus, d'après les instructions de leurs Gouvernements respectifs et conformément aux principes généraux de la présente Convention

Art 25

The Commanders-in-chief of belligerent armies shall arrange the details for carrying out the preceding Articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention

Art 26

Les Gouvernements signataires prendront les mesures nécessaires pour instruire leurs troupes, et spécialement le personnel protégé, des dispositions de la présente Convention et pour les porter à la connaissance des populations

Art 26

The Signatory Governments will take the necessary measures to instruct their troops, especially the personnel protected, in the provisions of the present Convention, and to bring them to the notice of the civil population

CHAPITRE VIII —*De la Répression des Abus et des Infractions*

Art 27 [1]

Les Gouvernements signataires, dont la législation ne serait pas dès à présent suffisante, s'engagent à prendre ou à proposer à leurs législatures les mesures nécessaires pour empêcher en tout temps l'emploi, par des particuliers ou par des sociétés autres que celles y ayant droit en vertu de la présente Convention, de l'emblème ou de la dénomination de *Croix-Rouge* ou *Croix de Genève*, notamment, dans un but commercial,

CHAPTER VIII —*Prevention of Abuses and Infractions*

Art 27 [1]

The Signatory Governments, in countries the legislation of which is not at present adequate for the purpose, undertake to adopt or to propose to their legislative bodies such measures as may be necessary to prevent at all times the employment of the emblem or the name of Red Cross or Geneva Cross by private individuals or by Societies other than those which are entitled to do so under the present Convention,

[1] Great Britain signed the Convention under reserve of this article. See, however, para. 210, footnote 3.

par le moyen de marques de fabrique ou de commerce

L'interdiction de l'emploi de l'emblème ou de la denomination dont il s'agit produira son effet à partir de l'époque determinée par chaque législation et, au plus tard, cinq ans après la mise en vigueur de la presente Convention Dès cette mise en vigueur, il ne sera plus licite de prendre une marque de fabrique ou de commerce contraire à l'interdiction

and in particular for commercial purposes as a trade mark or trading mark

The prohibition of the employment of the emblem or the names in question shall come into operation from the date fixed by each legislature, and at the latest five years after the present Convention comes into force From that date it shall no longer be lawful to adopt a trade mark or trading mark contrary to this prohibition

Art 28 [1]

Les Gouvernements signataires s'engagent également à prendre ou à proposer à leurs législatures, en cas d'insuffisance de leurs lois pénales militaires, les mesures nécessaires pour reprimer, en temps de guerre, les actes individuels de pillage et de mauvais traitements envers des blessés et malades des armées, ainsi que pour punir, comme usurpation d'insignes militaires, l'usage abusif du drapeau et du brassard de la Croix Rouge par des militaires ou des particuliers non protegés par la présente Convention

Ils se communiqueront, par l'intermediaire du Conseil fédéral suisse, les dispositions relatives à cette répression, au plus tard dans les cinq ans de la ratification de la presente Convention

Art 28 [1]

The Signatory Governments also undertake to adopt, or to propose to their legislative bodies, should their military law be insufficient for the purpose, the measures necessary for the repression in time of war of individual acts of pillage and ill-treatment of the wounded and sick of armies, as well as for the punishment, as an unlawful employment of military insignia, of the improper use of the Red Cross flag and armlet (brassard) by officers and soldiers or private individuals not protected by the present Convention

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to these measures of repression at the latest within five years from the ratification of the present Convention

Dispositions Générales

General Provisions

Art 29

La presente Convention sera ratifiée aussitot que possible Les ratifications seront déposées à Berne

Il sera dressé du depot de chaque ratification un procès verbal dont une copie, certifiée conforme sera remise par la voie diplomatique à toutes les Puissances contractantes

The present Convention shall be ratified as soon as possible The ratifications shall be deposited at Berne

When each ratification is deposited a *proces verbal* shall be drawn up, and a copy thereof certified as correct shall be forwarded through the diplomatic channel to all the Contracting Powers

Art 30

La présente Convention entrera en vigueur pour chaque Puissance six mois après la date du depôt de sa ratification

Art 30

The present Convention shall come into force for each Power six months after the date of the deposit of its ratification

Art 31

La presente Convention, dument ratifiée, remplacera la Convention du 22 août 1864 dans les rapports entre les États contractants

Art 31

The present Convention, duly ratified, shall replace the Convention of the 22nd August, 1864, in relations between the Contracting States.

[1] Great Britain signed the Convention with reserve of this article See para 180, footnote 3

Ch. XIV —

La Convention de 1864 reste en vigueur dans les rapports entre les Parties qui l'ont signee et qui ne ratifieraient pas egalement la présente Convention

The Convention of 1864 remains in force between such of the parties who signed it who may not likewise ratify the present Convention

Art 32

La présente Convention pourra, jusqu'au 31 decembre prochain, etre signée par les Puissances représentées a la Conference qui s'est ouverte à Genève le 11 juin 1906, ainsi que par les Puissances non representées à cette Conference qui ont signe la Convention de 1864

Celles de ces Puissances qui, au 31 decembre 1906, n'auront pas signe la presente Convention, resteront libres d'y adherer par la suite Elles auront à faire connaître leur adhesion au moyen d'une notification ecrite adressee au Conseil federal suisse et communiquee par celui ci a toutes les Puissances contractantes

Les autres Puissances pourront demander à adherer dans la meme forme, mais leur demande ne produira effet que si, dans le delai d'un an à partir de la notification au Conseil federal, celui ci n'a reçu d'opposition de la part d'aucune des Puissances contractantes

The present Convention may be signed until the 31st December next by the Powers represented at the Conference which was opened at Geneva on the 11th June, 1906, as also by the Powers, not represented at that Conference, which signed the Convention of 1864

Such of the aforesaid Powers as shall have not signed the present Convention by the 31st December, 1906, shall remain free to accede to it subsequently They shall notify their accession by means of a written communication addressed to the Swiss Federal Council, and communicated by the latter to all the Contracting Powers

Other Powers may apply to accede in the same manner but their request shall only take effect if within a period of one year from the notification of it to the Federal Council no objection to it reaches the Council from any of the Contracting Powers

Art 33

Chacune des Parties contractantes aura la faculte de denoncer la presente Convention Cette denonciation ne produira ses effets qu'un an apres la notification faite par ecrit au Conseil federal suisse, celui ci communiquera immediatement la notification a toutes les autres Parties contractantes

Cette denonciation ne vaudra qu'a l'egard de la Puissance qui l'aura notifiée

En foi de quoi, les Plenipotentiaires ont signe la presente Convention et l'ont revêtue de leurs cachets

Fait a Geneve, le six juillet mil neuf cent six, en un seul exemplaire, qui restera depose dans les archives de la Conféderation suisse, et dont des copies, certifiees conformes, seront remises par la voie diplomatique aux Puissances contractantes

Each of the Contracting Powers shall be at liberty to denounce the present Convention The denunciation shall not take effect until one year after the written notification of it has reached the Swiss Federal Council The Council shall immediately communicate the notification to all the other Contracting Parties

The denunciation shall only affect the Power which has notified it

In witness whereof the Plenipotentiaries have signed the present Convention and have affixed thereto their seals

Done at Geneva the 6th July, 1906, in a single copy, which shall be deposited in the archives of the Swiss Confederation, and of which copies certified as correct shall be forwarded to the Contracting Powers through the diplomatic channel

(Here follow the signatures of the plenipotentiaries) Great Britain signed under reserve of Arts 23, 27 and 28 (but see para 180, footnote 3, and para 210, footnote 3), Persia under reserve of Art 18

The Ratifications of the following States have up to the present been deposited — Ch. XIV

Great Britain	Japan.
Siam	Netherlands
United States	Chile
Russia	Servia
Italy	Norway
Switzerland	Honduras
Congo	Portugal
Germany.	Roumania
Mexico	Sweden
Denmark.	Guatemala
Brazil	Bulgaria
Luxemburg	France
Belgium	Greece
Spain	Uruguay
Austria Hungary.	

The following accessions have been notified —

Afghanistan	Finland
Albania	Haiti
Czechoslovakia	Iceland
Colombia	Latvia
Costa-Rica	Lithuania
Cuba	Nicaragua
Dantzig	Paraguay
Dominican Republic	Poland
Ecuador	Salvador
Egypt [1]	Turkey [1]
Esthonia	Venezuela

APPENDIX 5.

International Convention Relative to the Opening of Hostilities

Signed at The Hague, 18th October, 1907

(British Ratification deposited at The Hague, 27th November, 1909)

(Translation)

Convention relative a l'Ouverture des Hostilites	*Convention relative to the Opening of Hostilities*
Sa Majeste le Roi du Royaume Uni de Grande Bretagne et d'Irlande et des Territoires Britanniques au dela des Mers, Empereur des Indes	His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India

(Here follows the list of other Sovereigns and heads of States who sent Plenipotentiaries to the Conference)

Considerant que, pour la securite des relations pacifiques, il importe que les hostilites ne commencent pas sans un avertissement prealable,	Considering that it is important, in order to ensure the maintenance of pacific relations, that hostilities should not commence without previous warning
Qu'il importe, de meme, que l'état de guerre soit notifié sans retard aux Puissances neutres	That it is equally important that the existence of a state of war should be notified without delay to neutral Powers, and
Désirant conclure une Convention à cet effet, ont nommé pour leurs Plenipotentiaires, savoir	Being desirous of concluding a Convention to this effect, have appointed the following as their Plenipotentiaries

(Here follow the names of the Plenipotentiaries)

---

[1] With certain reservations

Ch. XIV — Lesquels, après avoir dépose leurs pleins pouvoirs trouves en bonne et due forme, sont convenus des dispositions suivantes —

Art 1

Les Puissances Contractantes reconnaissent que les hostilites entre elles ne doivent pas commencer sans un avertissement prealable et non équivoque, qui aura, soit la forme d'une declaration de guerre motivee, soit celle d'un ultimatum avec déclaration de guerre conditionnelle

Art 2

L'état de guerre devra etre notifie sans retard aux Puissances neutres et ne produira effet a leur egard qu'apres reception d'une notification qui pourra etre faite meme par voie telégraphique Toutefois les Puissances neutres ne pourraient invoquer l'absence de notification, s'il était etabli d'une maniere non douteuse qu'en fait elles connaissaient l'état de guerre

Art 3

L'Article 1 de la presente Convention produira effet en cas de guerre entre deux ou plusieurs des Puissances Contractantes

L'Article 2 est obligatoire dans les rapports entre un belligerant contractant et les Puissances neutres également contractantes

Art 4

La présente Convention sera ratifiée aussitôt que possible

Les ratifications seront déposées a La Haye

Le premier depot de ratifications sera constaté par un proces verbal signe par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays Bas

Les dépots ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification

Copie certifiée conforme du procès-verbal relatif au premier dépot de ratifications, des notifications mentionnées à l'alinéa précèdent ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention Dans les cas visés

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions —

Art 1

The Contracting Powers recognize that hostilities between them must not commence without a previous and explicit warning in the form of either a declaration of war, giving reasons, or an ultimatum with a conditional declaration of war

Art 2

The existence of a state of war must be notified to the neutral Powers without delay, and shall not be held to affect them until after the receipt of a notification, which may, however, be given by telegraph Nevertheless, neutral Powers may not rely on the absence of notification if it be established beyond doubt that they were in fact aware of the existence of a state of war

Art 3

Article 1 of the present Convention shall take effect in case of war between two or more of the Contracting Powers

Article 2 applies as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention

Art 4

The present Convention shall be ratified as soon as possible

The ratifications shall be deposited at The Hague

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said

par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification

Art 5.

Les Puissances non Signataires sont admises a adhérer à la présente Convention

La Puissance qui désire adherer notifie par ecrit son intention au Gouvernement des Pays Bas en lui transmettant l'acte d'adhesion, qui sera deposé dans les archives du dit Gouvernement

Ce Gouvernement transmettra immediatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion en indiquant la date à laquelle il a reçu la notification

Art 6

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépot de ratifications, soixante jours apres la date du proces verbal de ce dépot, et, pour les Puissances qui ratifieront ultérieurement ou qui adhereront, soixante jours après que la notification de leur ratification ou de leur adhesion aura été reçue par le Gouvernement des Pays Bas

Art 7

S'il arrivait qu'une des Hautes Parties Contractantes voulut dénoncer la presente Convention, la denonciation sera notifiée par ecrit au Gouvernement des Pays Bas, qui communiquera immediatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue

La denonciation ne produira ses effets qu'a l'egard de la Puissance qui l'aura notifiée et un an apres que la notification en sera parvenue au Gouvernement des Pays Bas

Art 8

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'Article 4, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 5, alinéa 2) ou de dénonciation (Article 7, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification

Art 5

Non Signatory Powers may accede to the present Convention

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification

Art 6

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government

Art 7

In the event of one of the High Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government

Art 8

A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 4, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 5, paragraph 2) or of denunciation (Article 7, paragraph 1) have been received

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

Ch XIV — En foi de quoi les Plenipotentiaires ont revetu la présente Convention de leurs signatures

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera depose dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiees conformes, seront remises par la voie diplomatique aux Puissances qui ont ete conviees à la Deuxième Conference de la Paix

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference

The Convention was signed at The Hague by the Plenipotentiaries of 42 States

The Ratifications of the following States have up to the present been deposited —

Great Britain	Sweden	Portugal
Germany	Bolivia	Luxemburg
United States	Salvador	France
Austria Hungary	Haiti	Norway
Denmark	Japan	Siam
Mexico	Roumania	Switzerland
Netherlands	Guatemala	Belgium
Russia	Panama	Spain

The following Accessions have been notified —

Nicaragua	Poland	China

APPENDIX 6

International Convention Concerning the Laws and Customs of War on Land

Signed at The Hague, 18th October, 1907

(British Ratification deposited at The Hague, 27th November, 1909)

(Translation)

Convention concernant les Lois et Coutumes de la Guerre sur Terre

Sa Majeste le Roi du Royaume Uni de Grande Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes

Convention concerning the Laws and Customs of War on Land

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India

(Here follows the list of Sovereigns and heads of States who sent Plenipotentiaries to the Conference)

Considérant que, tout en recherchant les moyens de sauvegarder la paix et de prevenir les conflits armés entre les nations, il importe de se preoccuper egalement du cas ou l'appel aux armes serait amene par des evenements que leur sollicitude n'aurait pu detourner,

Animes du desir de servir encore, dans cette hypothèse extreme, les interêts de l'humanite et les exigences toujours progressives de la civilisation,

Estimant qu'il importe, à cette fin, de reviser les lois et coutumes générales de la guerre, soit dans le but de les definir avec plus de précision, soit

Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where an appeal to arms may be brought about by events beyond their responsibility to control,

Being animated also by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization, and

Thinking it important, with this object, to revise the general laws and customs of war, with the view on the one hand of defining them with

afin d'y tracer certaines limites destinées à en restreindre autant que possible les rigueurs,

Ont jugé nécessaire de compléter et de préciser sur certains points l'œuvre de la Première Conférence de la Paix, qui, s'inspirant, à la suite de la Conférence de Bruxelles de 1874, de ces idées recommandées par une sage et généreuse prévoyance, a adopté des dispositions ayant pour objet de définir et de régler les usages de la guerre sur terre

Selon les vues des Hautes Parties Contractantes, ces dispositions, dont la rédaction a été inspirée par le désir de diminuer les maux de la guerre, autant que les nécessités militaires le permettent, sont destinées à servir de règle générale de conduite aux belligérants, dans leurs rapports entre eux et avec les populations

Il n'a pas été possible toutefois de concerter dès maintenant des stipulations s'étendant à toutes les circonstances qui se présentent dans la pratique,

D'autre part, il ne pouvait entrer dans les intentions des Hautes Parties Contractantes que les cas non prévus fussent, faute de stipulation écrite, laissés à l'appréciation arbitraire de ceux qui dirigent les armées

En attendant qu'un code plus complet des lois de la guerre puisse être édicté, les Hautes Parties Contractantes jugent opportun de constater que, dans les cas non compris dans les dispositions réglementaires adoptées par elles, les populations et les belligérants restent sous la sauve garde et sous l'empire des principes du droit des gens, tels qu'ils résultent des usages établis entre nations civilisées, des lois de l'humanité et des exigences de la conscience publique

Elles déclarent que c'est dans ce sens que doivent s'entendre notamment les Articles 1 et 2 du Règlement adopté

Les Hautes Parties Contractantes, désirant conclure une nouvelle Convention à cet effet, ont nommé pour leurs Plénipotentiaires, savoir

greater precision, and, on the other hand, of confining them within limits intended to mitigate their severity as far as possible,

Have deemed it necessary to complete and render more precise in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and regulate the usages of war on land

According to the views of the High Contracting Parties, these provisions, the drafting of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants

It has not, however, been found possible at present to concert stipulations covering all the circumstances which arise in practice,

On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in default of written agreement, be left to the arbitrary opinion of military commanders

Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood

The High Contracting Parties, wishing to conclude a fresh Convention to this effect, have appointed at their Plenipotentiaries, that is so say

(Here follow the names of the Plenipotentiaries)

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit —

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following —

Art 1

Les Puissances Contractantes donneront à leurs forces armées de

Art 1

The Contracting Powers shall issue instructions to their armed land

Ch. XIV

terre des instructions qui seront conformes au Règlement concernant les Lois et Coutumes de la Guerre sur Terre, annexé à la présente Convention

Art 2

Les dispositions contenues dans le Règlement visé à l'Article 1 ainsi que dans la présente Convention ne sont applicables qu'entre les Puissances Contractantes, et seulement si les belligérants sont tous parties à la Convention

Art 3

La partie belligérante qui violerait les dispositions du dit Reglement sera tenue à indemnité, s'il y a lieu Elle sera responsable de tous actes commis par les personnes faisant partie de sa force armée

Art 4

La présente Convention dument ratifiée remplacera, dans les rapports entre les Puissances Contractantes, la Convention du 29 Juillet, 1899, concernant les Lois et Coutumes de la Guerre sur Terre

La Convention du 1899 reste en vigueur dans les rapports entre les Puissances qui l'ont signée et qui ne ratifieraient pas également la présente Convention

Art 5

La présente Convention sera ratifiée aussitôt que possible

Les ratifications seront déposées à La Haye

Le premier dépôt de ratifications sera constaté par un procès verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Etrangères des Pays Bas

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays Bas et accompagnée de l'instrument de ratification

Copie certifiée conforme du procès verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention Dans les cas visés par l'alinéa précédent, le dit

forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention

Art 2

The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention

Art 3

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation It shall be responsible for all acts committed by persons forming part of its armed forces

Art 4

The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention of the 29th July, 1899, respecting the Laws and Customs of War on Land

The Convention of 1899 remains in force as between the Powers which signed it, but which do not ratify the present Convention

Art 5

The present Convention shall be ratified as soon as possible

The ratifications shall be deposited at the Hague

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs

The subsequent deposits of ratification shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention The said Government shall, in the cases con-

Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification

templated in the preceding paragraph, inform them at the same time of the date on which it received the notification

Art 6

Les Puissances non Signataires sont admises à adhérer à la présente Convention

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification

Art 6

Non-Signatory Powers may accede to the present Convention

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification

Art 7

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays Bas

Art 7

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government

Art 8

S'il arrivait qu'une des Puissances Contractantes voulut dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas

Art 8

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government

Art 9

Un registre tenu par le Ministère des Affaires Étrangères des Pays Bas indiquera la date du dépôt de ratifications effectué en vertu de l'Article 5, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 6, alinéa 2) ou de dénonciation (Article 8, alinéa 1)

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes

Art 9

A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 5, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 6, paragraph 2) or of denunciation (Article 8 paragraph 1) have been received

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it

En foi de quoi les Plenipotentiaires ont revetu la presente Convention de leurs signatures

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera deposé dans les archives du Gouvernement des Pays Bas, et dont des copies certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conference de la Paix

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference

ANNEX TO THE CONVENTION

REGLEMENT CONCERNANT LES LOIS ET COUTUMES DE LA GUERRE SUR TERRE

SECTION I —DES BELLIGERANTS

CHAPITRE I —*De la Qualite de Belligerant*

Art 1

LES lois, les droits, et les devoirs de la guerre ne s'appliquent pas seulement à l'armee, mais encore aux milices et aux corps de volontaires reunissant les conditions suivantes —

1 D'avoir à leur tete une personne responsible pour ses subordonnes,
2 D'avoir un signe distinctif fixe et reconnaissable à distance,
3 De porter les armes ouvertement et
4 De se conformer dans leurs operations aux lois et coutumes de la guerre

Dans les pays ou les milices ou des corps de volontaires constituent l'armee ou en font partie ils sont compris sous la denomination d'armee

Art 2

La population d'un territoire non occupé qui, à l'approche de l'ennemi, prend spontanement les armes pour combattre les troupes d'invasion sans avoir eu le temps de s'organiser conformement à l'Article 1 sera consideree comme belligerante si elle porte les armes ouvertement et si elle respecte les lois et coutumes de la guerre

Art 3

Les forces armées des parties belligérantes peuvent se composer de combattants et de non combattants En cas de capture par l'ennemi, les uns et les autres ont droit au traitement des prisonniers de guerre

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

SECTION I —OF BELLIGERENTS

CHAPTER I —*The Status of Belligerent*

Art 1

THE laws, rights, and duties of war apply not only to the army, but also to militia and volunteer corps fulfilling all the following conditions —

1 They must be commanded by a person responsible for his subordinates,
2 They must have a fixed distinctive sign recognizable at a distance,
3 They must carry arms openly, and
4 They must conduct their operations in accordance with the laws and customs of war

In countries where militia or volunteer corps constitute the army, or form part of it they are included under the denomination "army"

Art 2

The inhabitants of a territory not under occupation who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly, and if they respect the laws and customs of war

Art 3

The armed forces of the belligerents may consist of combatants and non combatants In the case of capture by the enemy, both have the right to be treated as prisoners of war

CHAPITRE II —*Des Prisonniers de Guerre*

Art 4

Les prisonniers de guerre sont au pouvoir du Gouvernement ennemi, mais non des individus ou des corps qui les ont captures

Ils doivent etre traites avec humanite

Tout ce qui leur appartient personnellement, excepte les armes, les chevaux, et les papiers militaires, reste leur propriété

Art 5

Les prisonniers de guerre peuvent etre assujettis à l'internement dans une ville, forteresse, camp, ou localite quelconque, avec obligation de ne pas s'en eloigner au delà de certaines limites déterminées, mais ils ne peuvent etre enfermes que par mesure de sureté indispensable, et seulement pendant la durée des circonstances qui nécessitent cette mesure

Art 6

L'État peut employer, comme travailleurs, les prisonniers de guerre, selon leur grade et leurs aptitudes, à l'exception des officiers Ces travaux ne seront pas excessifs et n'auront aucun rapport avec les opérations de la guerre

Les prisonniers peuvent être autorisés à travailler pour le compte d'administrations publiques ou de particuliers, ou pour leur propre compte

Les travaux faits pour l'État sont payés d'apres les tarifs en vigueur pour les militaires de l'armée nationale executant les memes travaux, ou, s'il n'en existe pas, d'après un tarif en rapport avec les travaux exécutes

Lorsque les travaux ont lieu pour le compte d'autres administrations publiques ou pour des particuliers, les conditions en sont reglees d'accord avec l'autorité militaire

Le salaire des prisonniers contribuera à adoucir leur position, et le surplus leur sera compté au moment de leur liberation, sauf défalcation des frais d'entretien

Art 7

Le Gouvernement au pouvoir duquel se trouvent les prisonniers de guerre est charge de leur entretien

A défaut d'une entente speciale entre les belligérants, les prisonniers de guerre seront traités pour la nourriture, le couchage, et l'habillement sur le meme pied que les troupes du Gouvernement qui les aura capturés

CHAPTER II —*Prisoners of War* Ch XIV

Art 4

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them

They must be humanely treated

All their personal belongings, except arms, horses, and military papers, remain their property

Art 5

Prisoners of war may be interned in a town, fortress, camp, or other place, and are bound not to go beyond certain fixed limits, but they cannot be placed in confinement except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist

Art 6

The State may employ the labour of prisoners of war, other than officers, according to their rank and capacity The work shall not be excessive, and shall have no connection with the operations of the war

Prisoners may be authorized to work for the public service, for private persons, or on their own account

Work done for the State is paid for at rates proportional to the work of a similar kind executed by soldiers of the national army, or, if there are no such rates in force, at rates proportional to the work executed

When the work is for other branches of the public service, or for private persons, the conditions are settled in agreement with the military authorities

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, deductions on account of the cost of maintenance excepted

Art 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance

In default of special agreement between the belligerents, prisoners of war shall be treated, as regards rations, quarters, and clothing, on the same footing as the troops of the Government which captured them

Ch. XIV

Art 8

Les prisonniers de guerre seront soumis aux lois, Règlements, et ordres en vigueur dans l'armee de l'État au pouvoir duquel ils se trouvent Tout acte d'insubordination autorise à leur égard, les mesures de rigueur nécessaires

Les prisonniers évadés, qui seraient repris avant d'avoir pu rejoindre leur armée ou avant de quitter le territoire occupé par l'armee qui les aura capturés, sont passibles de peines disciplinaires

Les prisonniers qui, après avoir réussi à s'évader, sont de nouveau faits prisonniers, ne sont passibles d'aucune peine pour la fuite antérieure

Art 9

Chaque prisonnier de guerre est tenu de déclarer, s'il est interroge à ce sujet, ses véritables noms et grade et, dans le cas ou il enfreindrait cette règle, il s'exposerait à une restriction des avantages accordés aux prisonniers de guerre de sa catégorie

Art 10

Les prisonniers de guerre peuvent être mis en liberté sur parole, si les lois de leur pays les y autorisent, et, en pareil cas, ils sont obliges, sous la garantie de leur honneur personnel, de remplir scrupuleusement, tant vis-à vis de leur propre Gouvernement que vis-à vis de celui qui les a faits prisonniers, les engagements qu'ils auraient contractes

Dans le même cas, leur propre Gouvernement est tenu de n'exiger ni accepter d'eux aucun service contraire a la parole donnée

Art 11

Un prisonnier de guerre ne peut être contraint d'accepter sa liberté sur parole, de meme le Gouvernement ennemi n'est pas obligé d'acceder à la demande du prisonnier réclamant sa mise en liberté sur parole

Art 12

Tout prisonnier de guerre libéré sur parole et repris portant les armes contre le Gouvernement envers lequel il s'etait engage d'honneur, ou contre les alliés de celui ci, perd le droit au traitement des prisonniers de guerre, et peut être traduit devant les Tribunaux

Art. 13

Les individus qui suivent une armée sans en faire directement

Art 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in the power of which they are Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary

Escaped prisoners who are retaken before being able to rejoin their own army, or before leaving the territory occupied by the army which captured them, are liable to disciplinary punishment

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of their previous escape

Art 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule he is liable to have the advantages given to prisoners of his class curtailed

Art 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they may have contracted

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given

Art 11

A prisoner of war cannot be compelled to accept his liberty on parole, similarly the hostile Government is not obliged to accede to the request of a prisoner to be set at liberty on parole

Art 12

Prisoners of war liberated on parole and recaptured bearing arms against the Government to which they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and may be put on trial before the Courts

Art 13

Individuals following an army without directly belonging to it, such

partie, tels que les correspondants et les reporters de journaux, les vivandiers, les fournisseurs, qui tombent au pouvoir de l'ennemi et que celui ci juge utile de détenir, ont droit au traitement des prisonniers de guerre, à condition qu'ils soient munis d'une légitimation de l'autorité militaire de l'armée qu'ils accompagnaient

as newspaper correspondents or reporters, sutlers or contractors, who fall into the enemy's hands, and whom the latter thinks it expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying

Art 14

Il est constitué, dès le début des hostilités dans chacun des États belligérants, et, le cas échéant, dans les pays neutres qui auront recueilli des belligerants sur leur territoire, un bureau de renseignements sur les prisonniers de guerre Ce bureau, chargé de répondre a toutes les demandes qui les concernent, reçoit des divers services compétents toutes les indications relatives aux internements et aux mutations, aux mises en liberté sur parole, aux échanges, aux evasions, aux entrees dans les hopitaux, aux decès, ainsi que les autres renseignements necessaires pour établir et tenir à jour une fiche individuelle pour chaque prisonnier de guerre Le bureau devra porter sur cette fiche le numéro matricule, les nom et prénom, l'âge, le lieu d'origine, le grade, le corps de troupe, les blessures, la date, et le lieu de la capture, de l'internement, des blessures, et de la mort, ainsi que toutes les observations particulières La fiche individuelle sera remise au Gouvernement de l'autre belligérant après la conclusion de la paix

Le bureau de renseignements est également chargé de recueillir et de centraliser tous les objets d'un usage personnel, valeurs, lettres, &c , qui seront trouvés sur les champs de bataille ou delaissés par des prisonniers libéres sur parole, échangés, évades, ou décédés dans les hôpitaux et ambulances et de les transmettre aux intéressés

Art 14

A bureau for information relative to prisoners of war is instituted at the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents on their territory The business of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as all other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war The bureau must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character The individual return shall be sent to the Government of the other belligerent after the conclusion of peace

It is also the business of the information bureau to gather and keep together all personal effects valuables, letters, &c , found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned

Art 15

Les sociétés de secours pour les prisonniers de guerre, régulièrement constituées selon la loi de leur pays, et ayant pour objet d'être les intermédiaires de l'action charitable recevront, de la part des belligérants, pour elles et pour leurs agents dûment accrédités, toute facilité dans les limites tracées par les nécessités militaires et les règles administratives, pour accomplir efficacement leur tâche d'humanité Les délégués de ces sociétés pourront être admis à distribuer des

Art 15

Societies for the relief of prisoners of war, if properly constituted in accordance with the laws of their country, and with the object of serving as the channel for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military exigencies and administrative regulations Representatives of these societies, when furnished with a personal permit by

Ch XIV

secours dans les dépôts d'internement, ainsi qu'aux lieux d'étape des prisonniers rapatriés, moyennant une permission personnelle délivrée par l'autorité militaire, et en prenant l'engagement par écrit de se soumettre à toutes les mesures d'ordre et de police que celle-ci prescrirait

the military authorities, may, on giving an undertaking in writing to comply with all measures of order and police which they may have to issue, be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners

Art 16

Les bureaux de renseignements jouissent de la franchise de port pour les lettres, mandats, et articles d'argent ainsi que les colis postaux destinés aux prisonniers de guerre ou expédiés par eux, seront affranchis de toutes les taxes postales, aussi bien dans les pays d'origine et de destination que dans les pays intermédiaires.

Les dons et secours en nature destinés aux prisonniers de guerre seront admis en franchise de tous droits d'entrée et autres, ainsi que des taxes de transport, sur les chemins de fer exploités par l'État

Information bureaux enjoy the privilege of free carriage. Letters, money orders, and valuables, as well as postal parcels, intended for prisoners of war, or dispatched by them, shall be exempt from all postal charges in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as any payment for carriage by State railways

Art 17

Les officiers prisonniers recevront la solde à laquelle ont droit les officiers de même grade du pays où ils sont retenus, à charge de remboursement par leur Gouvernement

Art 17

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount shall be refunded by their own Government

Art 18

Toute latitude est laissée aux prisonniers de guerre pour l'exercice de leur religion, y compris l'assistance aux offices de leur culte, à la seule condition de se conformer aux mesures d'ordre et de police prescrites par l'autorité militaire

Art 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of their own Church, on the sole condition that they comply with the police regulations issued by the military authorities

Art 19

Les testaments des prisonniers de guerre sont reçus ou dressés dans les mêmes conditions que pour les militaires de l'armée nationale.

On suivra également les mêmes règles en ce qui concerne les pièces relatives à la constatation des décès, ainsi que pour l'inhumation des prisonniers de guerre, en tenant compte de leur grade et de leur rang

Art 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be followed as regards documents concerning the certification of the death and also as to the burials of prisoners of war, due regard being paid to their grade and rank

Art 20

Après la conclusion de la paix, le rapatriement des prisonniers de guerre s'effectuera dans le plus bref délai possible

Art 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPITRE III —*Des Malades et des Blessés*

Art 21

Les obligations des belligérants concernant le service des malades et des blessés sont regies par la Convention de Geneve

CHAPTER III —*The Sick and Wounded*

Art 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention

SECTION II —DES HOSTILITÉS

SECTION II —OF HOSTILITIES

CHAPITRE I —*Des Moyens de Nuire à l'Ennemi, des Sièges, et des Bombardements*

CHAPTER I —*Means of Injuring the Enemy, Sieges, and Bombardments*

Art 22

Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi

Art 22

Belligerents have not got an unlimited right as to the choice of means of injuring the enemy

Art 23

Outre les prohibitions établies par des Conventions spéciales, il est notamment interdit—

(*a*) D'employer du poison ou des armes empoisonnées,

(*b*) De tuer ou de blesser par trahison des individus appartenant à la nation ou à l'armée ennemie,

(*c*) De tuer ou de blesser un ennemi qui, ayant mis bas les armes ou n'ayant plus les moyens de se défendre, s'est rendu à discrétion,

(*d*) De déclarer qu'il ne sera pas fait de quartier,

(*e*) D'employer des armes, des projectiles, ou des matières propres à causer des maux superflus,

(*f*) D'user indument du pavillon parlementaire, du pavillon national, ou des insignes militaires et de l'uniforme de l'ennemi, ainsi que des signes distinctifs de la Convention de Genève,

(*g*) De détruire ou de saisir des propriétés ennemies, sauf les cas où ces destructions ou ces saisies seraient impérieusement commandées par les nécessités de la guerre,

(*h*) De déclarer éteints, suspendus, ou non recevables en justice, les droits et actions des nationaux de la partie adverse

Il est également interdit à un belligérant de forcer les nationaux de la partie adverse à prendre part aux opérations de guerre dirigées contre leur pays, même dans le cas où ils auraient été à son service avant le commencement de la guerre

Art 23

In addition to the prohibitions provided by special Conventions, it is particularly forbidden—

(*a*) To employ poison or poisoned weapons,

(*b*) To kill or wound by treachery individuals belonging to the hostile nation or army,

(*c*) To kill or wound an enemy who, having laid down his arms, or no longer having means of defence, has surrendered at discretion,

(*d*) To declare that no quarter will be given,

(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering,

(*f*) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as of the distinctive signs of the Geneva Convention,

(*g*) To destroy or seize enemy property, unless such destruction or seizure be imperatively demanded by the necessities of war,

(*h*) To declare abolished, suspended, or inadmissible the right of the subjects of the hostile party to institute legal proceedings

A belligerent is likewise forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country, even if they were in the service of the belligerent before the commencement of the war

Ch. XIV

Art 24

Les ruses de guerre et l'emploi des moyens nécessaires pour se procurer des renseignements sur l'ennemi et sur le terrain sont considérés comme licites

Art 25

Il est interdit d'attaquer ou de bombarder, par quelque moyen que ce soit, des villes, villages, habitations, ou bâtiments qui ne sont pas défendus

Art 26

Le commandant des troupes assaillantes, avant d'entreprendre le bombardement, et sauf le cas d'attaque de vive force, devra faire tout ce qui dépend de lui pour en avertir les autorités

Art 27

Dans les sièges et bombardements, toutes les mesures nécessaires doivent être prises pour épargner, autant que possible, les edifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance, les monuments historiques, les hôpitaux, et les lieux de rassemblement de malades et de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire

Le devoir des assiégés est de désigner ces edifices ou lieux de rassemblement par des signes visibles spéciaux qui seront notifiés d'avance à l'assiegeant

Art 28

Il est interdit de livrer au pillage une ville ou localité même prise d'assaut

CHAPITRE II —*Des Espions*

Art 29

Ne peut être considéré comme espion que l'individu qui, agissant clandestinement ou sous de faux prétextes, recueille ou cherche à recueillir des informations dans la zone d'operations d'un belligérant, avec l'intention de les communiquer à la partie adverse

Ainsi les militaires non déguisés qui ont penetré dans la zone d'operations de l'armée ennemie, à l'effet de recueillir des informations, ne sont pas considérés comme espions De même, ne sont pas considérés comme espions les militaires et les non-militaires, accomplissant ouvertement leur mission, charges de transmettre des dépêches destinées, soit à leur propre armée, soit à l'armée ennemie

Art 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible

Art 25

The attack or bombardment, by any means whatever, of undefended towns, villages, dwellings, or buildings is forbidden

Art 26

The officer in command of an attacking force must do all in his power to warn the authorities before commencing a bombardment, except in cases of assault

Art 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes

It is the duty of the besieged to indicate such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand

Art 28

The giving over to pillage of a town or place, even when taken by assault, is forbidden

CHAPTER II —*Spies*

Art 29

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party

Accordingly, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army for the purpose of obtaining information are not considered spies Similarly, the following are not considered spies Soldiers and civilians entrusted with the delivery of despatches intended either for their own army or for the enemy's army, and carrying out their mission

A cette categorie appartiennent également les individus envoyés en ballon pour transmettre les dépêches, et, en général, pour entretenir les communications entre les diverses parties d'une armée ou d'un territoire

Art 30

L'espion pris sur le fait ne pourra être puni sans jugement préalable

Art 31

L'espion qui, ayant rejoint l'armée à laquelle il appartient, est capturé plus tard par l'ennemi, est traité comme prisonnier de guerre et n'encourt aucune responsabilité pour ses actes d'espionnage antérieurs

CHAPITRE III —*Des Parlementaires*

Art 32

Est considéré comme parlementaire l'individu autorisé par l'un des belligérants à entrer en pourparlers avec l'autre et se présentant avec le drapeau blanc Il a droit à l'inviolabilité ainsi que le trompette, clairon ou tambour, le porte drapeau, et l'interprète qui l'accompagneraient

Art 33

Le chef auquel un parlementaire est expédié n'est pas obligé de le recevoir en toutes circonstances

Il peut prendre toutes les mesures nécessaires afin d'empêcher le parlementaire de profiter de sa mission pour se renseigner

Il a le droit, en cas d'abus, de retenir temporairement le parlementaire

Art 34

Le parlementaire perd ses droits d'inviolabilité, s'il est prouvé, d'une manière positive et irrécusable, qu'il a profité de sa position privilégiée pour provoquer ou commettre un acte de trahison [2]

CHAPITRE IV —*Des Capitulations*

Art 35

Les capitulations arrêtées entre les parties contractantes doivent tenir compte des règles de l'honneur militaire

Une fois fixées, elles doivent être scrupuleusement observées par les deux parties

openly To this class likewise belong persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory

Art 30

A spy taken in the act shall not be punished without previous trial

Art 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts as a spy

CHAPTER III —*Flags of Truce* [1]

Art 32

A person is regarded as bearing a flag of truce[1] who has been authorized by one of the belligerents to enter into communication with the other, and who presents himself under a white flag He is entitled to inviolability, as also the trumpeter, bugler or drummer, the flag bearer and the interpreter who might accompany him

Art 33

The commander to whom a flag of truce is sent is not obliged in every case to receive it

He may take all steps necessary in order to prevent the envoy[1] from taking advantage of his mission to obtain information

In case of abuse, he has the right temporarily to detain the envoy [1]

Art 34

The envoy[1] loses his rights of inviolability if it is proved in a positive and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery[2]

CHAPTER IV —*Capitulations.*

Art 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honour

Once settled, they must be scrupulously observed by both parties

[1] It would be preferable to use the word "parlementaire" It will be observed in this chapter of The Hague Rules that if it is not used "*parlementaire*" has to be translated in three different ways, as "flags of truce," "a person bearing a flag of truce," and the "envoy" See para. 224, footnote

[2] "*Trahison*" should here be translated "treason" See para. 251, footnote.

Ch. XIV

CHAPITRE V —*De l'Armistice*

Art 36

L'armistice suspend les opérations de guerre par un accord mutuel des parties belligérantes Si la durée n'en est pas determinee, les parties belligérantes peuvent reprendre en tout temps les operations, pourvu toutefois que l'ennemi soit averti en temps convenu, conformément aux conditions de l'armistice

Art 37

L'armistice peut etre general ou local Le premier suspend partout les opérations de guerre des États belligérants le second, seulement entre certaines fractions des armées belligérantes et dans un rayon déterminé

Art 38

L'armistice doit etre notifie officiellement et en temps utile aux autorités competentes et aux troupes Les hostilités sont suspendues immediatement apres la notification ou au terme fixé

Art 39

Il dépend des parties contractantes de fixer, dans les clauses de l'armistice, les rapports qui pourraient avoir lieu, sur le théâtre de la guerre, avec les populations et entre elles

Art 40

Toute violation grave de l'armistice, par l'une des parties, donne à l'autre le droit de le dénoncer et meme, en cas d'urgence, de reprendre immédiatement les hostilités

Art 41

La violation des clauses de l'armistice, par des particuliers agissant de leur propre initiative, donne droit seulement a reclamer la punition des coupables et, s'il y a lieu, une indemnité pour les pertes éprouvees

SECTION III —DE L'AUTORITÉ MILITAIRE SUR LE TERRITOIRE DE L'ETAT ENNEMI

Art 42

Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie.

CHAPTER V —*Armistices*

Art 36

An armistice suspends military operations by mutual agreement between the belligerent parties If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice

Art 37

An armistice may be general or local The first suspends the entire military operations of the belligerent States, the second between certain portions of the belligerent armies only and within a fixed zone

Art 38

An armistice must be notified officially and in good time to the competent authorities and to the troops Hostilities are suspended immediately after the notification, or at the time fixed

Art 39

It rests with the contracting parties to settle, in the terms of the armistice, the relations which may be allowed in the theatre of war with, and between, the civil populations

Art 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately

Art 41

A violation of the terms of the armistice by individuals acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if there is occasion for it, compensation for the losses sustained

SECTION III —MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE.

Art 42

Territory is considered occupied when actually placed under the authority of the hostile army.

L'occupation ne s'étend qu'aux territoires[1] où cette autorité est établie et en mesure de s'exercer

Art 43

L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics en respectant, sauf empêchement absolu, les lois en vigueur dans le pays

Art 44 [2]

Il est interdit à un belligérant de forcer la population d'un territoire occupé à donner des renseignements sur l'armée de l'autre belligérant ou sur ses moyens de défense

Art 45

Il est interdit de contraindre la population d'un territoire occupé à prêter serment à la Puissance ennemie

Art 46

L'honneur et les droits de la famille, la vie des individus, et la propriété privée, ainsi que les convictions religieuses et l'exercice des cultes, doivent être respectés

La propriété privée ne peut pas être confisquée

Art 47

Le pillage est formellement interdit

Art 48

Si l'occupant prélève, dans le territoire occupé, les impôts, droits, et péages établis au profit de l'État, il le fera, autant que possible, d'après les règles de l'assiette et de la répartition en vigueur, et il en résultera pour lui l'obligation de pourvoir aux frais de l'administration du territoire occupé dans la mesure où le Gouvernement légal y était tenu

Art 49

Si, en dehors des impôts visés à l'Article précédent, l'occupant prélève d'autres contributions en argent dans le territoire occupé, ce ne pourra être que pour les besoins de l'armée ou de l'administration de ce territoire

The occupation extends only to the territory[1] where such authority has been established and is in a position to assert itself

Art 43

The authority of the power of the State having passed *de facto* into the hands of the occupant, the latter shall do all in his power to restore, and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the country

Art 44 [2]

A belligerent is forbidden to compel the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence

Art 45

It is forbidden to force the inhabitants of occupied territory to swear allegiance to the hostile Power

Art 46

Family honour and rights, individual life, and private property, as well as religious convictions and worship, must be respected

Private property may not be confiscated

Art 47

Pillage is expressly forbidden.

Art 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls payable to the State, he shall do so, as far as is possible, in accordance with the legal basis and assessment in force at the time, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the national Government had been so bound

Art 49

If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, they shall only be applied to the needs of the army or of the administration of the territory in question

[1] The translation should be "territories."
[2] This article has not been accepted by Germany, Japan and Russia

Ch XIV

Art 50

Aucune peine collective, pécuniaire ou autre ne pourra être édictée contre les populations à raison de faits d'individuels dont elles ne pourront pas être considérées comme solidairement responsables

Art. 50.

No collective penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible

Art 51.

Aucune contribution ne sera perçue qu'en vertu d'un ordre écrit et sous la responsabilité d'un général en chef

Il ne sera procédé, autant que possible, à cette perception que d'après les règles de l'assiette et de la répartition des impôts en vigueur

Pour toute contribution, un reçu sera délivré aux contribuables

Art 51

No contribution shall be collected except under a written order, and on the responsibility of a General in command

The collection of the said contribution shall only be effected in accordance, as far as is possible, with the legal basis and assessment of taxes in force at the time

For every contribution a receipt shall be given to the contributories

Art 52

Des réquisitions en nature et des services ne pourront être réclamés des communes ou des habitants que pour les besoins de l'armée d'occupation Ils seront en rapport avec les ressources du pays et de telle nature qu'ils n'impliquent pas pour les populations l'obligation de prendre part aux opérations de la guerre contre leur patrie

Ces réquisitions et ces services ne seront réclamés qu'avec l'autorisation du commandant dans la localité occupée

Les prestations en nature seront autant que possible, payées au comptant, sinon, elles seront constatées par des reçus, et le paiement des sommes dues sera effectué le plus tôt possible

Art 52

Requisitions in kind and services shall not be demanded from local authorities or inhabitants except for the needs of the army of occupation They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied

Contributions in kind shall as far as possible be paid for in ready money, if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible

Art 53

L'armée qui occupe un territoire ne pourra saisir que le numéraire, les fonds, et les valeurs exigibles appartenant en propre à l'État, les dépôts d'armes, moyens de transport, magasins, et approvisionnements et, en général, toute propriété mobilière de l'État de nature à servir aux opérations de la guerre

Tous les moyens affectés sur terre, sur mer, et dans les airs à la transmission des nouvelles, au transport des personnes ou des choses, en dehors des cas régis par le droit maritime, les dépôts d'armes et, en général, toute espèce de munitions de guerre peuvent être saisis, même s'ils appartiennent à des personnes privées, mais devront être restitués et les indemnités seront réglées à la paix

Art. 53.

An army of occupation shall only take possession of cash, funds, and realizable securities which are strictly the property of the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations

Except in cases governed by naval law, all appliances adapted for the transmission of news, or for the transport of persons or goods, whether on land, at sea, or in the air, depots of arms, and, in general, all kinds of war material may be seized, even if they belong to private individuals, but they must be restored at the conclusion of peace, and indemnities must be paid for them

Art 54

Les cables sous marins reliant un territoire occupé à un territoire neutre ne seront saisis ou detruits que dans le cas d'une necessité absolue Ils devront également être restitués et les indemnités seront réglées à la paix

Art 54

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity They also must be restored at the conclusion of peace, and indemnities paid for them

Art 55

L'État occupant ne se considerera que comme administrateur et usufruitier des edifices publics, immeubles, forets, et exploitations agricoles appartenant à l'État ennemi et se trouvant dans le pays occupé Il devra sauvegarder le fonds de ces propriétés et les administrer conformement aux règles de l'usufruit

Art 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, landed property, forests and agricultural undertakings belonging to the hostile State, and situated in the occupied country It must safeguard the capital of such properties, and administer them in accordance with the rules of usufruct

Art 56

Les biens des communes, ceux des établissements consacres aux cultes, à la charite et à l'instruction, aux arts et aux sciences, meme appartenant a l'Etat, seront traites comme la propriete privee

Toute saisie, destruction, ou degradation intentionnelle de semblables etablissements, de monuments historiques, d'œuvres d'art et de science, est interdite et doit être poursuivie

Art 56

The property of local authorities, as well as that of institutions dedicated to public worship, charity, education, and to science and art, even when State property, shall be treated as private property

Any seizure or destruction of, or wilful damage to institutions of this character, historic monuments and works of science and art, is forbidden, and should be made the subject of legal proceedings

This Convention was signed at the Hague by the Plenipotentiaries of 41 States

The Ratifications of the following States have up to the present been deposited —

Great Britain	Salvador	Portugal
Austria-Hungary	Sweden	Belgium
Bolivia	United States	France
Denmark	Guatemala	Luxemburg
Germany [1]	Panama	Norway
Haiti	Japan [1]	Russia [1]
Mexico	Roumania	Siam
Netherlands	Cuba	Switzerland.
		Brazil

The following Accessions have been notified —

Nicaragua	China	Poland
Liberia	Finland	

1 With reserve of art 44 of the Regulations annexed to the Convention.

APPENDIX 7

INTERNATIONAL CONVENTION CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS AND PERSONS IN WAR ON LAND

Signed at The Hague, 18th October, 1907

(Not yet ratified by Great Britain[1])

Convention concernant les Droits et les Devoirs des Puissances et des Personnes Neutres en cas de Guerre sur Terre	(Translation) *Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land*
Sa Majesté le Roi du Royaume-Uni de Grande Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes,	His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India,

(Here follows a list of the Sovereigns and heads of States who sent Plenipotentiaries)

En vue de mieux préciser les droits et les devoirs des Puissances neutres en cas de guerre sur terre et de regler la situation des belligérants refugies en territiore neutre,	With the view of laying down more clearly the rights and duties of neutral Powers in case of war on land and of regulating the position of belligerents who have taken refuge in neutral territory,
Desirant également définir la qualite de neutre en attendant qu'il soit possible de régler dans son ensemble la situation des particuliers neutres dans leurs rapports avec les belligérants,	Being likewise desirous of defining the meaning of the term "neutral," pending the possibility of settling, in its entirety, the position of neutral persons in their relations with belligerents,
Ont résolu de conclure une Convention à cet effet et ont, en conséquence, nomme pour leurs Plénipotentiaires, savoir	Have resolved to conclude a Convention to this effect, and have, in consequence, appointed as their Plenipotentiaries, that is to say

(Here follow the names of the Plenipotentiaries)

Lesquels, après avoir deposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes —	Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions —
CHAPITRE I — *Des Droits et des Devoirs des Puissances Neutres*	CHAPTER I — *The Rights and Duties of Neutral Powers*
Art 1	Art 1
Le territoire des Puissances neutres est inviolable	The territory of neutral Powers is inviolable
Art 2	Art 2
Il est interdit aux belligérants de faire passer à travers le territoire d'une Puissance neutre des troupes ou des convois, soit de munitions, soit d'approvisionnements	Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power
Art 3	Art 3
Il est également interdit aux belligérants	Belligerents are likewise forbidden
(*a*) D'installer sur le territoire d'une Puissance neutre une station radiotélégraphique ou tout appareil destiné	(*a*) Erect on the territory of a neutral Power a wireless telegraphy station or any apparatus for the purpose of

[1] See para 466, footnote

à servir comme moyen de communication avec des forces belligérantes sur terre ou sur mer,

(*b*) D'utiliser toute installation de ce genre établie par eux avant la guerre sur le territoire de la Puissance neutre dans un but exclusivement militaire, et qui n'a pas été ouverte au service de la correspondance publique

communicating with belligerent forces on land or sea,

(*b*) Use any installation of this kind established by them for purely military purposes on the territory of a neutral Power before the war, and not previously opened for the service of public messages

Art 4

Des corps de combattants ne peuvent être formés, ni des bureaux d'enrolement ouverts, sur le territoire d'une Puissance neutre au profit des belligerants

Art 4

Corps of combatants must not be formed, nor recruiting agencies opened, on the territory of a neutral Power, to assist the belligerents

Art 5

Une Puissance neutre ne doit tolérer sur son territoire aucun des actes visés par les Articles 2 à 4

Elle n'est tenue de punir des actes contraires à la neutralité que si ces actes ont été commis sur son propre territoire

Art 5

A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory

It is not called upon to punish acts in violation of neutrality unless such acts have been committed on its own territory

Art 6

La responsabilité d'une Puissance neutre n'est pas engagée par le fait que des individus passent isolément la frontière pour se mettre au service de l'une des belligérants

Art 6

The responsibility of a neutral Power is not involved by the mere fact that persons cross the frontier individually in order to offer their services to one of the belligerents

Art 7

Une Puissance neutre n'est pas tenue d'empêcher l'exportation ou le transit, pour le compte de l'un ou de l'autre des belligérants, d'armes, de munitions, et, en général, de tout ce qui peut être utile à une armée ou à une flotte

Art 7

A neutral Power is not bound to prevent the export or transit, for either belligerent, of arms, munitions of war, or, in general, of anything which could be of use to an army or fleet

Art 8

Une Puissance neutre n'est pas tenue d'interdire ou de restreindre l'usage, pour les belligérants, des câbles télégraphiques ou téléphoniques, ainsi que des appareils de télégraphie sans fil, qui sont, soit sa propriété soit celle de Compagnies ou de particuliers

Art 8

A neutral Power is not bound to forbid or restrict the use on behalf of belligerents of telegraph or telephone cables, or of wireless telegraphy apparatus belonging to it or to Companies or to private individuals

Art 9

Toutes mesures restrictives ou prohibitives prises par une Puissance neutre à l'égard des matières visées par les Articles 7 et 8 devront être uniformement appliquées par elle aux belligérants

La Puissance neutre veillera au respect de la même obligation par les Compagnies ou particuliers propriétaires de câbles télégraphiques ou téléphoniques ou d'appareils de télégraphie sans fil.

Art 9

A neutral Power must apply impartially to the belligerents every restriction or prohibition which it may enact in regard to the matters referred to in Articles 7 and 8

The neutral Power shall see that the above obligation is observed by Companies or private owners of telegraph or telephone cables or wireless telegraphy apparatus.

Art 10

Ne peut être considéré comme un acte hostile le fait, par une Puissance neutre, de repousser, meme par la force, les atteintes à sa neutralité

Art 10

The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act

CHAPITRE II — *Des Belligérants internés et des Blessés soignés chez les Neutres*

CHAPTER II —*Internment of Belligerents and Care of the Wounded in Neutral Territory*

Art 11

La Puissance neutre qui reçoit sur son territoire des troupes appartenant aux armées belligérantes, les internera, autant que possible, loin du théâtre de la guerre

Elle pourra les garder dans des camps, et même les enfermer dans des forteresses ou dans des lieux appropriés à cet effet

Elle décidera si les officiers peuvent être laissés libres en prenant l'engagement sur parole de ne pas quitter le territoire neutre sans autorisation

Art 11

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war

It may keep them in camps and may even confine them in fortresses or in places set apart for the purpose

It shall decide whether officers may be left free on giving their parole not to leave the neutral territory without permission

Art 12

A défaut de convention spéciale, la Puissance neutre fournira aux internés les vivres, les habillements, et les secours commandés par l'humanité

Bonification sera faite, à la paix, des frais occasionnés par l'internement

Art 12

In default of special Agreement, the neutral Power shall supply the interned with the food, clothing, and relief which the dictates of humanity prescribe

At the conclusion of peace the expenses caused by the internment shall be made good

Art 13

La Puissance neutre qui reçoit des prisonniers de guerre évadés les laissera en liberté Si elle tolère leur séjour sur son territoire, elle peut leur assigner une résidence

La même disposition est applicable aux prisonniers de guerre amenés par des troupes se réfugiant sur le territoire de la Puissance neutre

Art 13

A neutral Power which receives escaped prisoners of war shall leave them at liberty If it allows them to remain in its territory it may assign them a place of residence

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power

Art 14

Une Puissance neutre pourra autoriser le passage sur[1] son territoire des blessés ou malades appartenant aux armées belligérantes, sous la réserve que les trains qui les amèneront ne transporteront ni personnel, ni matériel de guerre En pareil cas, la Puissance neutre est tenue de prendre les mesures de sûreté et de contrôle nécessaires à cet effet

Les blessés ou malades amenés dans ces conditions sur le territoire neutre par un des belligérants, et qui appartiendraient à la partie adverse, devront être gardés par la

Art 14

A neutral Power may authorize the passage into[1] its territory of the sick and wounded belonging to the belligerent armies on condition that the trains or other methods of transport by which they are conveyed shall carry neither combatants nor war material In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose

The sick and wounded of one belligerent brought under these conditions into neutral territory by the other belligerent must be so kept by the neutral Power as to ensure their

[1] See para 493, footnote, where it is suggested that "through" is a better translation than "into"

Puissance neutre de manière qu'ils ne puissent de nouveau prendre part aux operations de la guerre Cette Puissance aura les memes devoirs quant aux blessés ou malades de l'autre armée qui lui seraient confiés

taking no further part in the military operations The same duty shall devolve on the neutral State with regard to the sick and wounded of the other army who may be committed to its care.

Art 15

La Convention de Genève s'applique aux malades et aux blessés internes sur territoire neutre

Art 15

The Geneva Convention applies to the sick and wounded who are interned in neutral territory

CHAPITRE III —*Des personnes Neutres*

CHAPTER III —*Neutral Persons*

Art 16 [1]

Sont considerés comme neutres les nationaux d'un État qui ne prend pas part à la guerre

Art 16 [1]

The subjects or citizens of a State which is not taking part in the war are deemed neutrals

Art 17 [1]

Un neutre ne peut pas se prevaloir de sa neutralite

(*a*) S'il commet des actes hostiles contre un belligérant,

(*b*) S'il commet des actes en faveur d'un belligérant, notamment s'il prend volontairement du service dans les rangs de la force armee de l'une des parties

Art 17 [1]

A neutral cannot claim the benefit of his neutrality

(*a*) If he commits hostile acts against a belligerent,

(*b*) If he commits acts in favour of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties

En pareil cas, le neutre ne sera pas traité plus rigoureusement par le belligerant contre lequel il s'est départi de la neutralité que ne pourrait l'être, à raison du meme fait, un national de l'autre État belligérant

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a subject or citizen of the other belligerent State could be for the same act

Art 18.[1]

Ne seront pas considérés comme actes commis en faveur d'un des belligérants, dans le sens de l'Article 17, lettre (*b*)

(*a*) Les fournitures faites ou les emprunts consentis à l'un des belligérants, pourvu que le fournisseur ou le prêteur n'habite ni le territoire de l'autre partie, ni le territoire occupe par elle, et que les fournitures ne proviennent pas de ces territoires,

(*b*) Les services rendus en matière de police ou d'administration civile

Art 18 [1]

The following shall not be considered as acts committed in favour of one belligerent within the meaning of Article 17, letter (*b*)

(*a*) The furnishing of supplies or the making of loans to one of the belligerents, provided that the person so doing neither lives in the territory of the other party nor in territory occupied by it, and that the supplies do not come from such territory,

(*b*) Services rendered in matters of police or civil administration

[1] Great Britain signed this Convention under reserve of arts 16,17 and 18 See para 466 note

Ch. XIV

CHAPITRE IV —*Du Matériel des Chemins de Fer*

Art 19

Le matériel des chemins de fer provenant du territoire de Puissances neutres, qu'il appartienne à ces Puissances ou à des sociétés ou personnes privées, et reconnaissable comme tel, ne pourra être réquisitionné et utilisé par un belligerant que dans le cas et la mesure ou l'exige une impérieuse nécessité Il sera renvoyé aussitot que possible dans le pays d'origine

La Puissance neutre pourra de même, en cas de nécessité, retenir et utiliser, jusqu'à due concurrence, le matériel provenant du territoire de la Puissance belligerante

Une indemnité sera payée de part et d'autre en proportion du matériel utilisé et de la durée de l'utilisation

CHAPTER IV —*Railway Material*

Art 19

Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of Companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except in so far as is absolutely necessary It shall be sent back as soon as possible to the country of origin

A neutral Power may likewise, in case of necessity, retain and utilize to a corresponding extent railway material coming from the territory of the belligerent Power

Compensation shall be paid on either side in proportion to the material used, and to the period of usage

CHAPITRE V —*Dispositions Finales*

Art 20

Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances Contractantes et seulement si les belligerants sont tous parties à la Convention

CHAPTER V —*Final Provisions*

Art 20

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention

Art 21

La présente Convention sera ratifiée aussitot que possible

Les ratifications seront déposées à La Haye

Le premier dépot de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays Bas

Les depots ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention Dans les cas visés par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

The present Convention shall be ratified as soon as possible

The ratifications shall be deposited at The Hague

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification shall be immediately sent by the Netherland Government through the diplomatic channel, to the Powers invited to the Second Peace Conference as well as to the other Powers which have acceded to the Convention The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification

Art 22

Les Puissances non Signataires sont admises à adhérer à la présente Convention

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhesion, en indiquant la date à laquelle il a reçu la notification

Art 23

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépot de ratifications, soixante jours après la date du procès-verbal de ce depot et pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhesion aura été reçue par le Gouvernement des Pays Bas

Art 24

S'il arrivait qu'une des Puissances Contractantes voulut dénoncer la présente Convention la dénonciation sera notifiée par écrit au Gouvernement des Pays Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances, en leur faisant savoir la date à laquelle il l'a reçue

La denonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays Bas

Art 25

Un registre tenu par le Ministère des Affaires Étrangères des Pays Bas indiquera la date du depot des ratifications effectué en vertu de l'Article 21, alineas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhesion (Article 22, alinéa 2) ou de denonciation (Article 24, alinéa 1)

Chaque Puissance Contractante est admise a prendre connaissance de ce registre et à en demander des extraits certifies conformes

En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs Signatures

Art 22.

Non-Signatory Powers may accede to the present Convention

A Power which desires to accede notifies it intention in writing to the Netherland Government forwarding to it the act of accession, which shall be deposited in the archives of the said Government

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification

Art 23

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government

Art 24

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government

Art 25

A register kept by the Netherland Ministry of Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 21, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 22, paragraph 2) or of denunciation (Article 24, paragraph 1) have been received

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention

Ch XIV — Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference

This Convention was signed at The Hague by the Plenipotentiaries of forty-two States

The Ratifications of the following States have up to the present been deposited —

Austria Hungary	Norway	Panama
Belgium	Russia	Roumania
Bolivia	Salvador	Cuba
Denmark	Siam	France
Germany	Sweden	Luxemburg
Haiti	Switzerland	Guatemala
Mexico	United States	Portugal
Netherlands	Japan	Spain

The following Accessions have been notified —

China	Liberia	Poland
Nicaragua	Finland	

APPENDIX 8

International Convention Respecting Bombardments by Naval Forces in Time of War

Signed at The Hague, 18th October, 1907

[*British Ratification deposited at The Hague, 27th November 1909*]

(Translation)

Convention concernant le Bombardement par des Forces Navales en Temps de Guerre

Convention respecting Bombardments by Naval Forces in Time of War

Sa Majesté le Roi du Royaume-Uni de Grande Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes,

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India,

[Here follows the list of other Sovereigns and heads of States who sent Plenipotentiaries]

Animés du désir de réaliser le vœu exprimé par la Première Conférence de la Paix, concernant le bombardement, par des forces navales, de ports, villes, et villages non défendus,

Animated by the desire to realize the wish expressed by the First Peace Conference respecting the bombardment by naval forces of undefended ports, towns, and villages,

Considérant qu'il importe de soumettre les bombardements par des forces navales à des dispositions générales qui garantissent les droits des habitants et assurent la conservation des principaux édifices, en étendant à cette opération de guerre, dans la mesure du possible, les principes du Règlement de 1899 sur les Lois et Coutumes de la Guerre sur Terre,

Whereas it is expedient that bombardments by naval forces should be subject to rules of general application to safeguard the rights of the inhabitants and to assure the preservation of the more important buildings, by applying as far as possible to this operation of war the principles of the Regulations of 1899 respecting the Laws and Customs of Land War, and

S'inspirant ainsi du desir de servir les intérêts de l'humanité et de diminuer les rigueurs et les desastres de la guerre,

Ont résolu de conclure une Convention à cet effet, et ont, en conséquence, nomme pour leurs Plénipotentiaires, savoir

Actuated, accordingly, by the desire to serve the interests of humanity and to diminish the severity and disasters of war,

Have resolved to conclude a Convention to this effect, and have, for this purpose, appointed as their Plenipotentiaries, that is to say

[Here follow the names of the Plenipotentiaries]

Lequels, après avoir déposé leurs pleins pouvoirs, trouves en bonne et due forme, sont convenus des dispositions suivantes —

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions —

CHAPITRE I —*Du Bombardement des Ports, Villes, Villages, Habitations, ou Bâtiments non défendus*

CHAPTER I —*Bombardment of Undefended Ports, Towns, Villages, Dwellings, or Buildings*

Art 1 [1]

Il est interdit de bombarder, par des forces navales, des ports, villes, villages, habitations, ou bâtiments qui ne sont pas défendus

Une localite ne peut pas être bombardee à raison du seul fait que, devant son port, se trouvent mouillées des mines sous-marines automatiques de contact

Art 1 [1]

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden

A place may not be bombarded solely on the ground that automatic submarine contact mines are anchored off the harbour

Art 2

Toutefois, ne sont pas compris dans cette interdiction les ouvrages militaires, établissements militaires ou navals, dépots d'armes ou de materiel de guerre, ateliers et installations propres à être utilises pour les besoins de la flotte ou de l'armee ennemie, et les navires de guerre se trouvant dans le port Le commandant d'une force navale pourra, après sommation avec delai raisonnable, les detruire par le canon, si tout autre moyen est impossible et lorsque les autorites locales n'auront pas procede à cette destruction dans le délai fixé

Il n'encourt aucune responsabilité dans ce cas pour les dommages involontaires qui pourraient être occasionnés par le bombardement

Si des nécessités militaires, exigeant une action immediate, ne permettaient pas d'accorder de délai, il reste entendu que l'interdiction de bombarder la ville non defendue subsiste comme dans le cas enoncé dans l'alinéa 1er, et que le commandant prendra toutes les dispositions voulues pour qu'il en resulte pour cette ville le moins d'inconvénients possible

Art 2

Military works, military or naval establishments, depots of arms or war material, workshops or plant which could be utilized for the needs of the hostile fleet or army, and ships of war in the harbour, are not, however, included in this prohibition The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable interval of time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed

The Commander incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances

If for military reasons immediate action is necessary, and no delay can be allowed to the enemy, it is nevertheless understood that the prohibition to bombard the undefended town holds good, as in the case given in the first paragraph, and that the commander shall take all due measures in order that the town may suffer as little harm as possible

Art 3

Il peut, après notification expresse, être procédé au bombardement des ports, villes, villages, habitations, ou bâtiments non défendus, si les

Art 3

After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the

[1] The 2nd paragraph of this article has not been accepted by Great Britain, France, Japan and Germany

Ch XIV autorités locales, mises en demeure par une sommation formelle, refusent d'obtempérer à des réquisitions de vivres ou d'approvisionnements nécessaires au besoin présent de la force navale qui se trouve devant la localité

Ces réquisitions seront en rapport avec les ressources de la localité Elles ne seront réclamées qu'avec l'autorisation du commandant de la dite force navale, et elles seront, autant que possible, payées au comptant, sinon elles seront constatées par des reçus

local authorities, on a formal summons being made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question

Such requisitions shall be proportional to the resources of the place They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in ready money, if not, receipts shall be given

Art 4

Est interdit le bombardement, pour le non paiement des contributions en argent, des ports, villes, villages, habitations, ou bâtiments non défendus

Art 4

The bombardment of undefended ports, towns, villages, dwellings, or buildings, on account of failure to pay money contributions, is forbidden

CHAPITRE II —*Dispositions Générales*

CHAPTER II —*General Provisions.*

Art 5

Dans le bombardement par des forces navales, toutes les mesures nécessaires doivent être prises par le commandant pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance, les monuments historiques, les hôpitaux et les lieux de rassemblement de malades ou de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire

Le devoir des habitants est de désigner ces monuments, ces édifices, ou lieux de rassemblement, par des signes visibles, qui consisteront en grands panneaux rectangulaires rigides, partagés, suivant une des diagonales, en deux triangles de couleur, noire en haut et blanche en bas

Art 5

In bombardments by naval forces all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, provided that they are not used at the time for military purposes

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two painted triangular portions, the upper portion black, the lower portion white

Art 6

Sauf le cas où les exigences militaires ne le permettraient pas, le commandant de la force navale assaillante doit, avant d'entreprendre le bombardement, faire tout ce qui dépend de lui pour avertir les autorités

Art 6

Unless military exigencies render it impossible, the officer in command of an attacking naval force must, before commencing the bombardment, do all in his power to warn the authorities

Art 7

Il est interdit de livrer au pillage une ville ou localité même prise d'assaut

Art 7

The giving over to pillage of a town or place, even when taken by assault, is forbidden.

CHAPITRE III —*Dispositions Finales*

Art 8

Les dispositions de la presente Convention ne sont applicables qu'entre les Puissances Contractantes et seulement si les belligerants sont tous parties à la Convention

Art 9

La presente Convention sera ratifiee aussitot que possible

Les ratifications seront deposées à La Haye

Le premier depôt de ratifications sera constaté par un procès verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas

Les depôts ulterieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays Bas et accompagnee de l'instrument de ratification

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa precédent, ainsi que des instruments de ratification, sera immediatement remise, par les soins du Gouvernement des Pays Bas et par la voie diplomatique, aux Puissances conviees à la Deuxième Conference de la Paix, ainsi qu'aux autres Puissances qui auront adheré à la Convention Dans les cas visés par l'alinéa precedent, le dit Gouvernement leur fera connaitre en même temps la date à laquelle il a reçu la notification

Art 10

Les Puissances non-Signataires sont admises à adhérer à la présente Convention

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement

Ce Gouvernement transmettra immediatement à toutes les autres Puissances copie certifiee conforme de la notification ainsi que de l'acte d'adhesion, en indiquant la date à laquelle il a reçu la notification

Art 11

La présente Convention produira effet pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui ad

CHAPTER III —*Final Provisions* **Ch XIV**

Art 8

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention

Art 9

The present Convention shall be ratified as soon as possible

The ratifications shall be deposited at The Hague

The first deposit of ratification shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification

Art 10

Non-Signatory Powers may accede to the present Convention

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification, as well as of the act of accession, mentioning the date on which it received the notification

Art 11

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subse-

héreront, soixante jours apres que la notification de leur ratification ou de leur adhesion aura été reçue par le Gouvernement des Pays-Bas

Art 12

S'il arrivait qu'une des Puissances Contractantes voulût denoncer la presente Convention, la denonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immediatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue

La denonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiee et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas

Art 13

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépot de ratifications effectué en vertu de l'Article 9, alineas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 10, alinéa 2) ou de denonciation (Article 12, alinea 1)

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes

En foi de quoi les Plénipotentiaires ont revetu la presente Convention de leurs signatures

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays Bas, et dont des copies, certifiees conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix

quently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government

Art 12

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government

Art 13

A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 9, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 10, paragraph 2) or of denunciation (Article 12, paragraph 1) have been received

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference

This Convention was signed at The Hague by the Plenipotentiaries of forty-one States

The Ratifications of the following States have, up to the present, been deposited —

Great Britain.[1]	Sweden	Guatemala
Germany [1]	Bolivia	Portugal
United States	Salvador	France [1]
Austria-Hungary	Haiti	Luxemburg
Denmark	Panama	Belgium
Mexico	Japan[1]	Norway
Netherlands	Roumania	Siam
Russia	Cuba	Switzerland
		Brazil

The following Accessions have been notified

China	Nicaragua	Spain
Liberia	Finland	

[1] Under reserve of Article 1, para 2

APPENDIX 9

INTERNATIONAL DECLARATION PROHIBITING THE DISCHARGE OF PROJECTILES AND EXPLOSIVES FROM BALLOONS

Signed at The Hague, 18th October, 1907.

(British Ratification deposited at The Hague, 27th November, 1909)

Déclaration relative à l'Interdiction de lancer des Projectiles et des Explosifs du Haut de Ballons

LES Soussignés, Plenipotentiaires des Puissances conviées à la Deuxième Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Decembre), 1868, et désirant renouveler la Declaration de la Haye du 29 Juillet, 1899, arrivée à expiration,

Déclarent

Les Puissances Contractantes consentent, pour une période allant jusqu'à la fin de la Troisième Conférence de la Paix, à l'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux

La presente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles

Elle cessera d'être obligatoire du moment ou, dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligerants

La presente Declaration sera ratifiée dans le plus bref delai possible

Les ratifications seront déposées à La Haye

Il sera dressé du depot des ratifications un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes

Les Puissances non-Signataires pourront adherer à la présente Déclaration Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets

(Translation)

Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons

THE Undersigned, Plenipotentiaries of the Powers invited to the Second International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St Petersburg of the 29th November (11th December), 1868, and being desirous of renewing the Declaration of The Hague of the 29th July, 1899, which has now expired,

Declare

The Contracting Powers agreed to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature

The present Declaration is only binding on the Contracting Powers in case of war between two or more of them

It shall cease to be binding from the moment when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power

The present Declaration shall be ratified as soon as possible

The ratifications shall be deposited at The Hague

A Protocol shall be drawn up recording the receipt of the ratifications, of which a duly certified copy shall be sent, through the diplomatic channel, to all the Contracting Powers

Non-Signatory Powers may accede to the present Declaration To do so, they must make known their accession to the Contracting Powers by means of a written notification, addressed to the Netherland Government, and communicated by it to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall only operate on the expiry

Ch XIV — qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée

En foi de quoi les Plénipotentiaires ont revêtu la présente Déclaration de leurs signatures

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes

of one year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers

This denunciation shall only operate in respect of the denouncing Power

In faith whereof the Plenipotentiaries have appended their signatures to the present Declaration

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Contracting Powers

This Convention was signed at The Hague by the Plenipotentiaries of 27 States [1]

The Ratifications of the following States have up to the present been deposited —

Great Britain	Salvador	Luxemburg
United States	Haiti	Norway
China	Panama	Siam
Netherlands	Portugal	Switzerland
Bolivia	Belgium	Brazil

The following Accessions have been notified —

Nicaragua	Finland	Liberia

APPENDIX 10

Form of Armistice (No 1) [2]

Armistice between two opposing Forces

A B authorised by C D Commander in Chief His Britannic Majesty's Forces in and L F authorised by F H Commander-in-Chief the troops in agree to the following Articles —

Art 1 On publication of this armistice, hostilities shall cease between the British and forces at all points along the frontier of between

and

Art 2 The armistice shall continue until noon on the day of and until such further time as is hereinafter mentioned

Art 3 Either side may at any time on or after the said day of give six days' notice of its intention to determine the armistice and the armistice shall be determined at the expiration of such six days Notice shall be given by writing, stating the intention to determine the armistice, and sent from the headquarters of one army to the headquarters of the other army In reckoning time for the purpose of the said six days' notice, the day on which the notice is given, at whatever hour the same may be given, shall be reckoned as an entire day, and the armistice shall expire at midnight on the fifth day succeeding the day on which the notice is given

Art 4 The lines of demarcation shown on the attached map shall be strictly adhered to during the armistice The territory lying between the two lines of demarcation shall be strictly neutral, and any advance into it by any member

[1] These included those of Great Britain, the United States, and Austria-Hungary, and Turkey Those of Chile, Denmark, France, Germany, Italy, Japan, Roumania, Russia, Servia, Spain and Sweden did not sign it

[2] This and the two following forms are a revision of those given by Thring

of either army is prohibited except for the purposes of communication between the two armies Neither army shall extend its line in a or direction beyond the points shown as the extremities of their respective lines

Art 5 Subject to the restrictions mentioned in the 4th art as respects making an advance into the neutral territory, either army may take measures to strengthen its position, and may receive reinforcements and stores of warlike and other material, and may do any other act not being an act of direct hostility

Art 6 During the two days following the day on which this armistice is ratified, burial parties from both armies shall be permitted to sit the field of battle of the instant, for the purpose of burying the dead

Art 7 The main road from A to B via C will be used for communication between the Commanders in Chief of the two armies

Art 8 During the continuance of the armistice, the peaceful inhabitants of the country shall be allowed to pursue their occupations, and to buy from or sell to either army provisions or goods, but any measures consistent with the observance of the articles of the armistice in relation to the neutral territory may be taken by either army to prevent inhabitants, after entering the lines of or obtaining information respecting one army from passing or carrying information to the other army

Art 9 This armistice shall come into force immediately on its ratification by the Commanders in Chief of the two armies, and officers shall be despatched with all speed, from the headquarters of each army, to give notice of the armistice at all points along the line

APPENDIX 11

Form of Armistice (No 2)

Between Besieging Force and Garrison

A B , General, Commander in-Chief of His Britannic Majesty's Force now in and C D General, Commander in-Chief of the Garrison of agree to the following Articles —

Art 1 An armistice between the British troops investing and the troops forming the garrison of shall begin at noon on the 15th instant, and shall end at noon on the 25th instant

Art 2 White flags shall be hoisted simultaneously at the beginning of the armistice, the one at within the British lines, and the other at Fort

The flags shall be kept flying during the continuance of the armistice, and shall be lowered simultaneously at its conclusion

Art 3 Provisions to the extent of rations shall be supplied daily for the use of the garrison by the besiegers on payment of such sums as may be agreed upon as the value thereof by commissioners to be appointed by the above named Commanders-in-Chief respectively The provisions shall be delivered to persons authorised to demand the same by the general commanding the garrison, at such times, and in such places in front of the British lines, as may be agreed upon by the above-named Commanders in Chief, and shall be conveyed to the garrison by the persons authorised as above stated

Art 4 Save in so far as is provided by art 3, or as may be agreed upon between the above named Commanders-in-Chief, it is agreed that the garrison shall not attempt to obtain succour, and that no communication whatever shall, during the armistice, take place between the garrison, whether friend or enemy, and a space of around the fortification shall be considered neutral ground, and no person whatever, whether he be a stranger or belonging to the garrison, or to the besieging army, shall be allowed to enter on such space without the permission of the above named Commanders-in Chief

Art 5 General , commanding the garrison, engages on behalf of the garrison not to repair the fortifications, or to undertake any new siege-works, or do any act or thing whatsoever calculated to place the garrison in a better position in regard to its defence and General , on behalf of the British troops, engages not to undertake any siege-works, or to make any hostile movement against the garrison, but it is understood that he is at liberty to obtain fresh supplies of provisions or reinforcements of troops

Ch. XIV

APPENDIX 12

FORM OF SUSPENSION OF ARMS FOR THE BURIAL OF THE DEAD, &c

General A B , commanding the British forces at and General C D , commanding the forces at agree as follows —

Art 1 A suspension of arms for the space of three hours, beginning at ten o'clock and ending at one o'clock on this day of is agreed to for the purpose of burying the dead and withdrawing the wounded

Art 2 The beginning of the suspension of arms shall be notified by two white flags hoisted simultaneously, the one within the British lines, and the other within lines The white flags shall continue flying during the suspension of arms, and such flags shall be lowered simultaneously as a signal of the conclusion of the suspension of arms

Art 3 All firing shall cease during the suspension of arms

Art 4 The British troops shall not, during the suspension of arms, advance beyond the line, and the troops shall not advance beyond the line The space between the two lines shall be open to all persons engaged in burying the dead, or in attending to the wounded, or on carrying away the dead or the wounded, but to no other persons

APPENDIX 13

ARMISTICE AGREED ON BY JAPAN AND RUSSIA AT PORTSMOUTH (U S A) ON 5TH SEPTEMBER, 1905 [1]

The undersigned plenipotentiaries of Japan and Russia, duly authorised to that effect by their respective governments, have agreed on the following terms of the armistice which will remain in force until the execution of the treaty of peace —

(1) A certain distance (zone of demarcation) shall be fixed to separate the front of the armies of the two Powers in Manchuria, and also in the Tumen region

(2) The naval force of one of the belligerents may not bombard the territory occupied or belonging to the other

(3) The taking of maritime prizes will not be interrupted by the armistice

(4) During the armistice, no reinforcements may be sent to the theatre of war Those who are on the way from Japan may not be sent north of Mukden and those on the way from Russia may not be sent south of Harbin

(5) The commanders of the military and naval forces will arrange the details of the armistice in accordance with the principles above enunciated

(6) The two Governments will issue the order to put this protocol into execution directly after the signature of the treaty of peace

Signed Witte Signed Komoura
Rosen Takahura

The peace was signed 5th September, 1905, at 3 50 p m

APPENDIX 14

PROTOCOL OF THE CONDITIONS OF THE ARMISTICE CONCLUDED IN MANCHURIA ON 13TH SEPTEMBER, 1905 [2]

Art 1 Fighting is suspended throughout the extent of Manchuria

Art 2 The space between the front lines of the Japanese and Russian armies which are indicated on the maps exchanged with the present protocol constitutes the neutral zone

Art 3 Every person having the least connection with either of the armies is forbidden to enter the neutral zone on any pretext whatsoever

Art 4 The road leading from Shuang-miao-tzu to Sha-ho-tzu is to be employed for communication between the two armies

[1] Translated from Ariga, 1908, p 548
[2] Translated from Ariga, 1908, p 553.

Art 5 The present protocol will come into force on the 16th (Russian style 3rd) September, 1905, at mid day, and will remain in force until the execution of the treaty of peace, signed at Portsmouth by the plenipotentiaries of the two Powers

The present protocol is signed by the representatives of the commanders-in-chief of the Japanese and Russian armies in Manchuria, in virtue of the full powers which have been given to them by the said commanders-in chief

Done on the road situated close to Sha ho tzu the 13th September, 1905, in two texts, Japanese and Russian, each party keeping a Japanese and a Russian text

Signed Fukushima,
Major-General, &c
Oranouski,
Major-General, &c

APPENDIX 15

JAPANESE PROJECT FOR THE ARMISTICE IN THE TUMEN REGION [1]

Art 1 The Japanese and Russian armies in the Tumen region will execute the armistice according to the stipulations of the present convention

Art 2 The Japanese army will canton south of the line The positions of the Russian army will be limited to the north of the line The region between these two lines will form the neutral zone

Art 3 No troops, patrols or men sent on reconnaissance, nor any individual belonging or attached to the army will be permitted to enter the neutral zone

Art 4 No preparations for attack or defence will be made near the line limiting the neutral zone The necessary preparations for cantoning the troops will not be considered as preparations for attack or defence

Art 5 No requisitions of coolies, horses or any other objects will be made in the neutral zone

Art 6 The Japanese and Russian armies in the Tumen region will both commence to evacuate their troops beyond the lines indicated in art 2 on the third day and must have completed the evacuation behind the lines by the seventh day from the signing of the present convention

Art 7 Once the convention is drawn up, the commanders of the Japanese and Russian armies will order the troops and the officials under their command to execute the armistice, in such a manner that the order may reach them as soon as possible They will at the same time notify the commanders of the land and sea forces

Art 8 This convention will come in force immediately it has been signed by the plenipotentiaries of the Japanese and Russian armies, it will lapse on the execution of the treaty of peace

Art 9 The present convention will be drawn up in two Japanese and two Russian texts, each army keeping a text in each language

(This project was not agreeable to the Russians and an armistice had not been concluded when the treaty of peace was ratified)

APPENDIX 16

SUSPENSION OF ARMS AT THE SIEGE OF BELFORT, 13TH FEBRUARY, 1871 [2]

It has been agreed by the undersigned —Captain Krafft of the Auxiliary Engineers, and Captain von Schultzendorf, General Staff of the besieging army, both furnished with full powers by Colonel Denfert-Rochereau, Commandant of Belfort, and by Lieutenant-General von Treskow, Commandant of the besieging corps

As follows —

(1) Lieutenant-General von Treskow will send a telegram to Versailles to acquaint the Imperial Chancellor Count Bismarck that Colonel Denfert Rochereau requires direct instructions from his government as regards the surrender of the fortress

[1] Translated from Ariga, 1908, p 560
[2] Translated from *La défense de Belfort*, pp 429–30.

Ch. XIV

(2) Colonel Denfert-Rochereau will send an officer to Bâle to await the telegraphic instructions from the French Government

(3) Until the return of this officer there will be a suspension of arms between the besieged and besiegers, beginning the 13th February at 11 p m Nevertheless the suspension of arms may be denounced at any moment twelve hours before the time intended for the resumption of hostilities

(4) During the suspension of arms the two parties shall remain in their present positions The limits thus traced shall not be crossed, and, moreover, there shall be no communication on the part of civilians between the fortress and the outside

(5) Colonel Denfert-Rochereau engages to inform Lieutenant General von Treskow with the least possible delay of the decision he makes after receiving the instructions of the French Government

The present convention has been made in duplicate original, one text in German and the other in French

Signed Krafft
Von Schultzendorf
16th February, 1871

APPENDIX 17

Terms of Armistice with Germany, 11th November, 1918

Between Marshal Foch, Commander in Chief of the Allied Armies, acting in the name of the Allied and Associated Powers, with Admiral Wemyss, First Sea Lord, on the one hand, and

Herr Erzberger, Secretary of State, President of the German Delegation,

Count von Oberndorff, Envoy Extraordinary and Minister Plenipotentiary,

Major General von Winterfeldt,

Captain Vanselow (German Navy),

duly empowered and acting with the concurrence of the German Chancellor on the other hand

An Armistice has been concluded on the following conditions —

Conditions of the Armistice concluded with Germany

A —Clauses relating to the Western Front

I —Cessation of hostilities by land and in the air 6 hours after the signing of the Armistice

II —Immediate evacuation of the invaded countries—Belgium, France, Luxemburg, as well as Alsace-Lorraine—so ordered as to be completed within 15 days from the signature of the Armistice

German troops which have not left the above mentioned territories within the period fixed shall be made prisoners of war

Occupation by the Allied and United States Forces jointly shall keep pace with the evacuation in these areas

All movements of evacuation and occupation shall be regulated in accordance with a Note (Annexe 1) determined at the time of the signing of the Armistice

III — Repatriation, beginning at once, to be completed within 15 days, of all inhabitants of the countries above enumerated (including hostages, persons under trial, or condemned)

IV —Surrender in good condition by the German Armies of the following equipment —

5,000 guns (2,500 heavy, 2,500 field)
25,000 machine guns
3,000 trench mortars
1,700 aeroplanes (fighters bombers—firstly all D 7's and night-bombing machines)

The above to be delivered *in situ* to the Allied and United States troops in accordance with the detailed conditions laid down in the Note (Annexe 1) determined at the time of the signing of the Armistice

V —Evacuation by the German Armies of the districts on the left bank of the Rhine These districts on the left bank of the Rhine shall be administered by the local authorities nder the control of the Allied and United States Armies of Occupation

The occupation of these territories by Allied and United States troops shall be assured by garrisons holding the principal crossings of the Rhine (Mainz, Coblenz, Cologne), together with bridgeheads at these points of a 30-kilometre (about 19 miles) radius on the right bank, and by garrisons similarly holding the strategic points of the area

A neutral zone shall be reserved on the right bank of the Rhine, between the river and a line drawn parallel to the bridgeheads and to the river and 10 kilometres (6¼ miles) distant from them, between the Dutch frontier and the Swiss frontier

The evacuation by the enemy of the Rhine districts (right and left banks) shall be so ordered as to be completed within a further period of 16 days, in all 31 days after the signing of the Armistice

All movements of evacuation and occupation shall be regulated according to the Note (Annexe 1) determined at the time of the signing of the Armistice

VI —In all territories evacuated by the enemy, evacuation of the inhabitants shall be forbidden, no damage or harm shall be done to the persons or property of the inhabitants

No person shall be prosecuted for having taken part in any military measures previous to the signing of the Armistice

No destruction of any kind to be committed

Military establishments of all kinds shall be delivered intact, as well as military stores, food, munitions and equipment, which shall not have been removed during the periods fixed for evacuation

Stores of food of all kinds for the civil population, cattle, &c., shall be left *in situ*

No measure of a general character shall be taken, and no official order shall be given which would have as a consequence the depreciation of industrial establishments or a reduction of their personnel

VII —Roads and means of communications of every kind, railroads, waterways, roads, bridges, telegraphs, telephones, shall be in no manner unpaired

All civil and military personnel at present employed on them shall remain

5,000 locomotives and 150,000 wagons, in good working order, with all necessary spare parts and fittings, shall be delivered to the Associated Powers within the period fixed in Annexe No. 2 (not exceeding 31 days in all)

5,000 motor lorries are also to be delivered in good condition within 36 days

The railways of Alsace-Lorraine shall be handed over within 31 days, together with all personnel and material belonging to the organization of this system

Further, the necessary working material in the territories on the left bank of the Rhine shall be left *in situ*

All stores of coal and material for the upkeep of permanent way, signals and repair shops shall be left *in situ* and kept in an efficient state by Germany, so far as the working of the means of communication on the left bank of the Rhine is concerned

All lighters taken from the Allies shall be restored to them

The Note attached as Annexe 2 defines the details of these measures

VIII —The German Command shall be responsible for revealing within 48 hours after the signing of the Armistice, all mines or delay action fuzes disposed on territories evacuated by the German troops, and shall assist in their discovery and destruction

The German Command shall also reveal all destructive measures that may have been taken (such as poisoning or pollution of wells, springs, &c.)

Breaches of these clauses will involve reprisals

IX —The right of requisition shall be exercised by the Allied and United States armies in all occupied territories, save for settlement of accounts with authorized persons

The upkeep of the troops of occupation in the Rhine districts (excluding Alsace-Lorraine) shall be charged to the German Government

X —The immediate repatriation, without reciprocity, according to detailed conditions which shall be fixed, of all Allied and United States prisoners of war, including those under trial and condemned. The Allied Powers and the United States of America shall be able to dispose of these prisoners as they think fit. This condition annuls all other conventions regarding prisoners of war, including that of July, 1918, now being ratified. However, the return of German prisoners of war interned in Holland and Switzerland shall continue as heretofore. The return of German prisoners of war shall be settled at the conclusion of the Peace preliminaries

XI —Sick and wounded who cannot be removed from territory evacuated by the German forces shall be cared for by German personnel, who shall be left on the spot with the material required

Ch. XIV

B —Clauses relating to the Eastern Frontiers of Germany

XII —All German troops at present in any territory which before the war formed part of Austria Hungary, Roumania or Turkey, shall withdraw within the frontiers of Germany as they existed on 1st August, 1914, and all German troops at present in territories, which before the war formed part of Russia, must likewise return to within the frontiers of Germany as above defined, as soon as the Allies shall think the moment suitable, having regard to the internal situation of these territories

XIII —Evacuation of German troops to begin at once, and all German instructors, prisoners and agents, civilian as well as military, now on the territory of Russia (frontiers as defined on 1st August, 1914), to be recalled

XIV —German troops to cease at once all requisitions and seizures and any other coercive measures with a view to obtaining supplies intended for Germany in Roumania and Russia (frontiers as defined on 1st August, 1914)

XV —Annulment of the treaties of Bucharest and Brest-Litovsk and of the supplementary treaties

XVI —The Allies shall have free access to the territories evacuated by the Germans on their Eastern frontier, either through Danzig or by the Vistula, in order to convey supplies to the populations of these territories or for the purpose of maintaining order

C —Clause relating to East Africa

XVII —Evacuation of all German forces operating in East Africa within a period specified by the Allies

D —General Clauses

XVIII —Repatriation without reciprocity, within a maximum period of one month, in accordance with detailed conditions hereafter to be fixed, of all interned civilians, including hostages and persons under trial and condemned, who may be subjects of Allied or Associated States other than those mentioned in Clause III

Financial Clauses

XIX —With the reservation that any subsequent concessions and claims by the Allies and United States remain unaffected, the following financial conditions are imposed —

Reparation for damage done

While the Armistice lasts, no public securities shall be removed by the enemy which can serve as a pledge to the Allies to cover reparation for war losses

Immediate restitution of the cash deposit in the National Bank of Belgium and, in general, immediate return of all documents, specie, stocks, shares, paper money, together with plant for the issue thereof, affecting public or private interests in the invaded countries

Restitution of the Russian and Roumanian gold yielded to Germany or taken by that Power

This gold to be delivered in trust to the Allies until peace is concluded

E —Naval Conditions

XX —Immediate cessation of all hostilities at sea, and definite information to be given as to the position and movements of all German ships

Notification to be given to neutrals that freedom of navigation in all territorial waters is given to the Navies and Mercantile Marines of the Allied and Associated Powers, all questions of neutrality being waived

XXI —All Naval and Mercantile Marine prisoners of war of the Allied and Associated Powers in German hands to be returned without reciprocity

XXII —To surrender at the ports specified by the Allies and the United States all submarines at present in existence (including all submarine cruisers and minelayers), with armament and equipment complete Those that cannot put to sea shall be deprived of armament and equipment, and shall remain under the supervision of the Allies and the United States Submarines ready to put to sea shall be prepared to leave German ports immediately on receipt of a wireless order to sail to the port of surrender, the remainder to follow as early as possible The conditions of this Article shall be completed within 14 days of the signing of the Armistice

XXIII —The following German surface warships, which shall be designated by the Allies and the United States of America, shall forthwith be disarmed and thereafter interned in neutral ports, or, failing them, Allied ports, to be designated by the Allies and the United States of America, and placed under

the surveillance of the Allies and the United States of America, only one and maintenance parties being left on board, namely —

6 battle cruisers
10 battleships
8 light cruisers (including two minelayers)
50 destroyers of the most modern type

All othe surface warships (including river craft) are to be concentrated in German Naval bases, to be designated by the Allies and the United States of America, completely disarmed and placed under the supervision of the Allies and the United States of America All vessels of the Auxiliary Fleet are to be disarmed All vessels specified for internment shall be ready to leave German ports seven days after the signing of the Armistice Directions for the voyage shall be given by wireless

XXIV —The Allies and the United States of America shall have the right to sweep up all minefields and destroy all obstructions laid by Germany outside German territorial waters, and the positions of these are to be indicated

XXV —Freedom of access to and from the Baltic to be given to the Navies and Mercantile Marines of the Allied and Associated Powers This to be secured by the occupation of all German forts, fortifications batteries and defence works of all kinds in all the routes from the Cattegat into the Baltic, and by the sweeping up and destruction of all mines and obstructions without and without German territorial waters without any questions of neutrality being raised by Germany, and the positions of all such mines and obstructions to be indicated, and the plans relating thereto are to be supplied

XXVI —The existing blockade conditions set up by the Allied and Associated Powers are to remain unchanged, and all German merchant ships found at sea are to remain liable to capture The Allies and United States contemplate the provisioning of Germany during the Armistice as shall be found necessary

XXVII —All Aerial Forces are to be concentrated and immobilized in German bases to be specified by the Allies and the United States of America

XXVIII —In evacuating the Belgian coasts and ports, Germany shall abandon, *in situ* and intact, the port material and material for inland waterways, also all merchant ships, tugs and lighters, all Naval aircraft and air materials and stores, all arms and armaments and all stores and apparatus of all kinds

XXIX —All Black Sea ports are to be evacuated by Germany, all Russian warships of all descriptions seized by Germany in the Black Sea are to be handed over to the Allies and the United States of America, all neutral merchant ships seized in the Black Sea are to be released, all warlike and other materials of all kinds seized in those ports are to be returned, and German materials as specified in Clause XXVIII are to be abandoned

XXX —All merchant ships at present in German hands belonging to the Allied and Associated Powers are to be restored to ports specified by the Allies and the United States of America without reciprocity

XXXI —No destruction of ships or of materials to be permitted before evacuation, surrender or restoration

XXXII —The German Government shall formally notify all the neutral Governments, and particularly the Governments of Norway, Sweden Denmark and Holland that all restrictions placed on the trading of their vessels with the Allied and Associated countries, whether by the German Government or by private German interests, and whether in return for specific concessions, such as the export of shipbuilding materials, or not, are immediately cancelled

XXXIII —No transfers of German merchant shipping of any description to any neutral flag are to take place after signature of the Armistice

F —Duration of Armistice

XXXIV —The duration of the Armistice is to be 36 days, with option to extend During this period, on failure of execution of any of the above clauses, the Armistice may be repudiated by one of the contracting parties on 48 hours' previous notice It is understood that failure to execute Articles III and XVIII completely in the periods specified is not to give reason for a repudiation of the Armistice, save where such failure is due to malice aforethought

To ensure the execution of the present convention under the most favourable conditions, the principle of a permanent International Armistice Commission

is recognized This Commission shall act under the supreme authority of the High Command, military and naval, of the Allied Armies

The present Armistice was signed on the 11th day of November, 1918, at 5 o'clock a m (French time)

(Signed) F FOCH
R E WEMYSS

ERZBERGER
OBERNDORFF
WINTERFELDT
VANSELOW

11th November, 1918

The representatives of the Allies declare that, in view of fresh events, it appears necessary to them that the following condition shall be added to the clauses of the Armistice —

"In case the German ships are not handed over within the periods specified, the Governments of the Allies and of the United States shall have the right to occupy Heligoland to ensure their delivery"

(Signed) R E WEMYSS *Admiral* F FOCH

"The German delegates declare that they will forward this declaration to the German Chancellor, with the recommendation that it be accepted, accompanying it with the reasons by which the Allies have been actuated in making this demand"

(Signed) ERZBERGER
OBERNDORFF
WINTERFELDT
VANSELOW

ANNEXE No 1

1 —The evacuation of the invaded territories, Belgium, France and Luxemburg, and also of Alsace-Lorraine, shall be carried out in three successive stages according to the following conditions —

1*st stage* —Evacuation of the territories situated between the existing front and line No 1 on the enclosed map, to be completed within 5 days after the signature of the Armistice

2*nd stage* —Evacuation of territories situated between line No 1 and line No 2, to be carried out within 4 further days (9 days in all after the signing of the Armistice)

3*rd stage* —Evacuation of the territories situated between line No 2 and line No 3, to be completed within 6 further days (15 days in all after the signing of the Armistice)

Allied and United States troops shall enter these various territories on the expiration of the period allowed to the German troops for the evacuation of each

In consequence, the Allied troops will cross the present German front as from the 6th day following the signing of the Armistice, line No 1 as from the 10th day, and line No 2 as from the 16th day

II —*Evacuation of the Rhine district* —This evacuation shall also be carried out in several successive stages —

(1) Evacuation of territories situated between lines 2 and 3 and line 4, to be completed within 4 further days (19 days in all after the signing of the Armistice)

(2) Evacuation of territories situated between lines 4 and 5 to be completed within 4 further days (23 days in all after the signing of the Armistice)

(3) Evacuation of territories situated between lines 5 and 6 (line of the Rhine) to be completed within 4 further days (27 days in all after the signing of the Armistice)

(4) Evacuation of the bridgeheads and of the neutral zone on the right bank of the Rhine to be completed within 4 further days (31 days in all after the signing of the Armistice)

The Allied and United States Army of Occupation shall enter these various territories after the expiration of the period allowed to the German troops for the evacuation of each, consequently the Army will cross line No 3, 20 days after the signing of the Armistice It will cross line No 4 as from

the 24th day after the signing of the Armistice Line No 5 as from the 28th day Line No 6 (Rhine) the 32nd day, in order to occupy the bridgeheads

III —*Surrender by the German Armies of war material specified by the Armistice* —This war material shall be surrendered according to the following conditions —The first half before the 10th day, the second half before the 20th day This material shall be handed over to each of the Allied and United States Armies by each larger tactical group of the German Armies in the proportions which may be fixed by the permanent International Armistice Commission

ANNEX No 2

Conditions regarding communications, railways, waterways, roads, river and sea ports, and telegraphic and telephonic communications —

I —All communications as far as the Rhine, inclusive, or comprised, on the right bank of this river, within the bridgeheads occupied by the Allied Armies shall be placed under the supreme and absolute authority of the Commander in Chief of the Allied Armies, who shall have the right to take any measure he may think necessary to assure their occupation and use All documents relative to communications shall be held ready for transmission to him

II —All the material and all the civil and military personnel at present employed in the maintenance and working of all lines of communication are to be maintained in their entirety upon these lines in all territories evacuated by the German troops

All supplementary material necessary for the upkeep of these lines of communication in the districts on the left bank of the Rhine shall be supplied by the German Government throughout the duration of the Armistice

III —*Personnel* —The French and Belgian personnel belonging to the services of the lines of communication, whether interned or not are to be returned to the French and Belgian Armies during the 15 days following the signing of the Armistice The personnel belonging to the organization of the Alsace Lorraine railway system is to be maintained or reinstated in such a way as to ensure the working of the system

The Commander in Chief of the Allied Armies shall have the right to make all changes and substitution that he may desire in the personnel of the lines of communication

IV —*Material* —(*a*) *Rolling stock* —The rolling stock handed over to the Allied Armies in the zone comprised between the present front and Line No 3, not including Alsace Lorraine, shall amount at least to 5,000 locomotives and 150,000 wagons This surrender shall be carried out within the period fixed by Clause 7 of the Armistice and under conditions, the details of which shall be fixed by the permanent International Armistice Commission

All this material is to be in good condition and in working order, with all the ordinary spare parts and fittings It may be employed together with the regular personnel, or with no other, upon any part of the railway system of the Allied Armies

The material necessary for the working of the Alsace Lorraine railway system is to be maintained or replaced for the use of the French Army

The material to be left *in situ* in the territories on the left bank of the Rhine, as well as that on the inner side of the bridgeheads, must permit of the normal working of the railways in these districts

(*b*) *Permanent way, signals and workshops* —The material for signals, machine tools and tool outfits, taken from the workshops and depots of the French and Belgian lines, are to be replaced under conditions, the details of which are to be arranged by the permanent International Armistice Commission

The Allied Armies are to be supplied with railroad material, rails, incident al fittings plant, bridge building material and timber necessary for the repair of the lines destroyed beyond the present front

(*c*) *Fuel and maintenance material* —The German Government shall be responsible throughout the duration of the Armistice for the release of fuel and maintenance material to the depots normally allotted to the railways in the territories on the left bank of the Rhine

V —*Telegraphic and Telephonic Communications* —All telegraphs, telephones, and fixed W/T stations are to be handed over to the Allied Armies, with all the civil and military personnel and all their material, including all stores on the left bank of the Rhine

Ch XIV — Supplementary stores necessary for the upkeep of the system are to be supplied throughout the duration of the Armistice by the German Government according to requirements

The Commander in Chief of the Allied Armies shall place this system under military supervision and shall ensure its control, and shall make all changes and substitutions in personnel which he may think necessary

He will send back to the German Army all the military personnel who are not in his judgment necessary for the working and upkeep of the railway

All plans of the German telegraphic and telephonic systems shall be handed over to the Commander in Chief of the Allied Armies

Convention Prolonging the Armistice with Germany, 13th December, 1918

Convention

The undersigned, in virtue of the powers with which they were endowed for the signing of the Armistice of the 11th November, 1918, have concluded the following additional agreement —

1 The duration of the Armistice signed on the 11th November, 1918, has been prolonged for a month, *i e*, till 5 a m on the 17th January, 1919

The one month's extension will be further extended until the conclusion of Peace preliminaries, provided this arrangement meets with the approbation of the Allied Governments

2 The clauses of the Convention (11th November) which have been incompletely fulfilled will be carried out during the period of extension, according to the conditions laid down by the Permanent International Armistice Commission following the orders given by the Allied Generalissimo

3 The following clause is added to the Convention of the 11th November, 1918 —

"From now onwards the Generalissimo reserves to himself the right of occupying (when he deems it advisable), as an additional guarantee, the neutral zone on the right bank of the Rhine, north of the bridgehead of Cologne, and as far as the Dutch frontier

"Six days' notice will be given by the Generalissimo before the occupation comes into effect"

Treves, 13th December, 1918

(Signed) F FOCH,
WEMYSS, Admiral

ERZBERGER,
A OBERNDORFF,
WINTERFELDT,
VANSELOW

Convention Prolonging the Armistice with Germany 16th January, 1919

Convention

The undersigned Plenipotentiaries (Admiral Browning taking the place of Admiral Wemyss), vested with the powers in virtue of which the Armistice Agreement of 11th November, 1918, was signed, have concluded the following supplementary Agreement —

1 The Armistice of the 11th November, 1918, which was prolonged until the 17th January, 1919, by the Agreement of the 13th December, 1918, shall be again prolonged for one month, that is to say, until the 17th February, 1919, at 5 a m

This prolongation of one month shall be extended until the conclusion of the Peace preliminaries, subject to the approval of the Allied Governments

2 The execution of those clauses of the Agreement of the 11th November which have not been entirely carried out shall be proceeded with and completed during the prolongation of the Armistice, in accordance with the detailed conditions fixed by the Permanent International Armistice Commission on the instructions of the Allied High Command

3 In substitution of the supplementary railway material specified by Tables 1 and 2 of the Spa Protocol of 17th December, *i e* , 500 locomotives and 19,000 wagons, the German Government shall supply the following agricultural machinery and instruments —

400 two-engined steam plough outfits, complete, with suitable ploughs,
6,500 drills,
6,500 manure distributors,
6 500 ploughs,
6,500 Brabant ploughs,
12,500 harrows,
6,500 scarifiers,
2,500 steel rollers,
2,500 Croskill rollers,
2,500 mowing machines,
2,500 hay making machines,
3,000 reapers and binders,

or equivalent implements, according to the scale of interchangeability of various kinds of implements considered permissible by the Permanent International Armistice Commission All this material, which shall be either new, or in very good condition, shall be delivered together with all accessories belonging to each implement, and with the spare parts required for 18 months' use

The German Armistice Commission shall, between the present date and the 23rd January, supply the Allied Armistice Commission with a list of the material that can be delivered by the 1st March, which must, in principle, constitute not less than one third of the total quantity The International Armistice Commission shall, between now and the 23rd January, fix the latest dates of delivery, which shall, in principle, not extend beyond the 1st June

4 The officers in Germany delegated by the Allied and Associated Powers to organize the evacuation of the prisoners of war belonging to the armies of the Entente, together with representatives of the Relief Associations of the United States, France, Great Britain and Italy, shall form a Commission charged with the care of Russian prisoners of war in Germany

This Commission, the headquarters of which shall be in Berlin, shall be empowered to deal with the German Government direct, upon instructions from the Allied Governments, regarding all questions relating to Russian prisoners of war

The German Government shall accord the Commission all travelling facilities necessary for the purpose of investigating the housing conditions and food supply of such prisoners

The Allied Governments reserve the right to arrange for the repatriation of Russian prisoners of war to any region which they may consider most suitable

5 *Naval Clauses* —Article XXII of the Armistice Agreement of the 11th November, 1918, shall be supplemented as follows —

"In order to ensure the execution of such clause, the German authorities shall be bound to carry out the following conditions —

All submarines capable of putting to sea, or of being towed, shall be handed over immediately and shall make for Allied ports Such vessels shall include submarine cruisers, minelayers, relief ships and submarine docks All submarines which cannot be surrendered shall be completely destroyed or dismantled, under the supervision of the Allied Commissioners

Submarine construction shall cease immediately, and all submarines in course of construction shall be destroyed or dismantled, under the supervision of the Allied Commissioners "

Article XXIII of the Armistice Agreement of the 11th November, 1918, shall be supplemented as follows —

"In order to ensure the execution of such clause, the German Commission shall furnish the Inter Allied Naval Armistice Commission with a complete list of all surface vessels constructed or in course of construction (launched or on the stocks), specifying probable dates of completion "

Article XXX of the Armistice Agreement of 11th November, 1918, shall be supplemented as follows —

Ch. XIV

"In order to ensure the execution of such clause, the Allied High Command informs the German High Command that all possible measures must be taken immediately for delivery, in Allied ports, of all Allied merchantmen still detained in German ports "

6 *Restitution of Material carried off from Belgian and French Territories* — As restitution of material carried off from French and Belgian territory is indispensable for setting factories once more into working order, the following measures shall be carried out, viz —

(*a*) All machinery, machinery parts, industrial or agricultural plant, accessories of all kinds and, generally, all industrial or agricultural articles carried off by German military or civilian authorities or individuals, under any pretext whatever, from territories formerly occupied by the German armies on the Western front, shall be placed at the disposal of the Allies for the purpose of being returned to their places of origin, should the French and Belgian Governments so desire

These articles shall be returned without further alteration and undamaged

(*b*) In view of such restitution, the German Government shall immediately furnish the Armistice Commission with all official or private accounts, agreements for sale or hire, or correspondence relating to such articles, together with all necessary declarations or information regarding their existence, origin, adaptation, present condition and locality

(*c*) The delegates of the French or Belgian Government shall cause inventories or examinations of such articles to be made on the spot in Germany, should they think fit

(*d*) The return of such articles shall be effected in accordance with special instructions to be given as required by the French or Belgian authorities

(*e*) With a view to immediate restitution, declarations shall more particularly be made of all stocks of driving belts, electric motors and parts thereof, or plant removed from France or Belgium and existing in depot parks, railways, ships and factories

(*f*) The furnishing of the particulars referred to in Articles 3 and 6 hereof shall commence within 8 clear days from the 20th January, 1919, and shall be completed in principle before the 1st April, 1919

7 As a further guarantee, the Supreme Allied Command reserves to itself the right to occupy, whenever it shall consider this desirable, the sector of the fortress of Strassburg formed by the fortifications on the right bank of the Rhine, with a strip of territory extending from 5 to 10 kilometres in front of such fortifications, within the boundaries defined on the map appended hereto

The Supreme Allied Command shall give 6 days' notice prior to such occupation, which shall not be preceded by any destruction of material or of buildings

The limits of the neutral zone will, therefore, be advanced by 10 kilometres

8 In order to secure the provisioning of Germany and of the rest of Europe, the German Government shall take all necessary steps to place the German fleet, for the duration of the Armistice, under the control and the flags of the Allied Powers and the United States, who shall be assisted by a German delegate

This arrangement shall in no wise affect the final disposal of such vessels The Allies and the United States shall, if they consider this necessary, replace the crews either entirely or in part, and the officers and crews so replaced shall be repatriated to Germany

Suitable compensation, to be fixed by the Allied Governments, shall be made for the use of such vessels

All questions of details, as also any exceptions to be made in the case of certain types of vessel, shall be settled by a special agreement to be concluded immediately

Treves, 16th January, 1919

(Signed) FOCH
BROWNING

ERZBERGER
OBERNDORFF
VON WINTERFELDT
VANSELOW.

CONVENTION PROLONGING THE ARMISTICE WITH GERMANY, 16TH FEBRUARY, 1919

CONVENTION

The undersigned Plenipotentiaries, possessed of the powers in virtue of which the Armistice Agreement of 11th November, 1918, was signed, have concluded the following additional agreement —

Admiral Wemyss being replaced by Admiral Browning, General v Winterfeldt, by General v Hammerstein, and the Minister Plenipotentiary Count v Oberndorff by the Minister Plenipotentiary v Haniel

I —The Germans are to cease all hostilities against the Poles at once, whether in the district of Posen or any other district With this end in view, they are forbidden to allow their troops to cross the following line—the old frontier between East and West Prussia and Russia as far as Lowsenfelde, from thence the line west of Lowsenfelde, west of Gr Neudorff, south of Brzoza, north of Schubin, north of Exin, south of Samotschin, south of Chodziesen, north of Czarnikau, west of Miala, west of Birnbaum, west of Bentschen, west of Wollstein, north of Lissa, north of Rawitsch, south of Krotoschin, west of Adelnau, west of Schildberg, north of Doruchow, to the Silesian frontier

II —The Armistice of 11th November, prolonged by the Agreements of 13th December, 1918, and 16th January, 1919, until 17th February, 1919, is further prolonged for a short period, the date of expiry not being given the Allied Powers and those associated with them reserving to themselves the right to terminate the period at 3 days' notice

III The carrying out of those clauses of the Agreement of 11th November, 1918, and of the additional Agreements of 13th December, 1918, and 16th January, 1919, the terms of which have not yet been fully carried into effect, will be continued and completed during the prolongation of the Armistice, according to detailed arrangements made by the Permanent Armistice Commission, acting on instructions issued by the Supreme Allied Command

Treves, 16th February, 1919

(Sd) LOCH
BROWNING

FRIEDBERGER
FREIHERR v HAMMERSTEIN
von HANIEL
VANSITTART

APPENDIX 18

THE TERMS OF THE CAPITULATION OF PORT ARTHUR, 1904 [1]

Art I The military and naval forces of Russia in the fortress and harbour of Port Arthur, as well as the volunteers and the officials, shall all become prisoners

Art II The forts and fortifications of Port Arthur, the warships and other craft, including torpedo craft, the arms, the ammunition, the horses, and every material for warlike use, shall be handed over as they are to the Japanese Army

Art III When the above two articles are agreed to, the following steps shall be taken by way of guarantee, namely, by noon on the 3rd instant all garrisons shall be withdrawn from fortifications and forts at I-zu shan, Hsiao-an tzu-shan, Ta an tzu shan, and all the highlands on the south-east of these, and the said fortifications and forts shall be handed over to the Japanese Army

Art IV Should it be recognized that the Russian military or naval forces destroy or take any other steps to alter the condition of the things enumerated in Art II and actually existing at the time of the signature of this Agreement these negotiations shall be broken off and the Japanese army will break off negotiation and resume freedom of action

Art V The officers of the Russian military and naval forces of Port Arthur shall compile and hand to the Japanese army maps showing the arrangement of the defences, the positions of mines and torpedoes or other

[1] The original English text, given in Takahashi, 1908, pp 211–13

Ch. XIV — dangerous objects, as well as lists of the organization of the naval and military forces in Port Arthur, nominal rolls of the military and naval officers, their ranks or grades, similar rolls relating to the warships, lists of the ships of all descriptions and their crews, and tables of the non combatants, male and female, their nationalities and their occupations

Art VI The arms (including those in the hands of the forces), the ammunition, and all material for war uses (except private property) shall be all left in their present positions Rules relating to the handing over and receipt of these objects shall be arranged by commissioners from the Russian and Japanese armies

Art VII The Japanese army, as an honour to the brave defence made by the Russian army, will allow the officers of the Russian military and naval forces and the officials attached to the said forces to retain their swords, together with all privately owned articles directly necessary for daily existence Further, with regard to the said officers, officials, and volunteers, such of them as solemnly pledge themselves in writing not to bear arms again until the close of the present war, and not to perform any act of whatsoever kind detrimental to the interests of Japan, shall be permitted to return to their country, and one soldier shall be allowed to accompany each officer of the army or navy These soldiers shall be required to give a similar pledge

Art VIII The disarmed non commissioned officers and men of the army and navy, as well as of the volunteers, wearing their uniforms, carrying their tents and all privately owned necessaries of daily life, shall under the command of their respective officers, assemble at places indicated by the Japanese army The details of this arrangement will be shown by the commissioners of the Japanese army

Art IX The officials of the sanitary and paymaster's departments of the Russian military and naval forces in Port Arthur shall remain and continue to discharge their duties under the control of the Japanese sanitary and paymaster's departments so long as the Japanese army deems it necessary for ministering and affording sustenance to the sick, the wounded, and the prisoners

Art X Detailed regulations with reference to the management of the non-combatants, the administration of the town, the performance of financial duties, the transfer of documents relating to these matters, and with reference to the carrying out of the Agreement in other respects, shall be entered in an Appendix to this Agreement Such Appendix[1] shall have the force of the Agreement itself

Art XI Each of the contracting parties shall receive one copy of this Agreement, and it shall become operative from the time of its signature

APPENDIX 19

The Duke of Wellington's proclamation on entering France, 22nd June, 1815
Malplaquet

(Despatches, Vol VIII, p 159)

"Il faut donc qu'ils fournissent aux requisitions qui leur seront faites de la part des personnes autorisées à les faire, en échange des reçus en forme et ordre, qu'ils se tiennent chez eux paisiblement et qu'ils n'aient aucune correspondance ou communication avec l'usurpateur ennemie, ni avec ses adherens "

The proclamation on entering France, 1st November, 1813, does not go into details, it merely states that peaceful inhabitants would be well treated and their property respected, and that receipts for requisitions would be given

APPENDIX 20

GERMAN INSTRUCTIONS

For the Governor-General of an Occupied Province, 1870

(Official Account, Part 1, Vol II, Appendix LIV.)

1 The Governor-General of any portion of hostile territory in our occupation is charged with full administrative and military power within his sphere of command While carrying out his duties with strictness, he will as far as possible exercise forbearance towards the country and its inhabitants

[1] A summary of this appendix is given in the note to para. 321

2 The authority of the hostile state within the district assigned to the Governor-General will cease to exist, and will be replaced by the military control of the latter

The instructions of the 25th July for the commanders-in-chief of troops occupying the enemy's country will suffice in this respect also for the Governor-General in his exercise of military authority

The Governor General will have under his orders all such troops within the district as may not belong to any particular army

3 In exercising administrative power, the Governor-General will avail himself of the services of the civil commissaries placed under his orders, and through these, of the civil administrative authorities of his district Should there be no proper civil administrative authorities he will invest persons with the necessary powers

4 The administrative powers of the Governor-General and his subordinates will be directed in the first place to the levying of all state taxes, to receive those for the treasury of the Governor General, and to credit such money as may not be employed for purposes in connection therewith to the general military chest

5 It further devolves upon the Governor-General to carry out the police regulations which are customary in the country, so far as they are in accordance with military interests

The civil judicial proceedings are to be conducted in accordance with the laws of the country

6 Especial attention is to be devoted to the security of all communications necessary for the connection of the armies with their base

7 Powers are delegated to the Governor General to control the postal, telegraphic, and railway communication of the public, and to stop it, entirely or partially, as may seem best to his judgment

8 Contributions and requisitions in the occupied district will be ordered by the Governor General as he may deem fit, or at the application of the Intendant-General of the Army, and will be carried out according to his instructions The extent of the money grant for supplies within the spheres of command of Governors General, is to be determined by them after consultation with the Intendant-General

9 On the 1st and 15th of each month reports are to be transmitted to me as to the progress and results of the administration, and with regard to any special events and measures which may have arisen

(Signed) WILLIAM
(Countersigned) COUNT V BISMARCK
COUNT V ROON

Headquarters, Pont-à Mousson,
21st August, 1870

See also proclamations and notices issued by the Japanese military authorities in Manchuria (The Russo-Japanese War British Officers' Reports, Vol II, p 658)

APPENDIX 21

MILITARY CONVENTION between the Commander of the 1st French Army and the General in chief of the Army of the Swiss Confederation for the entry of the French troops into Switzerland, Signed at Les Verrières, 1st Feb , 1871 [1]

The following Convention has been made between General Clinchant, General in chief of the 1st French Army, and General Herzog, General-in-chief of the Army of Swiss Confederation

Art 1 The French Army demanding to pass into Swiss territory will on entering lay down its arms, equipment and ammunition

Art 2 These arms, equipment and ammunition will be restored to France after peace and after the definite settlement of the expenses occasioned to Switzerland by the sojourn of the French troops

Art 3 The artillery material and ammunition will be dealt with as above

Art 4 The horses, arms and effects of the officers will remain at their disposal

Art 5 Arrangements will be made later as regards the troop horses

Art 6 Supply and baggage wagons, after having deposited their contents, will immediately return to France with their drivers and horses

[1] Translated from Martens's *Nouveau Recueil général de traités*, Vol 19, p 686

Ch XIV Art 7 The Treasure Chest and post wagons will be handed over with the contents to the Swiss Confederation, which will account for them when the settlement of expenses is taking place

Art 8 The execution of these arrangements will take place in the presence of French and Swiss officers nominated for the purpose

Art 9 The Confederation reserves the designation of the place of internment for officers and soldiers

Art 10 It is the right of the Federal Council to indicate the detailed prescriptions necessary to complete the present Convention

Done in triplicate at Les Verrières, 1st Feb , 1871

(Signed) Clinchant
(Signed) Herzog

APPENDIX 22

Relations between the British Military Forces and the Civil Population in time of war or imminent war

(i) *In the home country*

Relations between military forces and the civil population in the home country in time of war or imminent war are not the subject of any express laws It may be stated as a general proposition that these relations do not differ from those obtaining in time of peace, but they may be profoundly modified either by the creation of a state of martial law, by operation of the Royal Prerogative expressed by Orders in Council and otherwise, or by the exercise of powers conferred upon the Government by emergency legislation Apart from these possible and probable modifications, the ordinary law, including relevant sections of the Army Act, will govern all these relations This definite position has its foundation in constitutional principles, and it is essential that officers should appreciate that they will always be liable to be called upon by the civil courts to justify their actions towards their fellow citizens

(ii) *In enemy country*

In all relations between the occupying military forces and the civil population in enemy country, the guiding principles should be —

(1) to watch against any attempt to endanger the objects of the occupation, or the safety, maintenance and requirements of the forces, and, subject to this,

(2) to seek to institute and preserve a state of order, work and peace for the civil population

Such results can only be attained by courteous intercourse without unnecessary friction, and by honest dealing, but, if occasions should arise, any infraction of essential obligations on the part of the population must be met with all necessary severity within the limits of the law which is applicable Having regard to the close contact which must arise with the civil population, especially when occupation extends over a long period, it is essential that all ranks should be acquainted with these definite objects and that they should be instructed specifically as to their correct behaviour towards officials and civilians

The above principles were those expressed in the Proclamation of the Inter-Allied Rhineland High Commission of the 10th January, 1920, and they were the foundation of the ordinances subsequently issued for the government of German occupied territory

(iii) *In an allied country*

Military forces, so long as they maintain that character, preserve law and order among themselves within the territory occupied by them with the consent of their ally, by the application of their own military law, and as provided in the Army Act (ss 127 and 159) Beyond this territory, and in their relations with the local civil population, they are also amenable to the civil laws of the locality for offences committed by them, but in such cases instances have not been uncommon where the offender against a civil law has been surrendered to his military commander[1] for disposal All relations between the forces and an allied civilian population must be characterized by cordiality and scrupulous dealings, by strict regard to local laws and customs, and by due respect to all constituted authorities

[1] It has been the case that general or special arrangements and legislation have been made whereby the trial of military offenders against local civil laws has been definitely relegated to their own military courts, instances of this procedure being found in the Franco American and Anglo-French Conventions, and in No 45F of the Defence of the Realm Regulations made and issued during the Great War, 1914 18

PART II

THE ARMY ACT, RULES OF PROCEDURE, &c.

ARMY AND AIR FORCE (ANNUAL) ACT, 1928

Note.—As pointed out in Chapter II, para. 33, the Army Act requires to be brought into force annually by another Act of Parliament, which until 1920 was entitled the Army (Annual) Act, and which since that date has been entitled the Army and Air Force (Annual) Act. The alteration of the title was consequent on the creation of the Royal Air Force, and the subsequent repeal by the Army and Air Force (Annual) Act, 1920, of those portions of the Air Force (Constitution) Act, 1917, which enacted that the Air Force Act should continue in force only so long as the Army Act continued in force, and that when any amendments were made to the Army Act, the corresponding amendments, with necessary modifications, should be made to the Air Force Act by Order in Council. The Army and Air Force (Annual) Act now provides for the continuance in force for a year of both the Army Act and the Air Force Act, and usually contains amendments to these Acts. The amendments to the Army Act made down to 1928 are incorporated in the text of the Army Act printed below. The preamble and first three sections of an Army and Air Force (Annual) Act are ordinarily in the form shown below, which is taken from the Act of 1928.

An Act to provide, during Twelve Months, for the Discipline and Regulation of the Army and Air Force.

WHEREAS the raising or keeping of a standing army within the United Kingdom in time of peace, unless it be with the consent of Parliament, is against law.

And whereas it is adjudged necessary by His Majesty and this present Parliament that a body of land forces should be continued for the safety of the United Kingdom and the defence of the possessions of His Majesty's Crown, and that the whole number of such forces should consist of one hundred and fifty-three thousand five hundred, including those to be employed at the depots in the United Kingdom for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within His Majesty's Indian possessions.

And whereas under the Air Force (Constitution) Act, 1917, His Majesty is entitled to raise and maintain the air force, and it is judged necessary that the whole number of such force should

consist of thirty-two thousand five hundred, including those employed as aforesaid, but exclusive of the numbers serving as aforesaid, and the provisions of the Air Force Act are due to expire at the same dates as the provisions of the Army Act

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in His Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid

And whereas the said marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or vessels, merchant ships or vessels, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of His Majesty's forces by sea

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm, by martial law, or in any other manner than by the judgment of his peers and according to the known and established laws of this realm, yet, nevertheless, it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law or to the Air Force Act, in their duty, that an exact discipline be observed and that persons belonging to the said forces who mutiny or stir up sedition, or desert His Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military or air force discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow

And whereas the Army Act and the Air Force Act will expire in the year one thousand nine hundred and twenty-eight on the following days —

(*a*) In Great Britain and Ireland, the Channel Islands, and the Isle of Man, on the thirtieth day of April, and

(*b*) Elsewhere, whether within or without His Majesty's dominions, on the thirty-first day of July

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows —

hort title

1. This Act may be cited as the Army and Air Force (Annual) Act, 1928

rmy Act
id Air
orce Act
) be in
irce for
ecified
mes

2.—(1) The Army Act and the Air Force Act shall be and remain in force during the periods hereinafter mentioned, and no longer, unless otherwise provided by Parliament (that is to say) —

(*a*) Within Great Britain and Ireland[1], the Channel Islands, and the Isle of Man, from the thirtieth day of April, one thousand nine hundred and twenty-eight, to the thirtieth day of April, one thousand nine hundred and twenty-nine, both inclusive, and

(*b*) Elsewhere, whether within or without His Majesty's dominions, from the thirty-first day of July, one thousand nine

[1] In the Army and Air Force (Annual) Act, the term "Ireland" includes the Irish Free State.

hundred and twenty-eight, to the thirty-first day of July, one thousand nine hundred and twenty-nine both inclusive

(2) The Army Act and the Air Force Act, while in force, shall apply to persons subject to military law or to the Air Force Act, as the case may be, whether within or without His Majesty's dominions

(3) A person subject to military law or to the Air Force Act shall not be exempted from the provisions of the Army Act or Air Force Act by reason only that the number of the forces for the time being in the service of His Majesty, exclusive of the marine forces, is either greater or less than the numbers hereinbefore mentioned

Prices in respect of billeting

3 There shall be paid to the keeper of a victualling house for the accommodation provided by him in pursuance of the Army Act or the Air Force Act the prices specified in the First Schedule to this Act

* * * * * * * *

[Here follow the amendments of the Army and Air Force Acts made in 1928.]

FIRST SCHEDULE

Accommodation to be provided	Maximum Price
Lodging and attendance for soldier where meals furnished	Tenpence per night for the first soldier and eightpence per night for each additional soldier
Breakfast as specified in Part I of the Second Schedule to the Army Act	Sevenpence each
Dinner as so specified	Tenpence
Supper as so specified	Fourpence
Where no meals furnished, lodging and attendance and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat	Tenpence per night for the first soldier and eightpence per night for each additional soldier
Stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse	Two shillings and fivepence per day
Stable room without forage	Sixpence per day
Lodging and attendance for officer	Three shillings per night

Note.—An officer shall pay for his food

In the application of this Schedule to the Air Force references to the Air Force Act and airman shall be substituted for references to the Army Act and soldier.

THE ARMY ACT

ARRANGEMENT OF SECTIONS

Preliminary

	SECTION
Short title of Act	1
Mode of bringing Act into force	2
Division of Act	3

PART I

DISCIPLINE

CRIMES AND PUNISHMENTS

Offences in respect of Military Service

Offences in relation to the enemy punishable with death	4
Offences in relation to the enemy not punishable with death	5
Offences punishable more severely on active service than at other times	6

Mutiny and Insubordination

Mutiny and sedition	7
Striking or threatening superior officer	8
Disobedience to superior officer	9
Insubordination	10
Neglect to obey garrison or other orders	11

Desertion, Fraudulent Enlistment, and Absence without Leave

Desertion	12
Fraudulent enlistment	13
Assistance of or connivance at desertion	14
Absence from duty without leave	15

Disgraceful Conduct

Scandalous conduct of officer	16
Fraud by persons in charge of moneys or goods	17
Disgraceful conduct	18

Drunkenness

Drunkenness	19

Offences in relation to Persons in Custody

Permitting escape of person in custody	20
Irregular arrest or confinement	21
Escape from confinement	22

Offences in relation to Property

SECTION

Corrupt dealings in respect of supplies to forces 23
Deficiency in and injury to equipment 24

Offences in relation to False Documents and Statements

Falsifying official documents and false declarations 25
Neglect to report, and signing in blank 26
False accusation, or false statement 27

Offences in relation to Courts-martial

Offences in relation to courts-martial 28
False evidence 29

Offences in relation to Billeting

Offences in relation to billeting 30

Offences in relation to Impressment of Carriages, &c

Offences in relation to the impressment of carriages &c and their attendants 31

Offences in relation to Enlistment

Enlistment of soldier, airman, or sailor discharged with ignominy or disgrace 32
False answers or declarations on enlistment 33
General offences in relation to enlistment 34

Miscellaneous Military Offences

Traitorous words 35
Injurious disclosures 36
Ill-treating soldier 37
Duelling and attempting to commit suicide 38
Refusal to deliver to civil power officers and soldiers accused of civil offences 39
Conduct to prejudice of military discipline 40

Offences punishable by ordinary Law

Offences punishable by ordinary law of England 41

Redress of Wrongs

Mode of complaint by officer 42
Mode of complaint by soldier 43

Punishments

Scale of punishments by courts-martial 44

ARREST AND TRIAL

Arrest

Custody of persons charged with offences . 45

Summary Disposal of Charges

Power of commanding officer . 46
Power to deal summarily with charges against officers and warrant officers 47

Courts-martial

	SECTION
General and district courts martial	48
Field general courts-martial	49
Courts-martial in general	50
Challenges by accused	51
Administration of oaths	52
Procedure	53
Confirmation, revision, and approval of sentences	54
* * * *	55
Conviction of less offence permissible on charge of greater	56

EXECUTION OF SENTENCE

Commutation, Remission and Suspension of Sentences

Commutation and remission of sentences	57
Power to suspend sentences	57A

Penal Servitude

Effect of sentence of penal servitude	58
Place in which sentence to be served	59
Interim custody of military convict before arrival at penal servitude prison	60
Committal removal, release &c , of military convict	61
Treatment of military convict in penal servitude prison	62

Imprisonment and Detention

Effect of sentence of imprisonment or detention	63
Place in which sentence to be served	64
Interim custody of military prisoner or soldier undergoing detention	65
Committal, removal, release, &c , of military prisoner or soldier undergoing detention	66
Treatment and classification of prisoners in civil prisons	67

Commencement of Sentence and Interpretation of Provisions as to Punishment

Commencement of sentence and interpretation of provisions as to punishments	68

MISCELLANEOUS

Articles of War and Rules of Procedure

Power of His Majesty to make Articles of War	69
Power of His Majesty to make rules of procedure	70

Command

Removal of doubts as to military command	71

Inquiry as to and Confession of Desertion

Inquiry by court on absence of soldier	72
Confession by soldier of desertion or fraudulent enlistment	73

Provost Marshal.

SECTION

Provost marshal 74

Restitution of Stolen Property

Power as to restitution of stolen property 75

PART II

ENLISTMENT

Period of Service

Limit of original enlistment 76
Terms of original enlistment 77
Change of conditions of service 78
Reckoning and forfeiture of service 79

Proceedings for Enlistment

Mode of enlistment and attestation 80
Power of recruit to purchase discharge 81

Appointment to Corps and Transfers

Enlistment for general service and appointment to corps 82
Effect of appointment to a corps and provision for transfers 83

Re-engagement and Prolongation of Service

Re-engagement of soldiers 84
Continuance in service after twenty-one years' service 85
Re-engagement and continuance of service of non commissioned officers 86
Prolongation of service in certain cases 87
In imminent national danger His Majesty may continue soldiers in army service or call out reserve for permanent service 88

Discharge and Transfer to Reserve Force

Transfer of soldier to reserve when corps ordered abroad 89
Discharged or transferred to reserve 90
Delivery of lunatic soldier on discharge with his wife or child at workhouse, or of dangerous lunatic at asylum 91
Regulations as to discharge of soldiers 92

Authorities to Enlist and Attest Recruits

Regulations as to persons to enlist and enlistment of soldiers 93
Justices of the peace for the purposes of enlistment 94

Special Provisions as to Persons to be enlisted

Enlistment of aliens, negroes, &c 95
Claims of masters to apprentices 96
Application of apprentice provisions to indentured labourers 97

Offences as to Enlistment

SECTION

Penalty on unlawful recruiting 98
Recruits punishable for false answers 99

Miscellaneous as to Enlistment

Validity of attestation and enlistment or re engagement 100
Definition for purposes of Part II of competent military authority and reserve 101

PART III

BILLETING AND IMPRESSMENT OF CARRIAGES, &c

Billeting of Officers, Soldiers, and Women

Suspension of 3 Chas I, c 1, 31 Chas II, c 1, 6 Anne (I), c 14, as to billeting 102
Obligation of constable to provide billets for officers soldiers, and horses 103
Liability to provide billets 104
Officers soldiers, and horses entitled to be billeted 105
Accommodation and payment on billet 106
Annual list of keepers of victualling houses liable to billets 107
Regulations as to grant of billets 108
Billeting in cases of emergency 108A

Offences in relation to Billeting

Offences by constables 109
Offences by keepers of victualling houses 110
Offences by officers or soldiers 111

Impressment of Carriages, &c

Supply of carriages, &c, for regimental baggage and stores on the march 112
Payment for and regulations as to carriages, animals, &c 113
Annual list of persons liable to supply carriages and animals 114
Supply of carriages, vessels, &c, in case of emergency 115

Offences in relation to the Impressment of Carriages, &c

Offences by constables 116
Offences by persons ordered to furnish carriages, animals, vessels, &c 117
Offences by officers or soldiers 118

Supplemental Provisions as to Billeting and Impressment of Carriages

Application to court of summary jurisdiction respecting sums due to keepers of victualling houses or owners of carriages, &c 119
Provisions as to constables, police authorities, and justices 120
Fraudulent claim for carriages, animals, &c 121

PART IV.

GENERAL PROVISIONS.

Supplemental provisions as to Courts-martial

	SECTION
Royal warrant required for convening and confirming general courts-martial	122
Authority of officer empowered to convene general courts martial required for convening and confirming district courts martial	123
Right of person tried to copy of proceedings of court-martial	124
Summoning and privilege of witnesses at courts-martial	125
Misconduct of civilian at court-martial	126
Court-martial governed by English law only	127
Rules of evidence to be the same as in civil courts	128
Position of counsel at courts-martial	129
Provision in case of insane persons	130

General provisions as to Prisons and Detention Barracks

Duty of governor of prison to receive prisoners, deserters and absentees without leave	131
Establishment and regulation of military prisons and detention barracks	132
Provisions as to military prisons and detention barracks on active service	133
Inquests on deaths in military prisons and detention barracks in India	134
Arrangements as to civil prisons in India or colony	135

Pay

Authorised deductions only to be made from pay	136
Penal stoppages from ordinary pay of officers	137
Penal stoppages from ordinary pay of soldiers	138
How deduction of pay may be remitted	139
Supplemental as to deductions from ordinary pay	140
Prohibition of assignment of military pay, pensions, &	141
Punishment of false oath and personation	142

Exemptions of Officers and Soldiers

Exemptions of officers and soldiers from tolls	143
Exemption of soldiers in respect of civil process	144
Liability of soldier to maintain wife and children	145
Officers not to be sheriffs or mayors	146
Exemption from jury	147

Court of Requests in India

* * * * * *	148–151

Legal Penalties in Matters respecting Forces

Punishment for pretending to be a deserter	152
Punishment for inducing or assisting officers or soldiers to desert or absent themselves without leave	153
Penalty for interference with military duties, &c	153A
Apprehension of deserters or absentees without leave	154
Penalty on trafficking in commissions	155
Penalty on purchasing from soldiers regimental necessaries, equipments, stores, &c, and for unlawful possession of military certificates, &c	156
Unauthorised use of decorations, &c	156A

Jurisdiction

	Section
Person not to be tried twice	157
Liability to military law in respect of status	158
Liability to military law in respect of place of commission of offence	159
Punishment not increased by trial elsewhere than offence committed	160
Liability to military law in respect of time for trial of offences	161
Adjustment of military and civil law	162

Evidence

Regulations as to evidence	163
Evidence of civil conviction or acquittal	164
Evidence of conviction by court martial	165

Summary and other Legal Proceedings

Prosecution of offences, and recovery and application of fines	166
Summary proceedings in Scotland	167
Summary proceedings in Isle of Man, Channel Islands, India, and the colonies	168
Power of Governor-General of India and legislature of colony as to fines	169
Protection of persons acting under Act	170

Miscellaneous

Exercise of powers vested in holder of military office	171
Provisions as to warrants and orders of military authorities	172
Furlough in case of sickness	173
Licences of canteens	174
Use of recreation rooms without licence	174A

PART V

APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS

Persons subject to Military Law

Persons subject to military law as officers	175
Persons subject to military law as soldiers	176
Persons belonging to colonial forces and subject to military law as officers or soldiers	177
Mutual relations of regular forces and auxiliary forces	178
Modification of Act with respect to Royal Marines	179
Attaching of officers and soldiers to the air force and provisions as to officers and airmen attached to the regular forces	179A
Provision as to naval officers subject to military law	179B
Modification of Act with respect to His Majesty's Indian forces	180
Modification of Act with respect to auxiliary forces	181
Special provisions as to warrant officers	182
Special provisions as to non-commissioned officers	183
Special provisions as to application of Act to persons not belonging to His Majesty's forces	184
Relations between military and naval and air forces acting together	184A

Saving Provisions

	SECTION
Special provisions as to prisoners and prisons in Ireland	185
Saving of Naval Discipline Act, as to forces when on board His Majesty's ships .	186

Definitions

Application of Act to Channel Islands and Isle of Man	187
Application of Act in relation to mandated territories	187A
Application of Act to ships	188
Interpretation of term " on active service "	189
Interpretation of terms	190

SCHEDULES

THE ARMY ACT

[44 & 45 Vict c 58]

ss 1-3 *An Act to consolidate the Army Discipline and Regulation Act*, 1879, *and the subsequent Acts amending the same**

Preliminary

Short title of Act

1 This Act may be cited for all purposes as the Army Act.

Mode of bringing Act into force

2 This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force or continuing the same

NOTE

For explanation of the reasons for bringing this Act into force annually by a separate Act, see Ch II, paras 16 and 33

Division of Act

3. This Act is divided into five parts, relating to the following subject-matters, that is to say,

Part I —Discipline

Part II —Enlistment

Part III —Billeting and impressment of carriages

Part IV —General provisions

Part V —Application of military law, saving provisions, and definitions

PART I.

DISCIPLINE.

CRIMES AND PUNISHMENTS

Part I

Offences in respect of Military Service

s 4 Offences in relation to the enemy punishable with death

4. Every person subject to military law[1] who commits any of the following offences, that is to say,

(1) Shamefully abandons[2] or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend, or

* The Act is printed with the amendments introduced by the Annual Acts down to and inclusive of the Act of 1928, in accordance with the directions of 48 Vict c 8, s 8 (2), and also incorporates the amendments made by the T R F Act, 1907, the Air Force (Constitution) Act, 1917, and the Territorial Army and Militia Act, 1921.

(2) Shamefully casts away[3] his arms, ammunition, or tools in the presence of the enemy, or

(3) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice[4] sends a flag of truce to the enemy, or

(4) Assists the enemy with arms, ammunition, or supplies,[5] or knowingly[6] harbours or protects an enemy not being a prisoner, or

(5) Having been made a prisoner of war, voluntarily[7] serves with or voluntarily aids the enemy, or

(6) Knowingly[6] does when on active service [8] any act calculated to imperil the success of His Majesty's forces or any part thereof or

(7) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,[9]

shall, on conviction by court-martial, be liable to suffer death, or such less punishment as is in this Act mentioned

NOTE

1 *Subject to military law*—For an enumeration of persons so subject see Part V, and introductory observations thereto

2 *Shamefully abandons, &c* This offence can only be committed by the person in charge of the garrison, post, &c, and not by the subordinate 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 munitions, 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 s 6 (1)(*b*) or s 6 (2) (*e*), where it has reference to the position of an individual

Particulars of a charge under the first part of this paragraph must detail some circumstances which make the abandonment in a military sense shameful

3 *Shamefully casts away* The particulars of the charge must show the circumstances which make the act in a military sense shameful (see *e g* specimen charge sheet No 1, p 715) 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

4 *Treacherously or through cowardice* The particulars of the charge must show the circumstances which indicate the treachery or cowardice If there is no treachery or cowardice, the charge should be laid under s 5 (4)

5 *Supplies* This would include the taking any steps to restore a supply of water cut off by our forces

6 *Knowingly* Evidence should if possible be given that the accused knew the person harboured or protected to be an enemy, but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances A similar observation applies to "knowingly" in (6)

7 *Voluntarily* Proof of "serving with" or "aiding" without any visible sign of compulsion appears to be sufficient to constitute a *prima facie* case justifying a conviction if no rebutting evidence is given by the defence

8 For definition of *active service*, see s 189

9 Paragraph (7) is confined to acts, neglect, or omissions which show cowardice, and the particulars of the charge must be framed accordingly (see *e g* specimen charge sheet No 2, p 715) It must be shown that the accused, from an unsoldierlike 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 this paragraph

Part I

ss 5, 6

Offences in relation to the enemy not punishable with death

5. Every person subject to military law who on active service commits any of the following offences, that is to say,

(1) Without orders[1] from his superior officer leaves the ranks in order to secure prisoners or horses, or on pretence of taking wounded men to the rear, or

(2) Without orders[1] from his superior officer wilfully destroys or damages any property, or

(3) 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 Majesty's service when able to rejoin the same, or

(4) Without due authority[1] either holds correspondence with, or gives intelligence to[2], or sends a flag of truce to the enemy, or

(5) By word of mouth, or in writing, or by signals, or otherwise spreads reports calculated to create unnecessary alarm or despondency[3], or

(6) In action, or previously to going into action, uses words calculated to create alarm or despondency[3],

shall, on conviction by court-martial, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned

NOTE

1 *Without orders, without due authority* As soon as *prima facie* evidence negativing "orders" or "authority" is given, a court may convict unless the accused proves that he had orders or authority

2 *Gives intelligence to* A man must be taken to intend the natural consequences of his actions, and the paragraph appears to be wide enough to cover the case of intelligence reaching the enemy through the capture or the re publication (*e g*, by relatives or newspapers) of letters, sketches, photographs, &c 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, &c As to "injurious disclosures" generally, see s 3(b), and the Official Secrets Acts 1911 and 1920 as set out on p 895 *et seq* See also K R 521, 522

3 Para (5) The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create unnecessary alarm or despondency A similar remark applies to a charge under para (6) It is not necessary to aver or prove that the reports were false, indeed the truth may increase the offence, nor is it necessary to show that any effect was actually produced by the reports spread or words used, it could, however, seldom be expedient to try an officer or soldier under this section for expressions which could not be shown to have had some effect The offence under para (5) may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country

Offences punishable more severely on active service than at other times

6.—(1) Every person subject to military law who commits any of the following offences[1], that is to say,

[*Para (a) transferred to subs (2) by A and A F (A) Act*, 1928]

(*b*) Without orders from his superior officer, leaves his guard, piquet, patrol, or post[2], or

[*Paras (c), (d) and (g) transferred to subs (2) by A and A F (A) Act*, 1928]

[*Paras (e) and (f) transferred to subs (2) by A and A F (A) Act*, 1925 *Subs (2) renumbered (3) by A and A F (A) Act*, 1928]

(*h*) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever[3], intentionally[4] occasions false alarms in action, on the march, in the field, or elsewhere,[5] or

(*i*) Treacherously makes known the parole, watchword, or countersign to any person not entitled to receive it, or treacherously gives a parole, watchword, or countersign different from what he received[6], or

[*Para* (*j*) *transferred to subs* (2) *by A and A F* (*A*) *Act*, 1925 *Subs* (2) *renumbered* (3) *by A and A F* (*A*) *Act*, 1928]

(*k*) Being a soldier acting as sentinel, leaves his post[7] before he is regularly relieved,

[*Para* (*k*) (1) *transferred to subs* (2) *by A and A F* (*A*) *Act*, 1928]

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned, and

if he commits any such offence not on active service be liable if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

(2) Every person subject to military law who commits any of the following offences, that is to say,

(*a*) Leaves his commanding officer to go in search of plunder[8], or

(*b*) Forces a safeguard[9], or

(*c*) Forces or strikes a sentinel, or

(*d*) Breaks into any house or other place[10] in search of plunder[11], or

(*e*) Being a soldier acting as sentinel sleeps or is drunk on his post[7],

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned, and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

(3) Every person subject to military law who commits any of the following offences, that is to say,

(*a*) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere[12], or

(*b*) Makes known the parole, watchword, or countersign to any person not entitled to receive it, or, without good

Part I: s. 6

and sufficient cause, gives a parole, watchword, or countersign different from what he received[13], or

(*c*) Impedes the provost marshal[14] or any assistant provost marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the 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, or

(*d*) Does violence to any person bringing provisions or supplies to the forces, or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving[15], or

(*e*) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders[16] issued in that respect,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 The punishment for the offences here mentioned by name very widely according as the offences are committed on active service or not on active service, and where a man is charged with committing any of them on active service, those words must always be inserted in the charge For the definition of *active service*, see s 189

2 *Post* As used with respect to an individual this word refers to the position or place in which it may be the duty of an officer or soldier to be, especially when under arms, and with respect in particular to a sentry, it applies to the spot where the sentry is left to the observance of his duties by the officer or N C O posting him or to any limits specially pointed out as his beat In determining what, in any particular case, is a post, the court will use their military knowledge See note 7 below

The place in which the person was posted is material and should be stated in the charge

3 The particulars of the charge must state exactly the signal made or the words used If means other than words are used they must be specified briefly in the particulars of the charge

4 *Intentionally* See note 6 to s 4 and Ch VII, para 23

5 Where reliance is placed on the word "elsewhere," the place should be specified in the statement of the offence

6 Although treachery must be averred in a charge under this paragraph, and want of good and sufficient cause in a charge under subs (3) (*b*), the particulars of the charge need not detail the circumstances of the treachery or of the absence of good and sufficient cause Upon proof that the accused made known the watchword to a person not entitled to receive it, or gave a watchword different from that which he received, the court will be at liberty to infer the treachery or the absence of good and sufficient cause, unless the accused can show that he acted from good cause and not treacherously The particulars of the charge must aver that the person was not entitled to receive the watchword

Watchword will include any authorised pass word not being parole or countersign which might, for example, be adopted for a particular emergency

7 *Post* See note 2 above The fact of a sentry not being 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 A soldier is liable, if, being one of the guard or body furnishing the sentry for the post, he has undertaken the duty of sentry, even though not posted in the regular way by a N C O A sentry found drunk even a short distance from his post

should be charged with leaving his post, he cannot properly be charged with being drunk on his post, though he may be charged with drunkenness, the particulars of the charge showing that he was on duty at the time As to "stablemen," see K R , 623

8 This paragraph, having regard to the special military significance of the term "plunder," is applicable only to offences committed on active service For meaning of "commanding officer" see Ch XI, para 6

9 *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, cellar, 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

10 The "other place" should be specified in the charge

11 *Plunder* See above note 8

12 See notes 3 and 5 above This paragraph applies only to false alarms among the troops occasioned negligently

13 See note 6 above This paragraph only differs from subs (1) (s) in the omission of the treacherous character of the offence

14 *Provost marshal* As to appointment and duties of provost marshals see s 74, and Ch IV, para 40 As s 74 only provides for the appointments of provost marshals and assistant provost marshals abroad, a person should not be charged under this paragraph when the offence is committed in the United Kingdom, in such cases the charge should be laid under s 8 or s 9 (if applicable), or under s 40 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

15 See Ch XIV, para 413 (footnote) It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies From this point of view an offence which in other circumstances would be trivial, may require severe punishment, as for instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the army As an offence under the paragraph will really be a civil offence when not committed on active service, a person should not be charged under this paragraph when the offence is committed in the United Kingdom or in any other place where there is a civil court competent conveniently to deal with the case (see Ch VII, para 3) On the other hand, on active service, offences which, if committed in the United Kingdom, would be tried by a civil court, may be better tried under this enactment The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed

16 The particulars of the charge must show how the act charged was irregular and contrary to orders

Mutiny and Insubordination

Mutiny and sedition

7. Every person subject to military law who commits any of the following offences, that is to say,

(1) Causes or conspires with any other persons to cause any mutiny or sedition[1] in any of His Majesty's military, naval, or air forces, or

(2) Endeavours to seduce any person in any of His Majesty's military, naval, or air forces, from allegiance to His Majesty, or to persuade any person in any of His Majesty's military, naval, or air forces, to join in any mutiny or sedition[2], or

(3) Joins in, or being present[3] does not use his utmost endeavours[4] to suppress, any mutiny[5] or sedition in any forces belonging to any of His Majesty's military, naval, or air forces, or

Part I — ss 7, 8

(4) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to any of His Majesty's military, naval, or air forces, does not without delay inform his commanding officer[6] of the same,

shall, on conviction by court-martial, be liable to suffer death, or such less punishment as is in this Act mentioned

NOTE

1 See as to these offences, Ch III, paras 5–7 A man might be tried under this paragraph for conspiring to cause a mutiny though the conspiracy proved abortive, and no mutiny took place

2 Civilians who endeavour to seduce any person serving in His Majesty's forces by sea or land from allegiance to His Majesty, or to incite any such person to commit any traitorous or mutinous practice, are liable on conviction by a civil court to penal servitude for life under 37 Geo III, c 70, as amended by 7 Will IV and 1 Vict c 91

3 Doubts might well arise whether men present when a mutiny was being contrived or had actually begun were actually joining it or not This paragraph provides that if they are present and do not use their utmost endeavours to suppress it they will be equally guilty as if they took that active part which constitutes joining in a mutiny Consequently, men present on parade, or present accidentally, or induced by false pretences to attend a meeting, where a mutiny is begun or contrived, will be guilty of an offence under this paragraph although they took no active part, and therefore can hardly be said to have joined in the mutiny If a doubt exists as to whether any individual did or did not take such an active part as to have joined in the mutiny, he may be charged in alternative charges under para (1) and this paragraph

4 This does not necessarily mean the utmost of which a man is capable, but such endeavours as a man might be reasonably and fairly expected to make

5 Each one of a body of men not marching, or not coming from their barrack room when duly ordered, is guilty of mutiny, if he cannot show that his disobedience was occasioned solely by reason of compulsion

6 This expression will include any person having a military command over the person who has knowledge of the mutiny or sedition, and is not limited by R P 129, see Ch XI, para 6 A private soldier, for example, would properly inform his sergeant, and information so given would be held to be given to his commanding officer within the meaning of the section

Striking or threatening superior officer

8.—(1) Every person subject to military law who commits any of the following offences[1], that is to say,

Strikes or uses or offers any violence[2] to his superior officer,[3] being in the execution of his office,[4]

shall, on conviction by court-martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned, and

(2) Every person subject to military law who commits any of the following offences[1], that is to say,

Strikes or uses or offers any violence[2] to his superior officer[3] or uses threatening or insubordinate language[5] to his superior officer,

shall, on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned, and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 See s 56 (4A), (4B), (4C), under which an accused charged with striking may be found guilty of using or offering violence, if charged with using

violence, may be found guilty of offering violence, and if charged with using threatening language, may be found guilty of using insubordinate language

2 *Offers any violence* These words include any defiant gesture or act which if completed would end in actual violence but do not extend to an insulting or impertinent gesture or act from which violence could not result For example, a soldier throwing down his arms or his equipment on parade, or throwing away his cap or belt in an impertinent manner, but in such a direction that they could not strike a superior, could not be deemed to offer violence within the meaning of this enactment So also a man shaking his fist, or even drawing a bayonet, or otherwise making a show of violence against a superior, behind the bars of a cell or at such a distance that striking him was at the moment impossible, is not guilty of offering violence On the other hand, throwing a missile would be "using" or "offering" violence according to the results, and pointing a loaded firearm at a superior would be "offering" violence Pointing an unloaded firearm should be charged under s 40, unless threatening or insubordinate language is used

If the violence be used in self defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reason to believe it was necessary for his actual protection from injury, and that he used no more violence than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence

Provocation is not a ground of acquittal but tends to mitigate the punishment, evidence of provocation if tendered must therefore be admitted

3 *Superior officer* This expression in this section means not only a superior in rank as defined by s 190 (7) but also a senior in the same grade where that seniority gives power of command according to the usages of the service, but one private soldier can never be the "superior officer" of another The court should be satisfied, before conviction that the accused knew the person with respect to whom the offence was committed to be a superior officer If the superior did not wear the insignia of his rank, and was not personally known to the accused evidence would be necessary to show that the accused was otherwise aware of his being his superior officer Where the accused is charged with an offence against a superior officer who is of the same grade, evidence must be adduced to show that the latter is senior to the accused

A military policeman is not, as such, the superior officer of a private soldier When a soldier, who is arrested for drunkenness, strikes a N C O (being his superior officer) of the military police and is brought to trial, the convening officer will consider according to the particular circumstances, whether it is necessary or expedient to charge the soldier with the graver offence of striking his superior officer, or whether the case would be met by charging the accused with one of the less serious offences specified in s 10 (2) or (3)

See generally as to offences against superiors, K R , 619

4 *In the execution of his office* It is difficult accurately to define these words, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior is or is not in the execution of his office An officer in plain clothes may undoubtedly be in the execution of his office, but where the officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the soldier at the time of offering the violence that the person assaulted was an officer, which is not the case where the officer is in uniform On the other hand, there may be circumstances in which an officer in uniform is not in the execution of his office It may be taken in general that striking or using violence to any superior officer by a soldier over whom it is at the time the duty of that superior officer to maintain discipline, would be striking or using violence to him in the execution of his office

5 *Threatening or insubordinate language* Where the charge is for using threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed

Expressions used merely for exculpation would not be punishable under this section It has been ruled that "expressions, however offensive to a superior, that are used (1) in the course of a judicial inquiry, (2) by a party to that inquiry, and (3) upon a matter pertinent to and *bonâ fide* for the purposes of that inquiry, as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge "

Expressions used of a superior officer, and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under s 40, and not under this section, but the use of threatening

Part I
ss. 8, 9

or otherwise insubordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior constitutes an offence of "using insubordinate language" under this section

The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior

As to the use of coarse and abusive language by a man when drunk, see Ch III, paras 47, 48, and for general observations on insubordinate language, see Ch V, para 71

Improper language which does not amount to insubordinate language, or cannot be proved to have been used to a superior officer, must be charged under s 40

Disobedience to superior officer

9—(1) Every person subject to military law who commits the following offence, that is to say,

Disobeys[1] in such manner[2] as to show a wilful defiance of authority any lawful command[3] given personally[4] by his superior officer[5] in the execution of his office,[6] whether the same is given orally, or in writing, or by signal, or otherwise,

shall, on conviction by court-martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned, and

(2) Every person subject to military law who commits the following offence, that is to say,

Disobeys[1] any lawful command[7] given by his superior officer,[8] shall, on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude or such less punishment as is in this Act mentioned, and

if he commits such offence not on active service, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned

NOTE

1 The disobedience must be immediate or proximate to the command, and actual non compliance must be proved A man who says "I will not do it" does not necessarily disobey A man who when ordered to do a duty at a future time says "I will not do it," does not thereby commit an offence under this section, though he may be liable under s 8 (2) See Ch III, para 11

An omission arising from misapprehension or forgetfulness is not an offence under this section Nor is the act of a soldier who declines to sign his accounts upon the ground that they are incorrect Nor is failure to obey a command where obedience would be physically impossible

Religious scruples however *bonâ fide*, are no excuse for neglect or refusal to obey orders

2 *Disobeys in such manner any lawful command* See Ch III, paras 10–14 The particulars of the charge must specify the command, and state that it was given personally, and must show the manner in which the disobedience showed a wilful defiance of authority The particulars should also show how the superior officer was in the execution of his office (see note 4 to s 8, and specimen charge-sheets Nos 19 and 22, pp 718 9), but the court may make use of their military knowledge for determining whether the superior officer was in the execution of his office, and whether he was a superior officer who by virtue of his office was authorised to give such a command

3. *Lawful command* The command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay, or prevent a military proceeding Thus, a command given by an officer to his soldier servant to perform some domestic office not relating to military duty is not a

command within the meaning of this section A soldier who refuses to take a letter relating to private theatricals upon the order of a N C O does not disobey a lawful command

With regard to the performance of duties while under arrest, see K R 540

A convalescent patient may lawfully be ordered to assist the hospital staff by doing such fatigue work as he may be fit for, or for the good of his health to occupy himself with some prescribed form of handiwork

A soldier may lawfully be ordered to have his hair cut

A civilian cannot give a "lawful command" to a soldier employed under him, *e g* , in a pay office, but it may well be the soldier's duty as such to do the act indicated, apart from any order, and, if so, he may be punished for not doing so under s 40

As to orders to undergo medical treatment, see s 18 (3) and note

As to disobedience of general or garrison orders, see s 11

It was held in *Warden* v *Bailey* (1815) 4 M & S 400, that insubordinate discussion (with other N C Os) of an illegal order was a breach of good order and military discipline

4 A command does not cease to be given "personally" because it is given to a number of men at one time

5 For the meaning of the expression 'superior officer," see note 3 to s 8

6 *In the execution of his office* See note 2 above, and note 4 to s 8

7 *Disobeying lawful command* See note 3 above

To establish an offence under this sub section, it is not requisite to prove that the command was given personally by a superior It is sufficient to show that it was given by the deputy or agent of a superior, whom, according to the usages of the service or otherwise, the accused might reasonably suppose to have been duly authorised to notify to him the command of his superior But it must be a specific command to an individual, and must be given as being the command of a superior who by virtue of his office or otherwise was authorised to give such a command

An officer refusing to go into hospital when ordered could be charged under this sub section

10 Every person subject to military law who commits any of the following offences, that is to say, Insubordination

(1) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes or uses or offers violence to any such officer[1], or

(2) Strikes or uses or offers violence to any person, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer[2], or

(3) Resists an escort whose duty it is to apprehend him or to have him in charge[3], or

(4) Being a soldier, breaks out of barracks, camp, or quarters,[4]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 A person may be charged under this paragraph whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank the offender may be charged under s 8 or s 9 Only officers should be charged under this paragraph

2 It will be observed that a charge may be laid under this paragraph for assaulting a civilian policeman, if the person committing the assault is subject to military law, and has been placed in the policeman's custody by an officer, warrant officer, or N C O

3 The resistance may be passive A man lying down and refusing to move, if physically able to move, "resists" Threats and a threatening attitude which in fact deter an escort from arresting a man may amount to

Part I. — ss 10,11

"resisting" the escort The particulars of the charge should specify the nature of the resistance (see specimen charge sheet No 26 p 719) The court will use their military knowledge to determine whether it was the duty of the escort *to apprehend* the accused *or to have him in charge* Breaking away from an escort is not by itself an offence under this section, but may be charged under s 22

4 *Breaks out of barracks, &c* This offence consists in a soldier quitting barracks, &c , at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order, and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed The mode in which the act was effected will, however, assist a C O in determining whether to deal with it as a mere breach of discipline under this paragraph, or to reserve it for trial as amounting to desertion The particulars of the charge must show that the absence from barracks, &c , was without permission, or otherwise unlawful

If the charge be for breaking out of barracks, it must be proved that the accused left the confines of the barracks as charged and so also if the charge is for breaking out of camp A charge of breaking out of quarters would hold good in the case of a man quartered in one part of a barrack and improperly leaving that part for another part where he had no right to be

A soldier who breaks out of barracks, camp or quarters, and remains absent for some time should, if brought to trial by court martial, be charged only with desertion or absence without leave (s 12 or s 15), and if he was a defaulter at the time, the fact should be stated in the particulars of the charge See K R 649

Neglect to obey garrison or other orders

11 Every person subject to military law who commits the following offence , that is to say,

neglects to obey any general or garrison or other orders,

shall, on conviction by court-martial be liable if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

Provided that the expression 'general orders" in this section shall not include His Majesty's regulations and orders for the army or any similar order in the nature of a regulation published for the general information and guidance of the army

NOTE

The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental or of a like nature Disobedience of a specific order in the nature of a command must be dealt with under s 9, and non compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under s 40

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 A copy of the order contravened 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 (see K R 74 and 1602) 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 K R may be punished under s 40, but if a K R is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished under this section

The offence of concealment of venereal disease by a soldier is to be dealt with under this section K R 529

Desertion, Fraudulent Enlistment, and Absence without Leave

Desertion

12.—(1) Every person subject to military law who commits any of the following offences, that is to say,

(*a*) Deserts[1] or attempts to desert[2] His Majesty's service, or

(*b*) Persuades, endeavours to persuade, procures or attempts to procure, any person subject to military law to desert from His Majesty's service,

shall, on conviction by court-martial—

if he committed such offence when on active service[3] or under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned, and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment or such less punishment as is in this Act mentioned, and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned [4]

(2) Where an offender has fraudulently enlisted once or oftener, he may, for the purposes of trial for the offence of deserting or attempting to desert His Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs, and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly, and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences [4]

(3) For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section [4]

NOTE.

1 See Ch III, paras 17–26, K R, 581–597

Upon a charge of desertion the particulars should state, and the prosecution should prove, both the date when the absence began, and the date when it ended (by return, surrender, apprehension, or re-enlistment) It is not sufficient to allege and prove absence "on or about" a certain date, or "from some date subsequent to "

To establish desertion it is necessary to prove some circumstance justifying the inference that the accused intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for service abroad or service in aid of the civil power If the basis of the charge is an intent to avoid embarkation, or some other special duty or service, the particulars should contain an allegation to this effect

In order to establish in evidence that a soldier has deserted or attempted to desert "when under orders for embarkation," the original or a certified true copy of orders detailing the accused for embarkation must be produced by a witness on oath, and evidence must be given that the orders were duly posted or brought to the notice of the accused, or that he was otherwise in a position

Part I. — s 12

to be acquainted with their contents (see K R 1099, 1100) This would not, however, exclude proof of verbal orders for embarkation given by a C O in an emergency

Personal warning and acknowledgment of such warning in accordance with K R 1099 should also be proved whenever possible

If a man warned for a draft overstays his "draft leave," even though he does not know the exact date fixed for sailing, it will be open to the court, if the circumstances warrant it, to infer that he intended to escape the important service on which he was ordered and to convict him of desertion

A person charged with desertion may be found guilty of attempting to desert, or of being absent without leave, and a person charged with attempting to desert may be found guilty of desertion, or of being absent without leave (s 56 (3) (4), see also in connection with findings of absence without leave, note 1 to s 161)

As to forfeiture of prior service on conviction for desertion or fraudulent enlistment, see ss 79 (2), 84 (2), and notes, as to forfeiture of pay on conviction for desertion, see s 138 (1) and P W 879 (*a*), as to liability to general service or transfer on conviction or confession of desertion or fraudulent enlistment, see s 83 (7), as to liability to transfer of soldier delivered into military custody or committed by a court of summary jurisdiction as a deserter see s 83 (8), as to descriptive reports of deserters, escorts, and generally, see K R , 581–597, and as to inquiry into absence and confession of desertion or fraudulent enlistment, see ss 72, 73, and R P 125

Any person who falsely represents himself to any authority to be a deserter may be sentenced by a civil court of summary jurisdiction to imprisonment, with or without hard labour, for any period not exceeding three months, (s 152), see also as to punishment by a like court of persons inducing officers or soldiers to desert, s 153, and as to the apprehension of deserters, s 154

As to a false statement by a soldier to his C O that he has been guilty of desertion or fraudulent enlistment, see s 27 (3)

As to desertion by men of the Territorial Army, see T R F Act, s 20

When under K R 616 (*b*) a superior officer directs the case of an offender against whom a charge of desertion has been preferred to be summarily disposed of, he should order the offence to be disposed of as one of absence without leave

2 *Attempt to desert* To establish an attempt to desert, some act which, if completed, would constitute desertion, as above described, must be proved A mere intention to desert does not amount to an attempt to desert

3 *On active service* See note 1 to s 6

4 If the accused is put on his trial for two offences of desertion, or for fraudulent enlistment and desertion, and it is desired that the higher punishment allowed for a second offence should be awarded, the charges must be on separate charge sheets, and the trials distinct, though they may be held before the same court To enable the punishment of penal servitude to be awarded, the court must, of course, be a general court martial, or, if on active service, a field general court martial For the general principles to be adopted in connection with the placing of charges in separate charge sheets, see note 1 to R P 62

The case is similar where the charge is for fraudulent enlistment under s 13, but in that case, if he has deserted first, and fraudulently enlisted afterwards, he cannot be awarded the higher punishment unless he has served between the date of the desertion and the date of the fraudulent enlistment (s 13 (2) (3))

For example, if a soldier deserted on the 1st October, 1920, and was apprehended, convicted, and punished, and after undergoing his punishment returns to the ranks, and on the 10th March, 1923, fraudulently enlists, then, on conviction for such fraudulent enlistment, he can be sentenced to penal servitude, just as if the former conviction for desertion had been a conviction for fraudulent enlistment If, however, a soldier who deserted on the 5th January, 1923, and is not apprehended, abandons his intention of permanently quitting the service, and fraudulently enlists on the 15th July, 1923, then, although he may be convicted both of the desertion and of the fraudulent enlistment, he cannot be sentenced to penal servitude for the fraudulent enlistment, as the desertion was his absence "next before the fraudulent enlistment," and the exception in s 13 (3) applies

Where the desertion and fraudulent enlistment form in effect one transaction, the man should not as a rule be tried for both offences

13 —(1) Every person subject to military law who commits any of the following offences, that is to say,

(*a*) When belonging to either the regular forces, or the territorial army when embodied,[1] without having obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist or enrol, enlists[2] or enrols himself in His Majesty's regular forces[3] or in any force raised in India or a colony, or

(*b*) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrols himself, or enlists in the territorial army or in any of the reserve forces, or in the Air Force, or enters the Royal Navy,[4]

shall be deemed to have been guilty of fraudulent enlistment,[5] and shall, on conviction by court-martial, be liable—

(i) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned, and

(ii) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned

(2) Where an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs, and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly, and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences [6]

(3) Where an offender is convicted of the offence of fraudulent enlistment, then for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting or attempting to desert His Majesty's service may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not upon his conviction for that fraudulent enlistment be reckoned as a previous offence of deserting or attempting to desert [6]

NOTE

1 The particulars of the charge must specify the force to which the accused belonged at the time of his enlistment A member of the Territorial Army enlisting when the Territorial Army is not embodied, cannot be charged under this section, though he may be charged under s 33 for making a false answer

2 A copy or duplicate of the attestation paper is proof of enlistment (s 163 (1) (*a*))

3 This sub-section covers the case of a soldier of the Royal Marines who enlists in the regular forces while a deserter or an absentee from one of His Majesty's ships See proviso (*a*) to s 179 (15)

4 Subs (1) (*b*) covers the case of a soldier who enters the Royal Navy or enlists in the Royal Air Force, but subs (1) (*a*) does not cover that of a sailor

Part I. ss 13-15

or airman who enlists in the Army Such cases can be dealt with under s 33

5 For forfeiture of service on conviction for fraudulent enlistment, see ss 79, 84 (2) and 161

Where a soldier is charged with fraudulent enlistment, by reason of which he has obtained a free kit of necessaries, the receipt of that free kit must be mentioned in the particulars of the charge and (unless the accused pleads guilty) proved in evidence in order to enable the court to sentence him to a deduction from his pay as compensation for the free kit of necessaries, but the charge of fraudulently obtaining a free kit of necessaries cannot by itself be maintained, see R P 13 (F), K R , 624, and R P , App I, note as to use of Forms of Charges (23), p 701 The issue of a free kit of necessaries may be proved by a copy of a record thereof in the regimental books (s 163 (1), (*g*) and (*h*))

6 As to conviction for two offences, and the punishment for the second offence, see note 4 to s 12

For references to further provisions of the Act as to fraudulent enlistment and desertion, see note 1 to s 12 See also Ch III, paras 26 and 27

Assistance of or connivance at desertion

14 Every person subject to military law[1] who commits any of the following offences , that is to say,

(1) Assists[2] any person subject to military law to desert His Majesty's service , or

(2) Being cognizant of any desertion or intended desertion of a person subject to military law, does not forthwith give notice[3] to his commanding officer,[4] or take any steps in his power[5] to cause the deserter or intending deserter to be apprehended,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 As to similar offences by civilians, see s 153

2 It must be proved that the accused knew that the assistance given by him was for the purpose of the desertion

3 *Does not forthwith give notice* The time at which the accused became cognizant of the desertion, and, if he gave notice to his C O , the time at which he gave notice, are material, and should be specified in the charge

4 *Commanding officer* This includes any person having military command over the accused The court may use their military knowledge in determining whether the person is for this purpose a commanding officer or not See Ch VI, para 10, and note 6 to s 7

5 If the charge is under the latter part of (2), the particulars must allege the steps which it was in the power of the accused to take in order to cause the deserter, or intending deserter, to be apprehended

Absence from duty without leave

15. Every person subject to military law who commits any of the following offences , that is to say,

(1) Absents himself[1] without leave[2], or

(2) Fails to appear[2] at the place of parade[3] or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity[2] quits the ranks , or

(3) Being a soldier, when in camp or garrison or elsewhere, is found beyond any limits fixed or in any place prohibited by any general garrison or other order,[4] without a pass or written leave from his commanding officer[5], or

(4) Being a soldier without leave from his commanding officer,[5] or without due cause,[2] absents himself from any school when duly ordered to attend there,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 *Absents himself* See Ch III, paras 17–24, as to the apprehension of absentees without leave, see s 154, see also note 3 to s 22 with regard to a soldier who escapes from arrest and then absents himself without leave For forfeiture of pay on conviction for absence without leave, see ss 137 and 138, and the Pay Warrant

A soldier tried for desertion or attempted desertion may, under s 56, be found guilty of absence without leave, but if only charged with absence without leave he cannot be convicted of desertion or attempted desertion When a soldier has been absent without leave for 21 *clear* days a court of inquiry will be assembled (s 72) See also K R 581 *et seq* , 742, R P 125

The absence must be from the place where it is his duty to be, and where he ought to be found if wanted Usually it must be absence from his barrack, camp or station, but if his duty is to be in one part of the barrack, and he cannot be found when wanted, his absence from a part only of the barrack may amount to absence without leave

The particulars should state the date when the absence began, and the date when it ended (by return or arrest) If the hour of his absence is material for the purpose of proving a day's absence (see s 138 and note, and s 140), the hours of his departure and return must also be stated in the particulars

Involuntary absence due, for example, to illness or arrest by the civil power, is not ordinarily an offence under this section, but inability to return owing to drunkenness (which is an offence against the Act) is no excuse Where the absence was originally voluntary and subsequently becomes involuntary, the length of the absence without leave must be reckoned only to the time when the absence becomes involuntary Conversely, absence originally involuntary, may become an offence under this paragraph if the person charged fails to return to duty at the earliest possible moment

As soon as an absentee is taken into custody (either civil custody, or open or close arrest), whether on surrender or on apprehension, his absence ceases to be voluntary, K R 567 If, however, he is merely ordered (*e g* , by an assistant provost marshal or railway transport officer) to rejoin his unit at once, his absence without leave continues until he so rejoins

In cases where a soldier on leave has lost his return ticket or has not sufficient funds to purchase a railway ticket, and is consequently unable to rejoin his unit before the expiration of his leave, the delay in rejoining may be dealt with, subject to the discretion of the officer disposing of the case, as absence without leave, notwithstanding that the soldier may have reported to the local military or police authorities

If an officer is told that orders as to reporting will be sent to him at home, it is his duty to ask for orders should none reach him within a reasonable time Otherwise he may be treated as absent without leave after the date when any honest and reasonable man would have recognised that such orders would normally have arrived

Leave of absence is not effective until it is notified to the applicant A person who goes away in expectation of his application being granted, but without waiting to know the result of it, may be convicted of absence without leave, although in fact the leave asked for has been granted

A member of the Territorial Army, who, while out for annual training in camp, absents himself without leave, would be liable under this section See also T R F Act, s 20

2 In charges under this section the court may look to the accused to give evidence of his "leave," "urgent necessity" or "due cause," as soon as the prosecution have given evidence establishing his absence, failure to appear, &c , and raising the inference that he had no leave, &c

3 The particular parade should be specified, so that the accused may be able to show, if he can, that he was not by order or custom, or for other reasons, bound to attend that parade It must be proved that the accused had actual or constructive notice of the time and place appointed by the C O But the place for the parade need not have been specifically mentioned if it can be proved that it was well understood and known to the accused Such a charge can seldom be preferred with safety unless orders stating both the time and place of parade can be produced, and if any difficulty arise the

Part I.

ss 15–17

charge should be laid under para (1), if the evidence will support the charge

A soldier absent without leave is not also liable to trial for failing to attend parades, &c , during the period of his absence, but he may be tried on alternative charges for both offences A soldier absent from parade owing to drunkenness should be charged under s 19 and not under this paragraph

4 Ignorance of an order, of which he ought to be aware, although it may mitigate the punishment, does not exculpate the accused But misapprehension reasonably arising from want of clearness in the order may be a ground of exculpation (See also note to s 11)

5 Any officer having command over the accused and authority to grant leave will be a commanding officer within the meaning of paragraphs (3) and (4) This matter can therefore be determined by the military knowledge of the court

Disgraceful Conduct

Scandalous conduct of officer

16. Every officer who, being subject to military law, commits the following offence , that is to say,

behaves in a scandalous[1] manner, unbecoming the character of an officer and a gentleman,

shall, on conviction by court-martial, be cashiered [2]

NOTE

1 Scandalous conduct may be either of a military or social character But a charge of a social character is not to be preferred under this section, unless it is of so grave a nature as to render the officer deserving of being cashiered, and therefore scandalous in respect of his military character Social misconduct which is not so grave as to bring scandal on the service should not be made the ground of a charge against an officer, but may well form the subject of reproof and advice on the part of his C O or some other superior officer

The addition of an alternative charge under s 40 will meet a case where the evidence, as ultimately given before the court, may justify a more lenient view of the case

As a rule a charge should not be preferred under this section in the case of an act or neglect which amounts to any one of the specific offences dealt with in ss 4 to 15 and 17 to 39 Thus, in cases of drunkenness, whether on duty or not on duty, the charge should be preferred under s 19, and in cases of disgraceful conduct, as provided for in s 18

2 It is important to note that in case of a conviction under this section, cashiering is the only punishment which can be awarded by the court, (see, however, s 57 with regard to commutation or remission of such a sentence)

17. Every person subject to military law who commits any of the following offences , that is to say,

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods,

shall, on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned

NOTE.

At home stations, in all cases of fraud—but not of simple theft—the charge and summary of evidence must be submitted to the Judge Advocate General before the trial is ordered (K R 630)

The meaning of "theft," "fraudulent misapplication" and "embezzlement" is dealt with in Ch III, paras 30–35 , see also Ch VII, paras 50-55 See specimen charges Nos 43–47, pp 722–3 Under s 56, a person charged

with theft may be convicted of embezzlement or fraudulent misapplication, and if charged with embezzlement he may be convicted of theft or of fraudulent misapplication

This section does not apply to ordinary thefts or to such thefts as are dealt with in s 18 (4), but to those more serious offences committed by persons in a position of trust in relation to public or regimental property, where placed under their charge

The particulars of the charge must show in detail that the accused was charged with or concerned in the care or distribution of the money or goods alleged to have been stolen, fraudulently misapplied or embezzled (see specimen charge sheet No 43, p 722), but the court may use their military knowledge to determine that the accused, if holding a particular office, was, by virtue of his office, so charged or concerned A sentry posted over a place containing public property would not be "charged with" the care of the property within the meaning of this section

The expression "charged with" means officially charged with, that is to say, in virtue of the public office which the accused formally holds A corporal entrusted by a serjeant for his own convenience with public money should not be charged under this section, although he might be convicted under s 18

If the charge is for fraudulent misapplication or embezzlement, it should allege that the property was improperly applied for the use of the accused himself or some other person (as the case may be), and not for a public purpose If no evidence is forthcoming as to the particular mode of misapplication, the court may, in the absence of explanation from the accused, infer that the property was misapplied from the fact of its not having been properly applied

Each instance of theft, embezzlement or fraudulent misapplication 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 somebody else, and this must be particularly recollected in the case, for example, of a N C O's accounts getting into confusion through the neglect or carelessness of superiors

As to holding a court of inquiry on discovery of loss of stores, &c , see K R 737, 738, and as to restitution of stolen, &c , property, see s 75

A Bank note or Treasury note is, but a postal order is not, "money" for the purposes of this section

Property of the Navy, Army and Air Force Institutes is not "public" or "regimental" property for the purposes of this section This property is, however, specifically dealt with in s 18 (4)

It is not clear at what moment rations issued to a soldier cease to be "public" property *R* v *Immer* (1917) 13 Cr App Rep 22 *Mogan* v *Caldwell* (1919) 35 T L R , 381 but if he improperly disposes of them, he can be charged under s 40, and a civilian recipient under s 156, without laying the property in anyone

A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards gaining badges as a recruit (See s 190 (18), and P W , 965)

See also notes to s 18 (4)

Disgraceful conduct

18 Every person subject to military law[1] who commits any of the following offences, that is to say,

(1) Malingers,[2] or feigns[3] or produces disease or infirmity[4], or

(2) Wilfully maims or injures himself or any other person subject to military law, whether at the instance of that person or not, with intent thereby to render himself or that person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service[4], or

(3) Is wilfully guilty of any misconduct,[5] or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces[5] or aggravates disease or infirmity, or delays its cure[4], or

Part. I — s 18

(4) Steals,[6] embezzles or fraudulently misapplies,[7] or receives, knowing them to be stolen or embezzled, any money or goods the property of a person subject to military law,[8] or any money or goods belonging to any regimental mess[9] or band, or to any regimental institution[9] or to the Navy, Army, and Air Force Institutes, or any public money or goods[10], or

(5) Is guilty of any other offence[11] of a fraudulent nature[12] not before in this Act particularly specified, or of any other disgraceful conduct[13] of a cruel, indecent[14] or unnatural kind,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned [15]

NOTE

1 By the A & A F (A) Act, 1925, this section, which formerly related only to soldiers, was made applicable to every person subject to military law, hence officers can now be tried under this section for the offences therein mentioned

2 To *malinger* is to pretend illness or infirmity which does not exist, in order to escape duty

3 To *feign* disease or infirmity means that the accused person exhibit appearances resembling the genuine symptoms 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

4 Paras (1)–(3) The charge should show in what way an accused person has malingered, or what disease or infirmity he has feigned or produced, or what particular injury has been committed, or of what misconduct or wilful disobedience he has been guilty In a case under para (2), evidence will have to be given of the intent, but it would be sufficient to raise a presumption of intent if the act were shown to have been done wilfully and not accidentally

5 The misconduct must be with the intent of producing or aggravating the disease, or delaying its cure, as the case may be 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 paragraph Nor would a person incur liability under it who refuses to undergo a surgical operation

A soldier 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

6 Where an accused is charged with theft, the ownership of the property alleged to have been stolen should be clearly proved in evidence, and its identity established (where possible) by production and identification in court, if not produced, its non-production should be accounted for

It is not possible under this paragraph to support a charge of stealing the property of a person who was in fact dead at the time of the theft

7 See note to s 17, Ch III, paras 30 39, Ch VII, para 50, *et seq* Under s 56, a person charged with stealing may be found guilty of embezzlement or of fraudulent misapplication, or if charged with embezzlement, may be convicted of stealing or of fraudulent misapplication

8 If a soldier steals the greatcoat of his comrade, he can be charged with stealing it either as being public property or as being the property of a person subject to military law, for although the greatcoat is owned by the public, the comrade has a "special property" in it by reason of his lawful possession

9 The paragraph speaks only of a *regimental* mess or *regimental* institution (For definition of "regimental," see s 190 (17)) When the mess does not fall within the definition of "regimental," a charge cannot be brought under this paragraph, and the offender would have to be tried under s 41

It has been ruled that a branch of the Royal Army Temperance Association is not a regimental institution within the meaning of this paragraph

10 If it turns out that the property belongs to some person or persons not included in the category contained in this paragraph, the accused must be acquitted, as the offence could in that case only have been charged under s 41

The value of articles in respect of which the offender should be sentenced to stoppages must always be stated in the particulars of the charge, (see R P 13 (F) and note, and K R 626)

11 A charge under this paragraph for anything that is an offence under any previous enactment of the Act will be bad

12 *Of a fraudulent nature* The particulars must show that there was fraud in the act with which the accused is charged, irregularity in accounts due to incompetence or ignorance of book-keeping will not be sufficient

The following are examples of offences which may be charged under this paragraph—With intent to defraud, presenting for signature a pay and mess roll containing entries known to be false, passing a worthless cheque or "flash" note, charging money for railway warrants, tickets or concession vouchers to which an officer or soldier is entitled free of charge

A reservist who has wrongfully enlisted cannot be charged with obtaining reserve pay by false pretences or fraud

13 *Disgraceful conduct* The particulars of the charge must specify the details of the particular act or acts alleged to constitute the disgraceful conduct

14 *Of an indecent kind* Offences of an indecent kind against children and young persons of the female sex should be charged under s 41 and not under this section The expediency of trying such offences before a civil court should be considered in each case, and where they are committed against natives of India or of a colony, the cases should usually be dealt with by a civil court if this course can reasonably be followed Where trial by court-martial is proposed, the charge and summary of evidence must, at home stations, be submitted to the Judge-Advocate-General before trial is ordered (K R 630), and a judge-advocate should be appointed in all such cases, whether at home or abroad, in order that the court may have the benefit of his advice, particularly with regard to the danger of accepting the uncorroborated evidence of witnesses who are shown to be accomplices (See Ch VI, para 45)

15 A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards earning badges as a recruit (See s 190 (18), and P W 965)

Drunkenness

Drunkenness

19. Every person subject to military law who commits the following offence, that is to say,

The offence of drunkenness,[1] whether on duty or not on duty, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding five pounds[2]

Provided that, where the offence of drunkenness is committed by a soldier not on active service or on duty, the sentence imposed shall not exceed detention for a period of six months, with or without the addition of the aforesaid fine

NOTE

1 See generally as to this offence Ch III, paras 42–48, and s 46 (2) (3), and note Witnesses should be required to state their reasons for their opinion that an accused was drunk

2 Drunkenness is the only offence triable by court martial or C O for which a fine may be imposed The fine, if awarded by court-martial, cannot exceed five pounds, if by a C O it cannot exceed two pounds (s 46 (2) (*b*), K R 579)

Offences in relation to Persons in Custody

Permitting escape of person in custody.

20 Every person subject to military law who commits any of the following offences, that is to say,

Part I. — ss. 20, 21

(1) When in command of a guard, piquet, patrol, or post, releases without proper authority, whether wilfully or otherwise, any person committed to his charge[1], or

(2) Wilfully or without reasonable excuse[2] allows to escape[3] any person who is committed to his charge,[4] 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 penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned

NOTE

1 In a charge under para (1), if proof is given that the person in custody was released, the onus is on the accused to show proper authority The court may use their military knowledge with respect to whether the authority alleged was or was not sufficient

2 In a charge under para (2), if there is a doubt as to the accused having acted *wilfully*, he should be charged with having acted *without reasonable excuse*, or he may be charged with having acted wilfully, and it will be open to the court, under the provisions of s 56 (5), to find that he acted without reasonable excuse A man commits this offence *wilfully* by any act or omission intended to allow the escape of the person committed to his charge, or whom it was his duty to guard or keep See Ch VII, para 23

3 Where an escort consisting of a corporal and a private lose the soldier in their charge, the corporal is liable to conviction unless he can prove that the escape took place in circumstances against which he could not reasonably guard The private would be guilty, upon proof that he shared in the wilful act or negligence of the corporal, or that the soldier while committed to his charge during the temporary and necessary absence of the corporal was allowed to escape, unless he could show that he used all reasonable means to guard against the escape In the latter case the corporal would not be guilty if he could show that his temporary delegation of his duty to the private was occasioned by some necessary cause, and that he took reasonable precautions for the safe custody of the soldier during his absence

4 A deserter or absentee without leave who surrenders himself, and who is being conducted by a N C O to rejoin his unit (K R 709), is not "committed to the charge" of the N C O conducting him within the meaning of this section

Irregular arrest or confinement

21. Every person subject to military law who commits any of the following offences, that is to say,

(1) 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[1], or

(2) Having committed a person to the custody of any officer, non-commissioned officer, provost marshal, or assistant provost marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter to the officer, non-commissioned officer, provost marshal, or assistant provost marshal, into whose custody the person is committed, an account in writing[2] signed by himself of the offence with which the person so committed is charged,

(3) Being in command of a guard, does not as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence

so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,

shall, on conviction by court-martial, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 The prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement te trial or brought his case before the proper authority for investigation If these are proved it will lie on the accused to prove the necessity for keeping the person in question in custody without taking the steps mentioned

2 See note to s 45, and as to entry of charge in guard report, K R 544

Escape from confinement

22 Every person subject to military law who commits the following offence, that is to say,

Being in arrest or confinement,[1] or in prison or otherwise in lawful custody,[2] escapes,[3] or attempts to escape,

shall, on conviction by court-martial, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 As to arrest and confinement, see Ch IV, paras 1-18

2 A soldier in open arrest is "in lawful custody"

A man undergoing field punishment (though in lawful custody) is not "in arrest"

An accused may be convicted under this section for escaping from *any* lawful custody, *e g*, from a civilian who under s 154 has arrested him as a deserter

3 An escape may be either with or without force or artifice, and either with or without the consent of the custodian

A soldier who escapes from arrest and then absents himself without leave may legally be charged with, and convicted of, both offences, but as a rule it is preferable to charge only the absence, alleging in the particulars (as increasing the gravity of the offence) that it was committed "when in arrest"

Offences in relation to Property

Corrupt dealings in respect of supplies to forces

23. Every person subject to military law who commits any of the following offences, that is to say,

(1) Connives at the exaction of any exorbitant price for a house or stall let to a sutler, or

(2) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of His Majesty's forces,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Part I.

s 24

Deficiency in and injury to equipment

24 Every soldier who commits any of the following offences[1], that is to say,

(1) Makes away with,[2] or is concerned in making away with (whether by pawning, selling, destruction, or otherwise howsoever),[3] his arms ammunition, equipments, instruments, clothing,[4] regimental necessaries, or any horse of which he has charge, or any public property issued to him for his use or entrusted to his care for military purposes[5], or

(2) Loses by neglect[6] anything before in this section mentioned[5], or

(3) Makes away with (whether by pawning, selling, destruction, or otherwise howsoever) any military or air force decoration[7] granted to him, or

(4) Wilfully injures[8] anything before in this section mentioned, or any property belonging to a comrade, or to an officer,[9] or to any regimental mess or band, or to any regimental institution, or any public property, or

(5) Ill-treats any horse or other animal used in the public service,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 As to a charge under this section, see K R 625–629, R P App I, note as to use of Forms of Charges, para (23), p 701 As to liability of civilian pawnbroker, &c, see s 156

2 *Making away with* is distinct from theft, as it applies only to goods in a man's own possession, and which, therefore, he cannot in law steal Unless there is some positive act of pawning, sale, &c, a charge for making away with should not be preferred, but a charge of losing should be preferred under para (2) See K R 625

3 This paragraph shows clearly that, whether arms are pawned, sold, destroyed, or otherwise made away with, the military offence is the same, namely, the making away with them, but the degree of the offence may differ according to whether they have been pawned, sold, or destroyed, or otherwise made away with, and the punishment awarded may vary accordingly

4 *Clothing* includes clothing supplied to a man in hospital

5 A charge under paras (1) or (2) of making away with, &c, money or property not mentioned in para (1) would be bad, though if the act amounted to stealing or embezzlement it would be punishable under s 18 or s 41, or if there was proof of any wilful act or neglect, the soldier might, in some circumstances, be charged with an offence under s 40

6 This is not intended to punish a soldier for a deficiency in his kit occasioned by accident or mere carelessness but for loss by culpable neglect On the other hand, the fact that a man has not got his arms, regimental necessaries, &c, 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

In a trial for an offence under this paragraph, the certified copy of the record in the regimental books, on A F B 115, showing that certain articles were deficient, is *prima facie* evidence that they were deficient If no evidence except A F B 115 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 in A F B 115, 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 evidence, if possible, in support of their case in so far as such articles are concerned For such purpose, the court might, if necessary, grant an adjournment under R P 65 (A), but when for any reasonable cause—such as lapse of time since the deficiency arose, and

no witnesses consequently being available to rebut the evidence of or produced by the accused—the court must use their discretion as to their finding in respect of the articles in question In all cases where A F B 115 is not produced at the trial, evidence must be produced to show that at some previous specified date the accused had 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 *Decoration* See s 190 (18) Losing by neglect a decoration is not an offence

8 *Wilfully injures* A charge for injuring the property here mentioned must be laid under this section, and not under s 41 The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person 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, &c , or was mere carelessness In the latter case no offence under this section would be committed The principles to be observed in estimating the loss of or damage to equipment are shown in Equipment Regulations, Part 1, 1925, para 104 See also s 138 (4) and note and R P 13 (F) and note

9 As to the disqualification of an officer having a personal interest in the case for sitting on a court to try an offence under this paragraph, see R P 19 (B) (v) and note

Offences in relation to False Documents and Statements

Falsifying official documents and false declarations

25. Every person subject to military law who commits any of the following offences , that is to say,

(1) In any report, return, muster roll, pay list, certificate, book, route, or other document[1] made or signed by him, or of the contents of which it is his duty[2] to ascertain the accuracy—

(*a*) Knowingly makes or is privy to the making of any false or fraudulent statement[3] , or

(*b*) Knowingly makes or is privy to the making of any omission with intent to defraud[4] , or

(2) Knowingly and with intent to injure any person, or knowingly and with intent to defraud,[4] suppresses, defaces, alters, or makes away with any document which it is his duty[2] to preserve or produce[5] , or

(3) Where it is his official duty[2] to make a declaration respecting any matter, knowingly makes a false declaration,[5]

shall, on conviction by court-martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

1 The "other document" here contemplated is one executed by the accused in his capacity as an officer or soldier, and not in some civil capacity

2 The court may use their military knowledge in determining any question as to the duty of the accused in a case arising under this section

3 A trivial error in a report should not, in the absence of fraud or bad faith, be made the ground of a charge under para (1) (*a*).

4 In a charge under para (1) (*b*) or para (2) involving an intent to defraud, it will not be necessary to show an intent to defraud the government or a particular individual, so long as an intent to defraud is shown

It will be noted that the making of an omission with intent only to deceive is not made an offence under para (1) (*b*), nor is the alteration, etc , of a document an offence under para (2) if it is effected only with an intent to deceive

5 The particulars of a charge under para (2) or (3) should show why it was the accused's duty to preserve the document or to make the declaration,

Part I. — ss 25-27

but where the situation of the accused is proved, the court may use their military knowledge to infer his duty, *e g* , in the cases dealt with in specimen charge sheets Nos 74 and 75 (p 728), the court might use their military knowledge to infer from the fact that the accused was a company quartermaster-serjeant that it was his duty to preserve the documents in question

Para (3) does not include statements in a summary of evidence or verbal statements

Neglect to report, and signing in blank

26 Every person subject to military law who commits any of the following offences , that is to say,

(1) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher , or

(2) Refuses or by culpable neglect omits to make or send a report or return which it is his duty[1] to make or send,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 The particulars must show that it was the duty of the accused to make the report or return, but where the situation of the accused is proved the court may use their military knowledge to infer his duty See note 5 to s 25 If the report or return was one for which the superior had no right to call, there is no punishment for a refusal to make it The neglect must be something more than mere forgetfulness or mistake

False accusation, or false statement

27 Every person subject to military law who commits any of the following offences , that is to say,

(1) Being an officer or soldier, makes a false accusation[1] against any other officer or soldier, knowing such accusation to be false , or

(2) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts , or

(3) Being a soldier, falsely states to his commanding officer[2] that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the navy or air force, or has served in and been discharged from any portion of the regular forces, reserve forces, or auxiliary forces, or the navy or air force , or

(4) Being a soldier, makes a wilfully false statement to any military officer or justice[3] in respect of the prolongation of furlough,[4]

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 A mere false statement, not involving an accusation (*e g* , a letter to a friend containing insinuations against a N C O), is not within the meaning of this paragraph (See also R P 39, note 4)

2 *To his commanding officer* It is not enough for the statement to be made merely to a superior officer, but the term "commanding officer" will include any one whose duty it would be under the K R or according to the custom of the service to deal with a charge of desertion or fraudulent enlistment, if it were made against the soldier A written statement made to any person for the purpose of being laid before the C O is a statement to the C O As to a false confession of desertion made to any other authority, see s 152

3 *Justice* A justice has power under s 173 to extend furloughs in certain cases for a month

4 This paragraph applies only to false statements made in order to obtain, or otherwise in respect of, a prolongation, it does not cover false excuses for overstaying leave made on return

Offences in relation to Courts-martial

Offences in relation to courts martial

28. Every person subject to military law who commits any of the following offences[1], that is to say,

(1) Being duly summoned or ordered to attend as a witness before a court-martial,[2] makes default in attending, or

(2) Refuses to take an oath or make a solemn declaration[3] legally required by a court-martial to be taken or made, or

(3) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him, or

(4) Refuses when a witness to answer any question to which a court-martial may legally require an answer, or

(5) Is guilty of contempt[4] of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance[5] in the proceedings of such court,

shall, on conviction by a court-martial, other than the court in relation to or before whom the offence was committed, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

Provided that where a person subject to military law[6] is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court if they think it expedient, instead of the offender being tried by another court-martial, may by order under the hand of the president, order the offender to be imprisoned, with or without hard labour, or, in the case of a soldier, to undergo detention for a period not exceeding twenty-one days [7]

NOTE

1 An offence under this section is not triable by the court in relation to or before whom it was committed, except that for contempt of court by a person subject to military law the court may order him to be imprisoned, or, if he is a soldier, to undergo detention, for not more than 21 days (see proviso) If the offender is a soldier, he will, as a general rule, be sentenced to detention and not to imprisonment For form of commitment, see Form U, p 786

As a rule courts should accept an apology sufficient to vindicate their dignity without resorting to extreme measures

A civilian guilty of any of the offences mentioned in this section is punishable by a civil court under s 126 See note 1 to that section

2 See generally as to summoning and attendance of witnesses, R P 15, 75–78

Part I.

ss 28–30

3 A person refusing to take an oath must be given an opportunity of making a "declaration"

4 The court is formed when the members are assembled, even before they are sworn, and anything which would be a contempt after the court was sworn would be a contempt once the members are assembled

5 The interruption or disturbance need not be caused within the precincts of the court itself, if the circumstances are such as to constitute a contempt of court

6 S 48 (6) which prohibits a district court-martial from trying an officer, would not exempt an officer guilty of contempt of such a court from liability to be committed to prison by the court under this proviso, but the correct course for the court would almost invariably be to adjourn and report to the proper authority

7 The summary proceeding for contempt is not a trial, and the offence being as a rule committed in view of the court, opportunity should be given to the offender to offer any explanation of, or excuse for, his conduct, but no further inquiry will be necessary The order of the court does not require confirmation

To imprison or send to detention for contempt of court a person who is under trial, though legal, requires very exceptional circumstances to justify it, punishment so inflicted must immediately follow the contempt, and cannot be an addition to any sentence after conviction, or be ordered to commence at the date of the expiration of the punishment under the sentence The court must adjourn until the expiration of the punishment inflicted for the contempt, and must record upon the proceedings the facts which have necessitated the order

False evidence

29 Every person subject to military law who commits the following offence[1], that is to say,

When examined on oath or solemn declaration before a court-martial[2] or any court or officer authorised by this Act to administer an oath, wilfully[3] gives false evidence,

shall be liable, on conviction by court-martial, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 This section will be applicable to an accused person who applies to give evidence himself, but a charge should not be preferred against him except in a very flagrant case

As ss 46 (6), 47 (4), 70 (5) (6), and R P 3, 4, 9 (C), 124 (H), 125 (E) provide that evidence may be given on oath before a court of inquiry, or a C O , or an authority dealing summarily with a charge under s 47, or an officer taking a summary of evidence, a person subject to military law who wilfully gives false evidence on oath before a court or officer duly authorised to administer an oath, is guilty of an offence under this section The evidence before a court of inquiry upon an absentee (s 72) and upon a recovered prisoner of war must be given on oath or declaration (R P 124 (H))

2 The proceedings of the court-martial before which the false swearing is alleged to have taken place are not admissible as evidence that the accused swore as charged The member of the court who recorded the proceedings, or some other person who heard the evidence given, must prove this fact by oral evidence The lawful custodian of the proceedings (or his deputy) should, however, attend the court with the proceedings, for a witness who recorded them may use them to "refresh his memory" The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter sworn See Ch III, para 56, and Ch VII, para 72

3 Accidental or trifling mistakes or discrepancies in evidence will not be made the subject of a charge under this section

Offences in relation to Billeting

Offences in relation to billeting

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting[1]), that is to say,

(1) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted, or

(2) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same, or

(3) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses have been billeted, or to the making up and transmitting of an account of the money due to such person, or

(4) Wilfully demands[2] billets which are not actually required for some person or horse entitled to be billeted, or

(5) Takes or knowingly suffers to be taken from any person any money or reward for excusing or relieving any person from his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability, or

(6) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty, or

(7) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall, on conviction by court-martial,[3] be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 The provisions as to billeting are contained in Part III, ss 102–111, and ss 119–121

2 *Wilfully demands* The demand constitutes the offence, and it is immaterial whether the billet is actually obtained or not

3 See s 111 as to the jurisdiction of magistrates to deal with officers or soldiers guilty of offences under this section

Offences in relation to Impressment of Carriages, &c

Offences in relation to the impressment of carriages, &c, and their attendants

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages[1]), that is to say,

(1) Wilfully demands any carriages, animals, vessels, food, forage, or stores which are not actually required for the purposes authorised by this Act, or

(2) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment

Part I.
—
ss. 31,32

of sums due for carriages or as regards the weighing of the load, or

(3) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry, or

(4) Does not discharge as speedily as practicable any carriage, animal, or vessel, furnished in pursuance of the provisions of this Act relating to the impressment of carriages, or

(5) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled, to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person, or

(6) Ill-treats or permits such person in charge to be ill-treated, or

(7) Uses or offers any menace to or compulsion on a constable to make him provide any carriage, animal, vessel, food, forage, or stores which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, vessels, food, forage, or stores, or tending to induce him to do anything contrary to his said duty, or

(8) Forces any carriage, animal, vessel, food, forage, or stores from the owner thereof,

shall, on conviction by court-martial,[2] be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 The provisions as to the impressment of carriages, &c., are contained in Part III, ss 112–121

2 As to the jurisdiction of magistrates to deal with officers and soldiers guilty of these offences, see s 118

Offences in relation to Enlistment.

Enlistment of soldier, airman, or sailor discharged with ignominy or disgrace

32.—(1) Every person having become subject[1] to military law, who is discovered to have committed the following offence, that is to say,

Having been discharged with disgrace[2] from any part of His Majesty's military or air forces, or having been dismissed with disgrace from the navy,[3] has afterwards enlisted[4] in the regular forces without declaring[5] the circumstances of his discharge, or dismissal,[6]

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned [7]

(2) For the purpose of this section, the expression "discharged with disgrace from any part of His Majesty's military or air forces" means discharged with ignominy, discharged as incorrigible and worthless,[8] discharged for misconduct, or discharged on account of conviction for felony[9] or of a sentence of penal servitude

NOTE

1 *Having become subject, i e*, in the case of the regular forces, having signed the declaration and taken the oath (s 80 (4) (*b*)) The wording in this and the next section is different from that in other sections ("every person subject, &c, who commits," &c), because at the moment of committing the offence the man is not actually subject to military law

2 *Discharged with disgrace* It has been ruled that the disgrace must be by reason of some misconduct after and not before the man's previous enlistment

3 Where a person enlists who under s 52 of the Naval Discipline Act, has been dismissed, but not dismissed with disgrace, the charge should be laid under s 33

4 *Enlisted* The original or the duplicate attestation paper must be produced at the trial, (sec s 163 (1) (*a*))

5 Failure to declare the circumstances of discharge, &c, is *prima facie* proved by the attestation paper showing answers to have been given inconsistent with such declaration

6 A man who can show that when discharged he was not (from not having had a discharge certificate given him or for any other reason) made acquainted with the fact that his discharge was for one of the reasons constituting disgrace, ought not to be convicted under this section

7 For a corresponding offence in the case of a man enlisting in the Territorial Army, see T R I Act, s 11 No corresponding offence exists in the case of the Supplementary Reserve, a man enlisting in the Supplementary Reserve after having been discharged with disgrace from another part of His Majesty's forces, should usually be dealt with under s 99, but if dealt with while subject to military law the charge may be laid under s 33

A person charged with improper enlistment under this section should not also be charged under s 33 with "false answer" made on the occasion of such enlistment

8 "Incorrigible and worthless" is no longer a cause of discharge given in K R 370

9 *Felony* Theft is not necessarily a felony and when the theft which leads to a soldier's discharge is actually a felony the cause of discharge should be specifically worded "in consequence of having been convicted by the civil power of felony" in order that the discharge may come within the definition of "discharged with disgrace" In all cases of this kind, therefore, the copy of the record of civil conviction should be carefully scrutinized in order to ascertain whether the offence was a felony or a misdemeanour As to what offences are felonies, see table at end of Ch VII

33. Every person having become subject[1] to military law who is discovered to have committed the following offence[2], that is to say,

False answers or declarations on enlistment

To have made a wilfully false answer[3] to any question[4] set forth in the attestation paper[5] which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested,

shall, on conviction by court-martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned

NOTE

1. *Having become subject* See note 1 to the preceding section

2 Men enlisting after being dismissed from the Navy as "objectionable," or in any other circumstances (except "with disgrace," as to which see s 32 (1)) will be proceeded against under this section

When a soldier who has improperly enlisted into the regular forces while belonging to the Army Reserve is tried by court martial for his offence within

Part I
ss.33–35

three months of the date of his improper enlistment, but not otherwise, the words "and by his enlistment obtained a free kit of necessaries, value ," will be added to the particulars of the charge (see specimen charge sheet No 83, p 730) and (unless the accused pleads guilty) proved in evidence, in order to enable the court to sentence him to stoppages of pay for the value of the kit as stated in the charge

If the soldier is relegated to the Army Reserve after conviction by court-martial, the stoppages will be enforced, but if he is held to serve on his last attestation, the sentence of stoppages will be remitted

If the soldier is relegated to the Army Reserve, without trial, within three months from the date of his improper enlistment from the Army Reserve, he will be required to make good the value of the free kit of necessaries in accordance with the provisions of the Clothing Regulations (K R 624)

3 The answer must be wilfully false, thus where a man might reasonably have been mistaken as to the fact of his having "served," where, for instance, he was discharged as unfit before he had done duty or worn a uniform, a conviction would not hold good

A person charged with "fraudulent enlistment" (s 13) or "improper enlistment" (s 32) should not also be charged under this section with "false answer" made on the occasion of such enlistment

4 A false answer as to age should not, as a rule, be made the subject of a charge

5 *Attestation paper* The original or the duplicate must be produced at the trial (See s 163 (1) (*a*))

As to attestation and attestation papers, see ss 80, 94

General offences in relation to enlistment

34. Every person subject to military law who commits any of the following offences, that is to say,

(1) Is concerned in the enlistment for service in the regular forces of any man, when he knows or has reasonable cause to believe such man to be so circumstanced[1] that by enlisting he commits an offence against this Act, or

(2) Wilfully contravenes any enactments or the regulations of the service in any matter relating to the enlistment or attestation of soldiers of the regular forces,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 *So circumstanced*, *i e*, where he has been discharged with disgrace, so that he commits an offence under s 32, or where he belongs to the regular forces, or otherwise, so that he is guilty of fraudulent enlistment under s 13, or where, having previously served, he again enlists without declaring the circumstances of his previous service, so that he commits an offence under s 33, the attestation being part of the enlistment

Miscellaneous Military Offences

Traitorous words

35 Every person subject to military law who commits the following offence, that is to say,

Uses traitorous or disloyal words[1] regarding the Sovereign, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned

NOTE

1 The words used must be set out in the charge, they may be either spoken, or written, or printed It is not intended that mere violent or vulgar language used by a man under the influence of liquor should be punished under this section.

36. Every person subject to military law who commits the following offence, that is to say, Injurious disclosures

Whether serving with any of His Majesty's forces or not, without due authority,[1] either verbally or in writing,[2] or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to His Majesty's service,[3]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned [4]

NOTE.

1 The unauthorised communication of intelligence to the enemy on active service is punishable under s 5 (4)
2 As to injurious disclosures by private letters, see note 2 to s 5, and as to publishing military information, K R 522
3 Particulars of a charge under this section must show how and when effects injurious to His Majesty's service were produced
4 See also the Official Secrets Acts, 1911 and 1920, on p 895, *et seq*

37. Every officer or non-commissioned officer who commits any of the following offences, that is to say, Ill treating soldier

(1) Strikes[1] or otherwise ill-treats any soldier[2], or
(2) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,[3]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment or such less punishment as is in this Act mentioned

NOTE

1 Forcing or striking a soldier when acting as sentinel is punishable under s 6 (2) (*c*)
2 As the word "soldier" includes N C O, it follows that the offence of one N C O striking or ill-treating another who is not his superior falls within this section Striking a superior officer is dealt with under s 8 The case of one private soldier striking another should be dealt with under s 40
3 As to stoppages in respect of the amount detained, see s 137 (3)

38. Every person subject to military law who commits any of the following offences, that is to say, Duelling and attempting to commit suicide

(1) Fights, or promotes, or is concerned in or connives at fighting a duel[1], or
(2) Attempts to commit suicide,[2]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

Part I.

ss 38-40

NOTE

1 An officer carrying a challenge is punishable under para (1) If death ensued, the surviving principal in the duel and both the seconds might be tried and convicted for murder

2 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

Refusal to deliver to civil power officers and soldiers accused of civil offences

39 Every person subject to military law who commits any of the following offences[1], that is to say,

On application being made to him neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,[2]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

NOTE

1 These offences may be committed not only in the United Kingdom, but in any dominion or British possession where there is a civilian judicature An officer or soldier to whom an application is made under this section should require to see the warrant or other authority for the delivery over or apprehension, and if none exists, no offence is committed by refusing the demand

2 As to the cases in which a soldier of the regular forces is exempt from civil process, see s 144 (1) and (2)

Conduct to prejudice of military discipline

40 Every person subject to military law who commits any of the following offences, that is to say,

Is guilty of any act, conduct, disorder, or neglect to the prejudice of good order and military discipline,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence, nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention, but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction

NOTE

See Ch III, para 60

A charge under this section must recite its actual words, *i e*, there must be charged "conduct" (*or* "an act," *or* "disorder," *or* "neglect" (*as the case may be*)) "to the prejudice of good order and military discipline " But, of course, conduct, &c, 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 conduct, &c, proved was to the prejudice *both* of good order *and* of military discipline, having regard to its nature and to the circumstances in which it took place

"Neglect" to be punishable under this section must be wilful or culpable, and not merely the result of forgetfulness, error of judgment, or inadvertence

Attempts to commit "military" offences can, as a rule, be charged under this section, unless, as in the case of an attempt to desert (see s 12 (1)(a)), special provision is made elsewhere

A charge of displaying the white flag, where the evidence is not sufficient to justify a charge under s 4 or s 5, will be laid under this section K R 620

Words spoken "of and concerning" a superior must only be made the subject of a charge under this section where the speaker used them with a guilty intent In some cases it may be necessary to add to the particulars of the charge words explaining the meaning which it is alleged that the language used was intended to convey

The proviso to the section must not be interpreted as forbidding the addition in a proper case of an alternative charge under this section

If it is reasonably clear that a man—if guilty of anything—is guilty of one of the more serious offences mentioned in previous sections, a C O should not arrogate jurisdiction to himself by preferring a charge under this section on the other hand, if there is real doubt whether one of the more serious offences has been committed, and the C O considers that the circumstances justly permit a less serious charge under this section being preferred, he may properly take the latter course *Heddon* v *Evans* (1919) 35 T L R 642

The following are a few instances of offences not uncommonly charged under this section —

Giving a cheque which is subsequently dishonoured where there is no reasonable ground for supposing that it will be honoured on presentation

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 an officer or comrade (where there is no evidence of actual theft) See K R 621

Being in some place away from his unit on a particular date when his duty required him to be with his unit

Sleeping out instead of in billet

Improperly using Government car and petrol for private purposes

Borrowing money from subordinates

Producing a medical certificate, knowing it not to be genuine

Being in possession of a document purporting to be a genuine leave pass, knowing it not to be genuine

Improperly wearing uniform or rank badges (or ribbons or medals) to which he is not entitled

Giving false name to police

Accepting gifts as an inducement for arranging or excusing duties

Being unfit for duty by reason of previous indulgence in alcoholic stimulants

Negligently wounding or injuring self

Improperly obtaining money in return for railway warrant or ticket

Improperly obtaining "concession vouchers "

Improperly using or obtaining railway warrants

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, &c , see *Heddon* v *Evans* (1919) 35 T L R 642

Offences punishable by ordinary Law[1]

Offences punishable by ordinary law of England.

41. Subject to such regulations[2] for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial,[3] and on conviction[4] to be punished as follows, that is to say,

Part I. — ss.41,42

(1) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned, and

(2) If he is convicted of murder, be liable to suffer death, and

(3) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned, and

(4) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned, and

(5) If he is convicted of any offence not before in this section particularly specified, which when committed in England is punishable by the law of England, be liable, whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England

Provided as follows —

(*a*) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within His Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service[5] or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court,

(*b*) A person subject to military law when in His Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law

NOTE

1 See Ch VII generally as to offences punishable by the ordinary law, and as to the cases in which the jurisdiction given by this section should be exercised, see paras 1–3 of that chapter Subject to proviso (*a*), this section in effect gives absolute jurisdiction to a court martial to try a person subject to military law for any civil offence

2 *Subject to such regulations, &c* See provisos (*a*) and (*b*)

3 See specimen charge sheets, Nos 95–107, pp 732–4

As to reference to the Judge-Advocate-General of cases of fraud or indecency, see note to s 17 and note 14 to s 18

4 See s 56 (6) (and note), which provides for an accused person, when tried by court-martial for a civil offence, to be found guilty of certain other offences

5 For definition of *active service*, see s 189

Redress of Wrongs

Mode of complaint by officer

42 If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Army Council in order to obtain justice, who are hereby

required to examine into such complaint, and (if so required by the officer) through a Secretary of State make their report to His Majesty in order to receive the directions of His Majesty thereon Part I — ss 42,43.

NOTE

The right of complaint is in the first instance to the Army Council, but the officer may require the Army Council to report to the Sovereign through the Secretary of State It is the custom of the service that a complaint should be forwarded through the C O of a unit, and an officer would not be justified in deviating from this course unless the C O should refuse, or unreasonably delay, to forward it In such case an officer, on addressing himself directly to the general in command or brigade commander, should apprise his C O of his doing so, and must observe in the channel of approach to the Army Council each intermediate gradation of command in so far as he is concerned so to do An officer should indicate specifically whether his complaint is to the Army Council or the Sovereign

As regards complaints to the Sovereign, although the Army Council are required to examine into the complaint, they are not debarred from expressing their own view of the case, and even an expression of opinion by an intermediate authority may in some cases suffice to render further steps unnecessary An officer should not be disposed to push to extremes his right to bring his complaint before the Sovereign

This section does not limit the right of the Sovereign to receive complaints, but only controls the manner in which officers thinking themselves wronged are to approach the Sovereign

An exception to the general rule laid down in this section is to be found in K R 100 (see also K R 508) to the effect that if any officer or soldier desires to bring any grievance to the notice of an inspecting officer he is to be afforded an opportunity of doing so

When two or more officers are lent to or are seconded for service with a civil Department of State, &c , and one of them in the course of his employment, and solely in his capacity as an official of the civil Department, &c , does an act by which the other feels aggrieved, the officer who considers himself wronged cannot make a complaint under this section, but can only complain to the head or other proper authority in the civil Department, &c , in which both officers are employed, or have recourse to any other civil remedy that may be open to him Such a wrong does not fall within the scope of this section

Speaking generally, the section is not available to seconded officers in respect of matters arising in the course of seconded employment while they are outside the immediate jurisdiction of the Army Council, *e g* , the terms and conditions of their employment

European officers of the Indian Army on attaining substantive rank higher than that of lieutenant-colonel cease to belong to the Indian Army, and their right of complaint then comes under this section The right of complaint of European officers of the Indian Army not above the substantive rank of lieutenant-colonel is under s 180

A false accusation or false statement made on preferring a complaint under this section is punishable under s 27 (1) (2)

Mode of complaint by soldier

43 If any soldier thinks himself wronged in any matter[1] by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer,[2] and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the prescribed general officer or brigadier[3] or, in the case of a soldier serving in India, to such officer as the Commander-in-Chief of the Forces in India with the approval of the Governor-General of India in Council may appoint, and every officer to whom a complaint is made in pursuance of this section

Part I. shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take
ss 43,44 such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of

NOTE

1 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—that is to say, first to the captain and then to the C O It is only where the captain refuses or unnecessarily delays to redress or forward the complaint that a direct application can be made to the C O, and it is only if the C O similarly refuses or delays that a direct application can be made to the prescribed officer The captain, in the one case, and the C O in the other, ought to be informed of the application being made to his superior See K R 508

In addition to the right of complaint under this section, a soldier has rights of complaint to inspecting officers under K R 100 and 508 See note to s 42

A false accusation or false statement made on preferring a complaint under this section is punishable under s 27 (1) (2) 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 to s 40

2 The C O to whom the complaint is made will usually be the C O as defined in R P 129, but if the complaint is made to any other officer, that officer should receive it and should at once forward it to the C O of the complaining soldier as defined by that rule, and the complaint will then be dealt with as properly made

3 *Prescribed general officer or brigadier* see R P 126 (A)

Punishments

Scale of punishments by courts-martial

44. Punishments[1] may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers,[2] according to the scale following

(*a*) Death[3],
(*b*) Penal servitude[4] for a term not less than three years,
(*c*) Imprisonment,[5] with or without hard labour, for a term not exceeding two years,
(*d*) Cashiering[6],
(*e*) Dismissal[6] from His Majesty's service,
(*f*) Forfeiture in the prescribed manner of seniority of rank,[7] either in the army or in the corps to which the offender belongs, or in both, or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for the purposes of promotion,
(*g*) Reprimand, or severe reprimand,
(*gg*) Stoppages[8]

In the case of soldiers,[9] according to the scale following

(*h*) Death[3],
(*j*) Penal servitude[4] for a term not less than three years,
(*k*) Imprisonment,[5] with or without hard labour, for a term not exceeding two years,

(*kk*) Detention[10] for a term not exceeding two years,

(*l*) Discharge with ignominy from His Majesty's service[11],

(*m*) In the case of a non-commissioned officer, forfeiture, in the prescribed manner, of seniority of rank,[12] or reduction[13] to a lower grade, or to the ranks,

(*mm*) In the case of a non-commissioned officer, reprimand or severe reprimand[14],

(*n*) Forfeitures,[15] fines[16] and stoppages[17]

Provided that—

(1) 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 regulations of this Act[18] as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment

(1A) For the purposes of commutation and revision of punishment, detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment

(1B) An offender under this Act shall not be subject to imprisonment or detention for more than two consecutive years, whether under one or more sentences[19]

(2) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment[20]

(2A) The Army Council may restore the whole or any part of any lost seniority or forfeited service in the case of an officer who may perform good or faithful service, or who may otherwise be deemed by the Army Council to merit such restoration

(3) An officer or a non-commissioned officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand

(4) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from His Majesty's service[21]

(5) Where a soldier on active service[22] is guilty of any offence, it shall be lawful for a court-martial to award for that offence such field punishment,[23] other than flogging or attachment to a fixed object, as may be directed by rules to be made from time to time by a Secretary of State, and such 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

(6) In addition to or without any other punishment in respect of an offence committed by a soldier on active service,[22] it shall be lawful for a court-martial to order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding three months[24]

Part I. s. 44.

[*Provisos* (7) *and* (8) *repealed*]

(9) All rules with respect to field punishment made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament

(10) For the purpose of commutation of punishment the field punishment above mentioned shall be deemed to stand in the scale of punishments next below detention

(11) In addition to or without any other punishment in respect of any offence, an offender convicted by court-martial may be subject to forfeiture of any deferred pay, service towards pension, naval, military or air-force decoration or naval, military, or air-force reward,[25] in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1893, or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts

(12) In addition to or without any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorised by this Act[26] to be made from his ordinary pay

(13) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict or cause to be inflicted on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorised by this Act [27]

NOTE

1 See generally K R 652–656 as to the principles to be observed by a court martial in awarding sentence

2 An officer cannot be tried by district court martial, nor can a district court-martial award a sentence of death or penal servitude, s 48 (6)

3 *Death* As to notifying accused that a sentence of death has been passed, see note (*b*), R P , App II, p 762

4 *Penal servitude* See as to the execution of a sentence of penal servitude, ss 58–62, and notes A soldier sentenced to penal servitude may in addition be sentenced to be discharged with ignominy, (proviso (4))

It is competent for a court martial in cases where it is authorised to impose a term of penal servitude, to award penal servitude for life (except in cases under s 41 (5) for which a maximum sentence of penal servitude has been fixed by law—see table at end of Ch VII) or for any term not less than three years

5 *Imprisonment* As to rules for awarding terms of imprisonment in days, months or years, as the case may require, see K R 654 As to execution of a sentence of imprisonment, see ss 63–67, and notes, as to the date from which a sentence is to be reckoned, see s 68 (1), and as to the limitation of sentences of imprisonment, see proviso (1B)

A soldier convicted by court-martial of an offence under ss 17, 18 (4), 18 (5), or 41, whom it is not desired to retain in the Army, should be sentenced to imprisonment, but in case he is convicted of such offence, or of any other military offence, and it is desired to retain him in the Army, he should be sentenced to detention K R 652 lays down principles as to when imprisonment, and when detention, ought to be awarded

A soldier sentenced to imprisonment may in addition be sentenced to be discharged with ignominy, (proviso (4))

6 "Cashiering" is a more ignominious form of "dismissal" Sentences of cashiering and dismissal do not take effect until promulgation, and such sentences have the effect of cashiering or dismissing the accused, not only from the Army, but also from any other service in which he may hold His Majesty's commission

7 *Forfeiture in the prescribed manner of seniority of rank* See R P 47 Temporary rank in the case of an officer is a "rank" and not merely an appointment The substantive rank is not merged in the temporary rank, and a court-martial can order loss of seniority in either, or in both of the ranks

An officer sentenced to forfeit seniority of rank may also be sentenced to reprimand or severe reprimand, (proviso (3))

8 *Stoppages* See proviso (12) and s 137 (2)

9 The expression "soldier" includes a warrant officer, but s 182 contains certain modifications as regards warrant officers

A warrant officer when tried by district court martial may only be sentenced to the following punishments —

To be reprimanded or severely reprimanded, or

To such forfeitures, fines and stoppages as are allowed by this Act (see s 138),

and, either in addition to or in substitution for any of these punishments—

To be dismissed from the service, or

To be reduced to the bottom or any other place in the list of the rank which he holds, or

To be reduced to an inferior class of warrant officer (if any), or

To be reduced to a lower grade, or, if he was originally enlisted as a soldier but not otherwise, to the ranks

When tried by other than a district court martial, a warrant officer may be sentenced to any punishment which a district court-martial can award, and, either in addition to or in substitution for any such punishment, to any other punishment to which a soldier (including a N C O) is liable under this section

10 *Detention* See Ch III, para 64, and Ch V, para 106 As to the execution of a sentence of detention, see ss 63–67

A soldier sentenced to three months' detention, or upwards, is liable in commutation thereof, either wholly or partly, to general service, and to transfer to any corps, s 83 (7)

11. *Discharge with ignominy* See also proviso (4) A discharge with ignominy takes effect, not from the date of sentence or promulgation, but from the date when discharge is formally carried out in accordance with the regulations relating to discharges

12 *Forfeiture in the prescribed manner of seniority of rank* See R P 47 The power to forfeit seniority of rank in the case of N C Os is intended to meet cases in which reduction to a lower grade would be too severe As indicating the relative severity of a sentence of reduction and one of forfeiture of seniority, it is to be noted that a serjeant of twenty years' service who is sentenced to be reduced to the ranks loses all right to pension as a N C O, and is only entitled to pension as a private soldier, although he may have held the rank of serjeant for (say) twelve years On the other hand, the effect of a sentence of forfeiture of seniority of rank is that his seniority in the rank he holds is alone affected Thus, if a serjeant who was promoted to that rank on the 19th April, 1920, were sentenced to take rank and precedence as if his appointment to that rank bore date the 21st June, 1922, 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 serjeant from the 19th April, 1920

13 *Reduction* 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 from a more severe sentence As to the reduction of warrant officers, see note 9 above, and of warrant officers in the Indian forces, s 180 (2) (*f*)

A court-martial does not deal with acting or lance rank, a sentence reducing a corporal (acting serjeant) to corporal or to lance corporal is inoperative

14 *Reprimand or severe reprimand* (N C Os)

Although lance or acting rank is not cognizable in the sentence of a court-martial, nevertheless a soldier holding any such appointment, being a N C O, may be sentenced by court martial to be reprimanded or severely reprimanded. See note 6 to s 183

Part I. — s. 44

15 *Forfeitures i e*, those mentioned in provisos (6) and (11) of this section Forfeitures of service towards discharge under ss 79 (2), 84, and 161 are consequential and cannot be awarded by sentence of court-martial

Except as regards good conduct badges (P W 964), there is at present no provision contained in any Royal Warrant providing for the forfeitures by sentence of court-martial of military decorations or military rewards as defined by s 190 (18) and (19) No such forfeitures can therefore be ordered by a court-martial (See P W 1147) Neither can a court-martial deal with naval or air force decorations

As to restoration of forfeited service, see the proviso to ss 79 (2) and 161, and note 4 to s 84

16 *Fines* These are not authorised to be imposed for any offence except drunkenness, and cannot exceed, if imposed by a court-martial, five pounds, or, if imposed by a C O , two pounds, ss 19, 46 (2) (*b*), and K R 579

17 *Stoppages* See proviso (12) S 138 sets out the cases in which penal deductions or stoppages may be made from the ordinary pay of a soldier, and s 139 provides for their remission

18 *Subject to the other regulations of this Act, &c* Provisos (2), (3), (4), (6), (11), and (12) specify the particular instances in which more than one punishment may be given

19 By virtue of this proviso a man cannot be subjected to imprisonment or detention, whether under one or more sentences, for more than two consecutive years (See also K R 653) Any period passed in military custody under a sentence or in imprisonment by the civil power between two periods of imprisonment, or of detention, or between a period of imprisonment and one of detention (or *vice versa*), is to be reckoned as part of the term of confinement

The proviso does not apply to a fresh offence committed after release

A man whose sentence has expired is not in custody whilst returning to his unit, and if immediately after rejoining he commits an offence and is re-arrested, he may be sentenced by court martial to two years' imprisonment or detention, for at no intervening period since the expiration of his previous sentence has he been undergoing any sentence

Escape from prison or detention, even for a single day, breaks the continuity of the confinement, and time must be calculated afresh from the date on which the man is returned to prison, detention barrack, or military custody If he is re-captured and kept in military custody to be tried for some fresh offence (*e g*, his escape from imprisonment or detention) and his original sentence is still current, he is not merely "in arrest pending trial" but is actually serving his original term (see s 63) Therefore at his trial a court martial cannot award a full two years' imprisonment or detention, but must deduct therefrom the period spent in custody since his re arrest

See K R 561 (*b*) (iv) for provisions as to consecutive awards of detention by a C O, the same provisions are held to be applicable also to awards of field punishment (which is not expressly mentioned)

20 Care must be taken to comply with this provision, a sentence of penal servitude *and* to be cashiered is incorrect, as cashiering should *precede* penal servitude

21 It will be observed that this does not apply in the case of a soldier sentenced to detention

22 For definition of *active service*, see s 189

Whenever an accused was at the date of his offence on active service, this fact should always be stated in the charge sheet so that the court may be in a position to give effect to provisos (5) and (6) Nevertheless, where the troops in the country where the court sits are all on active service, the court may take judicial notice of such fact though not expressly averred, *cf* R P 12 (C)

23 The following conditions are essential to the legality of field punishment —

The offender must be on active service

The punishment must be in conformity with the Field Punishment Rules, see the Rules at p 787

24 Forfeiture of pay under this provision can only be ordered in case of an offence committed by a soldier on active service If the soldier is at the time liable to any penal deductions from pay, the order only affects the balance of the pay remaining after those deductions see s 138, proviso (*c*)

25 As to these forfeitures, see P W , 979, 1031, 1032, 1147, and note 15 above

26 *Authorised by this Act* See ss 137 and 138

27 One effect of this provision is to make it illegal for an officer prisoner of war placed by the captor State in charge of other prisoners to impose on them—even in compliance with express orders—any punishment not sanctioned by this Act

ARREST AND TRIAL

Arrest [1]

45 The following regulations shall be enacted with respect to persons subject to military law when charged[2] with offences punishable under this Act — Custody of persons charged with offences

(1) Every person subject to military law when so charged[2] may be taken into military custody Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report[3] of the necessity for further delay shall be made by his commanding officer[4] in manner prescribed, and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody

(2) Military custody[5] means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement

(3) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody any officer (though he be of higher rank) engaged in a quarrel, fray, or disorder, and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service

(4) An officer or non-commissioned officer commanding a guard, or a provost marshal or assistant provost marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost marshal, or assistant provost marshal into whose custody the person is committed, an account in writing,[6] signed by himself, of the offence with which the person so committed is charged[2]

(5) The charge[2] made against every person taken into military custody shall without unnecessary delay be investigated[7] by the proper military authority,[8] and, as soon as may be, either proceedings shall be taken for punishing the offence, or such persons shall be discharged from custody [9].

NOTE

1 See generally as to arrest and confinement, and release therefrom, Ch IV, paras 1–18, and K R 533–540.

Part I

s 45

It will be convenient to give a summary of the provisions for preventing a person from being kept in custody without his case being dealt with by the proper authority

An officer or N C O who commits a person into custody should sign and deliver to the officer or N C O into whose custody such person is committed, a written account (termed "the charge") of the offence with which the person so committed is charged He should, if possible, do this at the time of committal, but at any rate must do so within 24 hours after that time See ss 21 (2), 45 (4) If the "charge" is not delivered at the time of committal, a verbal report to the same effect is to be made (K R 536), but non delivery of the "charge" will not excuse a refusal to receive an offender into custody The officer or N C O into whose custody the accused is committed, must give in writing to the officer to whom he may be ordered to report the name and offence of the accused, as far as known to him, and the name and rank of the person by whom he is charged (s 21 (3)), and, if so requested by the person committed, he shall inform such person of the rank and name of the person preferring charges against him or ordering his arrest, and shall also give him a copy of the charge report as soon as he himself receives it The report it, and should be made by an entry in the guard report, and he should send the "charge," or a copy thereof, to the C O of the accused (K R 536) If he has not received the "charge," he must mention the circumstance in his report, and if the "charge" is not delivered within 24 hours, the commander of the guard must make a further report to the superior authority, who, if evidence sufficient to justify the retention in custody of the accused is not forthcoming, will, at the expiration of 48 hours from the time of committal, order him to be released (K R 536) A C O who has received the report of the committal of an accused person becomes responsible (s 45 (5)) for having the case investigated without delay This delay, under R P 2, is not to exceed 48 hours without the case being reported to the officer to whom application would be made to convene a court martial for the trial of the person charged

If eight days elapse without the case being disposed of summarily and without a court martial being ordered to assemble, the special report required by s 45 (1), as explained by R P 1, must be made, and a similar report is required to be forwarded every eight days, and this report will have to be sent by the C O, even though the fault of the delay lies with the officer to whom the report is to be made This special report is not required on active service If undue delay occurs in convening a general or district court martial, a report has to be made in due accordance with R P 17 (C)

When an officer or warrant officer is placed under arrest, the C O, unless he dismisses the charge, should report the case, without delay, to superior authority

With reference to the above observations, it must be recollected that in reckoning the time fixed by the R P, Sunday, Good Friday, and Christmas Day are, as a general rule, excluded (R P 135 (A)), but this is not the case in reckoning the days fixed by sections of the Act, *e g*, ss 21, 45 (1)

2 The "charge" referred to in this section, in s 46 (1), and in R P 3, 4 and 8 is distinct from that referred to in R P 11 (B) The latter, in the case both of officers and soldiers, is the formal charge preferred by the C O 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.

3 *Special report* See R P 1

4 The C O in this section means the C O as defined by R P 129, see K R 526

5 *Military custody* This expression is here restricted by the opening words of the section to the military custody of persons when charged with offences, and does not apply to persons in military custody undergoing sentence See K R 533–540

6 *An account in writing* The absence of a written charge does not, however, invalidate an arrest *Heddon* v *Evans* (1919), 35 T L R 642

7 As to the conduct of the investigation, see Ch IV, paras 19–29, R P 2–8 and notes, K R 542–554

8 *Proper military authority* All charges against N C Os and soldiers should be investigated in the first instance by the company, &c, commander,

who, in all cases where a private soldier is concerned, and in certain cases where a N C O is concerned, may either dispose of the case himself or reserve it for the C O (see K R 542, 565), and, where the case is so reserved, the C O must give the decision under s 46 (1)

9 As to offences in relation to this section, see s 21

Summary disposal of Charges [1]

Power of commanding officer.

46 —(1) The commanding officer[1] shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge,[2] if he in his discretion thinks that it ought not to be proceeded with, but where he thinks the charge ought to be proceeded with, he may take steps for bringing the offender to court-martial, or, in the case of an officer below the rank of field officer or of a warrant officer,[3] may refer the case to be dealt with summarily by a general officer or brigadier under the provisions of this Act, or in the case of a soldier[4] may deal with the case summarily

(2) Where he deals with a case summarily,[5] he may—

(*a*) Award to the offender detention[6] for any period not exceeding twenty-eight days, and

(*b*) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding two pounds[7] either in addition to or without any other punishment, and

(*c*) In addition to or without any other punishment may order the offender to suffer any deduction from his ordinary pay[8] authorised by this Act to be made by the commanding officer, and

(*d*) In the case of an offence by a soldier (not being a non-commissioned officer) on active service, may award to the offender field punishment[9] within the meaning of section forty-four of this Act for any period not exceeding twenty-eight days, and may in addition to, or without any other punishment, order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding twenty-eight days[9], and

(*e*) In addition to or without any other punishment may award such other minor punishment[10] as he is for the time being authorised to award, so however that a minor punishment shall not be awarded for any offence for which detention exceeding seven days is awarded

(3) Where the charge is against a soldier for drunkenness[11] the commanding officer shall deal with the case summarily unless the offence was committed on active service or on duty, or after the offender was warned for duty, or unless by reason of the drunkenness the offender was found unfit for duty, or unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months, but nothing in this subsection shall affect the jurisdiction of any court-martial or the right of the soldier to be tried by a district court-martial

[*Certain words omitted from subsection* 3 *by* 46 *Vict c* 6, *s* 4]

(4) [*This subsection was repealed by A.A.A.* 1910].

Part I. — s. 46

(5) *[This subsection was repealed by A & A F (A) Act, 1921]*

(6) Provided that in every case where the commanding officer has power to deal with the case summarily, the accused person may demand that the evidence against him should be taken on oath,[12] and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case

(7) An offender shall not be liable to be tried by court-martial where the charge has been dismissed or the offence has been dealt with summarily[13] by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by a court-martial [14]

(8) Where a commanding officer has power to deal with a case summarily under this section, and, after hearing the evidence, considers that he may so deal with the case, he shall, in every case where the award or finding involves a forfeiture of ordinary pay,[15] and in every other case, unless he awards no other punishment than one of the minor punishments referred to in this section, ask the soldier[16] charged whether he desires to be dealt with summarily or to be tried by a district court-martial, and if the soldier elects to be tried by a district court-martial[17] the commanding officer shall take steps for bringing him to trial by a district court-martial, but otherwise shall proceed to deal with the case summarily[18]

(9) The power of dealing summarily with a case may be delegated by a commanding officer to any officer under his command in accordance with and subject to the King's Regulations[19]

Provided that such officer shall not have power to inflict any punishment other than a minor punishment, or such fines for drunkenness as may be provided for by those Regulations

NOTE

1 See Ch IV, paras 31–38, R P 2–7, and notes, K R 542–568 As to meaning of *commanding officer*, see R P 129 and note, K R 526

2 A C O may dismiss the charge, whether the accused is an officer or a soldier, 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 the charge ought not to be proceeded with (R P 4 (A))

3 A C O cannot, as such, inflict "punishment" upon an officer Nor does his power under this section to deal summarily with a soldier extend to a warrant officer (s 182 (1)), or to a civilian who is subject to the Act (s 184 (2)) See s 47 with regard to summary disposal of charges against officers and warrant officers

4 *In the case of a soldier* "Soldier" includes a N C O, whether permanent or acting, but the K R restrict the powers of a C O in dealing with N C Os (K R 558, 559), who are only subject to the following summary and minor punishments —

Any deduction from ordinary pay allowed by s 138 (4), subject to the right of the N C O to elect trial by court-martial,

Reprimand or severe reprimand, } No right to elect trial by court-
Admonition, } martial

A N C O holding any appointment or acting rank or lance rank may be ordered by his C O, either for an offence or otherwise, to revert to his permanent rank or to any intermediate acting or lance rank, the N C O having no right to elect trial by court-martial, (s 183 (*c*), K R 559, and see note 15 below)

By s 183 (1), the obligation (under subs (3) of this section) to deal summarily with certain cases of drunkenness does not apply to a N C O charged with drunkenness

If a N C O is reduced to the ranks by sentence of court-martial, and whilst serving in the ranks is awarded a summary or minor punishment by his C O, such award is valid although at a later date the proceedings of the court-martial are quashed

5 The summary and minor punishments which a C O can award in the case of a private soldier are set out in K R 560 Briefly they are as follows —

Summary punishments (subject to the soldier's right to elect, previous to the award, to be tried by court martial)—

Detention —Up to 28 days, but if the C O is below the rank of field officer, then, except in cases of absence without leave, only up to 7 days,

Fine —For drunkenness only, and not exceeding two pounds For the prescribed scale of fines, see K R 579,

Deductions from pay —As authorised by s 138 (4) (6), (subject to approval of G O C if amount of proposed deduction exceeds four pounds),

Field punishment —Up to 28 days (on active service only),

Forfeiture of pay —Up to 28 days (on active service only)

Minor punishments (the soldier having no right to elect trial by court-martial)—

Confinement to barracks —Up to 14 days,

Extra guards and piquets —Only to be ordered as a punishment for minor offences or irregularities when on, or parading for, these duties,

Admonition

K R 561 lays down when more than one of the above punishments may be awarded

6 Detention awarded by a C O up to 7 days will be awarded in "hours", K R 561 (*b*) (ii) As to commencement of term of detention, see R P 6, and K R 561 (*b*) (iv) A C O cannot by one or more sentences award detention for more than 28 consecutive days (K R 561 (*b*) (iv)) A C O cannot inflict a sentence of imprisonment

7 For scale of fines for drunkenness, mode of recovery, &c, see K R 579, 580, and as to punishment for simple drunkenness, K R 577

8 *Deduction from ordinary pay* See ss 138–140 and notes

9 Field punishment is awarded in "days," never in "hours"

Forfeiture of pay commences as from the day of award When, therefore, it is desired to order forfeiture of pay for a period in excess of the field punishment awarded, *e g*, 10 days' field punishment and an additional forfeiture of 14 days' ordinary pay, it will be necessary to award the offender 10 days' field punishment with forfeiture of 24 days' pay, as pay is forfeited for the period of field punishment awarded

A C O cannot by one or more sentences award more than 28 days' consecutive forfeiture of pay or field punishment, but this does not prevent him awarding such sentences as 28 days' forfeiture to a man who has just undergone 14 days' detention or field punishment, or 28 days' detention or field punishment to one who has just undergone 14 days' forfeiture, in such cases it is the Royal Warrant which in effect causes the period of forfeiture to exceed 28 days

10 *Minor punishment* See K R 558 (*b*), 560 (*b*), and notes 4 and 5 to this section

11 Certain cases of drunkenness a C O must deal with summarily (unless the accused elects trial under subs (8) of this section), except where the offender is a N C O (s 183 (1)), but he *may*, if he thinks fit (subject to such election), deal summarily with any case of drunkenness, though the offence was committed in the special circumstances mentioned in this sub section See K R 575

12 Every charge must be heard in the presence of the accused. Witnesses will not be sworn unless he requires it, but he must have full liberty of cross-examination, to call witnesses and make any statement (R P 3, 4)

13 *Dealt with summarily* If a C O, contrary to K R 547 (which requires him to refer to superior authority certain offences), through inadvertence and with a full knowledge of the facts, dismisses the charge or deals with any offence summarily, his award is legal and the offender cannot be tried by court-martial for that offence

14 *Acquitted or convicted by a civil court or a court-martial* See note to s 157 Nor can a man acquitted or convicted of an offence by a civil court or court-martial be tried by court-martial for the same offence, ss 157, 162 (6) Where a soldier has been acquitted, or the charge has been dismissed,

Part I. ss. 46, 47

or where he has been convicted or summarily punished for an offence which is substantially the same as some other offence, he ought not to be summarily punished by his C O or tried for such other offence 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 afterwards be tried for desertion Nor can a man convicted by a court martial of an offence be afterwards sentenced by his C O to stoppages for damage caused by that offence

15 Lance and acting rank is a matter to be dealt with entirely by a C O , hence a C O can deprive a soldier of acting or lance rank and revert him to his permanent rank without giving him the option of trial by district court-martial, even though such deprivation will involve a lower rate of pay See also Ch IV, para 26, and note 6 to s 183

Where a case of absence without leave is dealt with summarily by a company, &c , commander acting as commanding officer, he must, of course, comply with the provisions of this sub section, and should in every case, before awarding any punishment, inform the soldier of the number of days pay he forfeits under the P W in respect of his absence, and ask him whether he wishes to be tried by district court martial

16 If the C O omits to ask the soldier the question prescribed by this sub section, the soldier can claim his right of trial by court martial at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence (R P 7), and a soldier is to be given on the following day an opportunity of reconsidering his decision to be tried by court martial K R 552 (*b*) Where a soldier elects to be tried, he may, if his C O thinks the circumstances of the case warrant it, be at once released from arrest pending trial K R 552 (*a*)

17 Where an accused elects trial by court-martial, the fact should be noted (in red ink) on the top of the application form and of the charge-sheet This serves (*inter alia*) to notify the court that the C O did not consider the case to be one deserving of a more severe punishment than he himself could have awarded (*cf* K R 652 (*c*))

18 The officer commanding a military hospital is temporarily the commanding officer of patients therein, and can investigate charges against them and apply for a court-martial See also K R 1350

R P 6 (B) prohibits a C O from increasing a punishment after he has once made his award, which is complete when the man has quitted his presence This rule applies in the case of minor as well as other punishments But a C O can at any time before the punishment has been completed, mitigate or remit a minor or a summary punishment As to entry of his award, see K R 544

Awards by a C O which appear to be illegal or excessive can be reviewed by u

19 See K R 542 (*d*), 565

Power to deal summarily with charges against officers and warrant officers

47.—(1) Any of the following authorities shall have power to deal summarily[1] with a charge against an officer below the rank of field officer or against a warrant officer referred for that purpose, or for trial by court-martial,[2] under the foregoing section of this Act, that is to say, any general officer or brigadier authorised to convene a general court-martial, and any officer (not under the rank of major-general) appointed for the purpose by the Army Council, and also in the case of a force on service beyond the seas the general or air officer commanding the force and any officer (not under the rank of major-general) appointed for the purpose by him

(2) The authority having power to deal summarily with the case may, with or without hearing the evidence, dismiss the charge, if he in his discretion thinks that it ought not to be proceeded with, or, where he thinks the charge ought to be proceeded with, take steps for bringing the offender to a court-martial, or may, after hearing the evidence, or, if the accused consents thereto in writing, after reading a summary or abstract of the evidence, deal with the

case summarily by awarding in the case of an officer[3] one or more of the following punishments[4],—

(*a*) Forfeiture of seniority of rank[5] either in the army or in the corps to which the offender belongs, or in both, or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for the purposes of promotion,

(*b*) Severe reprimand or reprimand,

and in the case of a warrant officer[3] one or more of the following punishments—

(*a*) Forfeiture in the prescribed manner of seniority of rank,[6]

(*b*) Severe reprimand or reprimand,

(*c*) Any deduction authorised by this Act to be made from his ordinary pay

(3) Where the authority having power to deal summarily with the case considers that he may so deal with the case, he shall, unless he awards a severe reprimand, or a reprimand, in every case ask the accused whether he desires to be dealt with summarily or to be tried by a court-martial, and if the accused elects to be tried by a court-martial, take steps for bringing him to trial by a court-martial, but otherwise shall proceed to deal with the case summarily

(4) In every case where an authority has power to dispose of a case summarily, and decides so to do, the accused may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case

(5) An offender shall not be liable to be tried by court-martial where the charge has been dismissed or the offence has been dealt with summarily under this section, and shall not be liable to be punished by a general officer or brigadier under this section for any offence of which he has been acquitted or convicted by a competent civil court or by a court-martial

NOTE

1. This section obviates the necessity for trying by court-martial a junior officer or a warrant officer who commits some offence which is not of a serious nature but yet cannot be overlooked (See K R 546 as to the offences with which the authorities specified in this section may deal) Where an officer or a warrant officer is ordered to be summarily dealt with under this section, he should be given a copy of the summary (or abstract) of the evidence not less than twenty four hours before the trial R P 9 (A)

2 An authority can act under this section not only if asked to do so but also if the case has been remanded for the purpose of the trial of the offender by court-martial Even if 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 The accused may demand that the evidence be given on oath After hearing the evidence the authority herein specified can still dismiss the case or order a court-martial, or he can deal summarily with it subject to the right of the accused to claim trial by court-martial under subs (3)

3 When an officer or warrant officer of the Royal Air Force seconded, lent or attached to the Army is summarily dealt with under this section, the

Part I — ss. 47,48

discretion of the authority so dealing with the case is regulated by K R 557, and he will not, in the case of an officer, award the punishment of forfeiture of seniority of rank in the Royal Air Force, or of service for promotion in that force, nor, in the case of a warrant officer, forfeiture of seniority of rank in the said force

4 Awards under this section which appear to be illegal or excessive can be reviewed by the authorities specified in R P 10

5 *Forfeiture of seniority of rank*—(officers) See R P 47 See also K R 555 and 556, which limit the power of an authority acting under this section

6 *Forfeiture in the prescribed manner of seniority of rank*—(warrant officers) See R P 47

Courts-Martial

PRELIMINARY NOTE

The principal enactments which govern the convening, composition, and procedure of courts-martial are contained in this group of sections (ss 48–56) The remainder of the law will be found in the supplemental provisions of the Act as to courts-martial (ss 122–130) and as to evidence (ss 163–165) and in the Rules of Procedure S 49 provides for the convening of the exceptional tribunal of a field general court-martial to try offences committed on active service, and offences against the inhabitants of, or residents in, countries beyond the seas, which it is not practicable to try by an ordinary court Certain questions relating to jurisdiction of courts-martial are dealt with in ss 157–162

See Ch V for general explanation of the constitution and practice of courts-martial, and for details see the Rules of Procedure and notes

K R 546 specifies the offences which an authority under s 47 may dispose of, and K R 547 specifies the offences which a C O is empowered to dispose of without reference to superior authority, K R 615 and 634 point out the general rules under which different classes of offences should be dealt with by a lower or higher tribunal

General and district courts martial

48 The following rules are enacted with respect to general courts-martial and district courts-martial —

(1) A general court-martial shall be convened by His Majesty or some officer deriving authority to convene a general court-martial immediately or mediately from His Majesty[1].

(2) A district court-martial shall be convened by an officer authorised to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial[2]

(3) A general court-martial shall consist of[3] not less than five officers, each of whom must have held a commission during not less than three whole years,[4] and of whom not less than four must be of a rank not below that of captain

(4) A district court-martial shall consist of[3] not less than three officers, each of whom must have held a commission during not less than two whole years[4]

(5) The minimum number mentioned in this section for a general or a district court-martial shall be the legal minimum[5] for that court-martial

(6) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude, but, subject as aforesaid,

any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished[6] by either a general or district court-martial

(7) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer

(8) Sentence of death[7] shall not be passed on any prisoner without the concurrence of two-thirds at the least of the officers serving on the court-martial by which he is tried

(9) The president[8] of a court-martial, whether general or district, shall be appointed by order of the authority convening the court, but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed[9] in the order convening the court and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial, and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed[9] in the order convening the court and to be conclusive a captain is not, having due regard to the public service, available

(10) If it becomes necessary to convene a court-martial under this Act at any place where in the opinion of the convening officer the necessary number of military officers is not available to form such a court, or where in his opinion such a necessary number could not be made available without serious injury to the interests of the service, such opinion to be expressed[9] in the order convening the court, and to be conclusive, then the said convening officer may, subject to any directions which may be given by the Army Council and with the consent of the proper air force authority, nominate any air force officer to preside over the court, or nominate as members of the court any necessary number of air force officers in addition to or in lieu of military officers

Provided that no air force officer shall be qualified to perform any function in relation to such court-martial unless he is of equal seniority and equivalent rank to that which would have been required by the provisions of this Act if he had been a military officer

NOTE

1 Power to convene general courts-martial is given by warrant, see s 122, and Ch V, paras 5–9

2 The power to convene district courts martial is not given specifically by warrant, but is an incident of the power to convene general courts martial, in other words, an officer authorised to convene general courts-martial may either himself convene, or delegate to other officers power to convene, district courts-martial (s 123) As to the duty of an officer before convening a court, and as to speedy convening of court, see Ch. V, paras 20–22 and R P 17

Part I. — ss. 48, 49

3 As to the composition, &c , of courts martial, see R P 19, 20 and 21, and K R 642–644

Air force officers properly attached or lent to, or seconded for service with, the Army, can sit on a court-martial, so also can an army chaplain if holding a commission, but he is not qualified to preside

4 A court would have no jurisdiction if each member has not held a commission for the required period, or if its composition differed in any respect from that detailed in the convening order

5 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

6 In the case of a warrant officer, a district court-martial can only award the punishments specified in s 182 (2) (*a*)

7 As to the duty to notify to an accused that sentence of death has been passed, see note (*b*), R P , App II, p 762

8 As regards the appointment of president and members, see K R 644 The convening officer cannot himself preside or, indeed, be a member of the court (s 50 (2)) The duties of the president are laid down in R P 59, he must be appointed by name As regards the members and waiting members, the number and ranks and units to which they belong may alone be mentioned, or they may be mentioned by name , and in cases where units cannot be specified (*e g* R E , R A S C), they should be named

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court martial, and on the trial of a commanding officer of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused K R 642

Where the accused is a warrant officer, the president must not, in any case, be under the rank of captain, s 182 (4)

9 *Such opinion to be expressed, &c* If the opinion is not duly expressed, the court will be improperly constituted, and its proceedings invalid

Field general courts martial.

49 —(1) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that an offence has been committed by any person subject to military law,

then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general courts-martial, to convene a court-martial, in this Act referred to as a field general court-martial,[1] for the trial of the person charged with such offence, provided as follows —

(*a*) An officer in command of a detachment or portion of troops not on active service shall not convene a field general court-martial for the trial of any person, unless that person is under his command, nor unless the offence with which the person is charged is an offence against the property or person of an inhabitant of, or resident in, the country in which the offence is alleged to have been committed

(*b*) A field general court-martial shall consist of not less than three officers, unless the officer convening the same is of opinion that three officers are not available having due regard to the public service, in which case the court-martial may consist of two officers

(*c*) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president,

who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain

(*d*) Where a field general court-martial consists of less than three officers, the sentence shall not exceed such field punishment as is allowed by this Act, or imprisonment.

(2) Section forty-eight of this Act except paragraph (10) thereof shall not apply to a field general court-martial, but sentence of death[2] shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members

(3) A field general court-martial may, notwithstanding the restrictions enacted by this Act[3] in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer, and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence Provided always, that no sentence of any such court-martial shall be executed until confirmed[4] as provided by this Act

NOTE

1 The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary general court martial A field general court martial can try any offence committed on active service, but where troops are not on active service it can only be convened for the trial of offences against the property or person of some inhabitant of, or resident in, the country See R P 105–123 and notes

If troops on board a ship (not commissioned by His Majesty) are on active service, the O C troops can convene a field general court martial for trial of an offender on board, (see also as to such troops s 188)

2 As to notifying accused that a sentence of death has been passed, see note (*b*), R P App II, p 762

3 *Restrictions enacted by this Act* See s 41 proviso (*a*)

4 As to confirmation of sentence, see s 54 (1) (*d*), and R P 120

Courts martial in general

50 —(1) The officers sitting on a court-martial may belong to the same or different corps,[1] or may be unattached to any corps, and may try persons belonging or attached to any corps

(2) The officer who convened a court-martial shall not, save as is otherwise expressly provided[2] by this Act, sit on that court-martial

(3) Any of the following persons, that is to say, a prosecutor or witness for the prosecution of any accused, or the commanding officer[3] of the accused within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges[4] on which an accused is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such accused, nor shall he act as judge advocate at such court-martial [5]

NOTE

1 If an officer is competent to sit on a court-martial, he is *qualified* to sit on any court of the same description, and a convening officer may, by arrangement, avail himself of the services of an officer not otherwise under his orders.

Part I

ss. 50,51.

See note 1 to R P 20 A general or district court martial must, so far as seems to the convening officer practicable, be composed of officers of different corps, R P 20 (A), and see as to the trial of a member of the auxiliary forces, R P 20 (B) The definition of corps in s 190 (15) includes the Royal Marines

2 *Save as otherwise expressly provided* See s 49 (1) (*c*), which enables the convening officer of a field general court martial to preside, if it is impracticable to appoint another officer

3 *Commanding officer* This includes any officer who has been the commanding officer of the accused, within the meaning of s 46 and R P 129, at any time between the date on which the charge against the offender is made and the date of trial inclusive, irrespective of the fact that he did not deal with the case in question

4 *Investigated the charges* The officer who investigated is usually the C O of the accused, when he is not, he is equally excluded by these words He has been defined as meaning the officer who, in a judicial capacity, sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer through whose hands the charges passed merely formally or ministerially R P 19 (B) (iii), however, adds to the list of disqualified officers the officer who took down the summary of evidence, the company, &c , commander who conducted the preliminary inquiry, any member of a court of inquiry which may have dealt with the case, and any member of a previous court martial which tried the accused in respect of the same offence

Special attention is drawn to R P 19 (B) (iii), and to the note on p 742, relating to the action to be taken in order to prevent officers who have served upon courts of inquiry, regarding the offence about to be tried, from sitting on courts martial for the trial of the offence

5 A member of the court or a judge advocate is a competent witness for the defence, but not for the prosecution In the case of a field general court martial, an officer is disqualified by R P 106 (D) for serving if he is provost marshal, assistant provost marshal, or prosecutor, or a witness for the prosecution

Challenges by accused

51.—(1) An accused about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president[1], whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the accused makes no reasonable objection [2]

(2) Every objection made by an accused to any officers shall be submitted to the other officers appointed to form the court

(3) If the objection is to the president,[1] such objection, if allowed by one third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president

(4) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the accused to object

(5) If the objection is to a member other than the president and 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

[3] (6) In order to enable an accused to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the accused on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like

question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer

Part I.
ss. 51,52

NOTE

1 This section gives the accused an absolute right to a new president, if his challenge to the president is allowed by one-third of the officers appointed to form the court. A challenge to the president must be dealt with first, see R.P. 25 (E).

2 As to challenges generally, see R P 25 and note, as to adjourning for the purpose of appointing fresh members, and the power to convene another court, R P 18, and as to challenges where a court is being sworn to try several persons, R P 71 (A) (B)

Administration of oaths

52.—(1) An oath in the prescribed form[1] shall be administered by the prescribed person[2] to every member of every court-martial[3] before the commencement of the trial

(2) An oath in the prescribed form or forms[4] shall be administered by the prescribed person[5] to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance on a court-martial for the purpose of instruction (if any), and also to every shorthand writer or interpreter (if any) in attendance on the court-martial [3]

(3) Every witness before a court-martial[3] shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form [6]

(4) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection, or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form,[7] and for the purposes of this Act such solemn declaration shall be deemed to be an oath [8]

NOTE

1 *Prescribed form* See R P 26 (A) and App II, pp 762-3

The oath taken by members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess), and in their capacity of judges to administer justice duly, as well as to keep secret the votes of members, and (until confirmed or except as permitted by instructions of the Army Council) the sentence of the court

The oath 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

2 *Prescribed person* See R P 26 (B)

3 As to swearing of members, witnesses, &c , in the case of a field general court-martial, see R P 111

4 *Prescribed form or forms* See R P 27 and App II, pp 762–3

5 *Prescribed person* See R P 27

6 The form of oath for a witness is set out in R P , App II, p 763, and the person to administer it is prescribed by R P 82

7 The form of solemn declaration is set out in R P , App II, p 763, and the person before whom such declaration may be made is prescribed by R P 28

Part I. — ss 52,53

8 The practice followed in the law courts of any colony or foreign country as to the mode of swearing or taking the affirmation of natives should usually be adopted

For punishment of perjury committed by a witness subject to military law, see s 29, by a civilian, see s 126 (2)

Procedure

53.—(1) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved

(2) If after the commencement of the trial the president dies or is otherwise unable to attend,[1] and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly, but if he is not of sufficient rank the court shall be dissolved

(3) If, on account of the illness of the accused[2] before the finding, it is impossible to continue[3] the trial, a court-martial shall be dissolved

(4) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried again[4]

(5) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared[5] of all other persons

(6) The court may adjourn[6] from time to time

(7) The court may also, where necessary, view[7] any place

(8) In the case of an equality of votes on the finding the accused shall be deemed to be acquitted[8] In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote

(9) When a court-martial recommend a person under sentence to mercy, such recommendation shall be attached to and form part[9] of the proceedings of the court, and shall be promulgated and communicated to the person under sentence, together with the finding and sentence

NOTE

1 *Unable to attend* The court cannot proceed at all without a president, and in the event of his absence must adjourn until he can attend, or until a new president is appointed by the convening authority see R P 65 (B)

2 *Illness of the accused* 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

3 *Impossible to continue* This means to continue within a reasonable time having regard to all the circumstances

4 It may frequently be inexpedient to convene a fresh court for a retrial under this provision, especially where the accused has been for some time under arrest or in confinement

5 *Cause the court to be cleared* If more convenient the court may withdraw for deliberation see R P 63

6 *Adjourn* See as to adjournment, R P 65

7 *View* The convening officer cannot depute a selection of members to view a place, as the view must be in open court (R P 63 (B)), *i e*, in the presence of all the members, the prosecutor, and the accused.

8 *Acquitted* In such a case the acquittal must be pronounced at once in open court, and if it relates to all the charges the accused must be released, s 54 (3)

9 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, see R P 49

Where, in a recommendation to mercy, a court expressed an opinion inconsistent with the guilt of the person under sentence, for instance, where the charge was for striking a superior, and the court stated their opinion that the accused "did not intend to strike," it was held that it must be treated as an acquittal, the intent being an element of the offence

As to the exceptional character of recommendations to mercy see Ch V, para 84

Confirmation, revision, and approval of sentences

54 —(1) The following authorities shall have power to confirm[1] the findings and sentences of courts-martial, that is to say,

(*a*) [*This paragraph was repealed by A & A F (A) Act*, 1920]

(*b*) In the case of a general court-martial, His Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from His Majesty

(*c*) In the case of a district court-martial, an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorised to convene general courts-martial

(*d*) In the case of a field general court-martial, an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part, or, where the offence was committed on active service, any such officer as may under the rules made in pursuance of this Act be authorised to confirm the findings and sentences of the field general court-martial awarding the sentence Provided that a sentence of death or penal servitude awarded by a field general court-martial shall not be carried into effect, unless or until it has been confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of his sentence

(2) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision[1] once, but not more than once,[2] and it shall not be lawful for the court on any revision to receive any additional evidence, and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also [3] In no case shall the authority recommend the increase of a sentence, nor shall the court martial on the revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded [4]

(3) The finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation[5] or be subject to be revised, and shall be pronounced at once in open court, and if it relates to the whole of the offences the accused shall be discharged

Part I. s 54. (4) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where a member of a court-martial 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 courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority, and where a court-martial is held in a colony,[6] and there is no such superior authority in that colony, the governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned Provided that where a member of a field general court-martial trying an accused would but for his being a member of the court have power to confirm the finding and sentence of the court, and is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence

(5) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly, and refer such finding and sentence or the part not confirmed to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purposes of this Act be deemed to be in that instance and to the extent of such reference the confirming authority

(6) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed[7] by an authority authorised to confirm the same

(7) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service,[8] be carried into effect, unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony.

(8) Sentence of death when passed in India[9] in respect of the offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect, unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General

(9) When a person subject to military law is convicted of manslaughter, or rape, or any other civil offence[10] under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India[9] by the Governor-General, or, if he has been tried in a colony,[6] by the governor of the colony

NOTE

1 For details as regards officers empowered to confirm courts-martial and those to whom the power may be delegated, see ss 122, 123, and notes.

As to confirmation and revision generally, see Ch. V, paras 87–98, and as to field general courts-martial, R P 120 and note Confirmation is complete

when the proceedings are promulgated At any time before promulgation the confirming authority may cancel his minute of confirmation and 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 A court cannot be re-assembled more than once for revision, whether of finding or of sentence

3 Where a finding on being sent back for revision is varied in any material respect by the court, a new sentence (not, however, necessarily differing from the original sentence) must be passed, for on the original finding being revoked, the sentence based upon it falls Where a new sentence is not passed, the accused is not legally under any sentence If a sentence only is sent back for revision, and (contrary to subs (2)) additional evidence is received, the revised sentence is illegal, though the finding will stand

4 The effect is that revision, except for curing legal defects in the finding or sentence, can only be used for acquitting the accused on any charge or charges or mitigating the sentence, inasmuch as revision can only be ordered in case of conviction, and if it is ordered the sentence cannot be increased See R P 51 and note

Where an accused is arraigned upon two alternative charges and is found guilty upon one of them, a finding of "not guilty" must be entered upon the other, and such a finding should be formally entered at once (See, however, R P 35 (C)) Even if it is not so entered, the accused cannot be convicted upon that charge on a revision, though the finding of guilty on the first charge has not been confirmed As a court on revision cannot increase the sentence, they cannot, as a rule, substitute *two* punishments for *one* (*cf* note 6 to s 57)

A confirming officer cannot substitute a special finding on any charge for the court's finding, he can only confirm, send back for revision, or refuse to confirm the finding (See R P 54 (C) and 55 as to confirmation of invalid or informally expressed sentences)

5. The Act, by declaring that an acquittal on a charge shall not require confirmation, makes the decision of the court on that charge, both as regards the facts and the law, absolute As to comments by the confirming officer in the case of an acquittal, see R P 51 (A) and K R 662 and 664

6 *Colony* See the definition in s 190 (23)

7 The result of this sub section is that if a finding of conviction is not confirmed it is invalid (see also R P 120 (A) and Ch V, para 87), consequently there is no conviction, and the accused has not been convicted by a court-martial for the purpose either of any subsequent trial or of any entry in the conduct book See s 157 and note, and R P 55 and 56

Confirmation of the sentence alone implies confirmation of the finding also, but is not the correct mode of recording confirmation

It has been ruled that confirmation ought to be withheld in the following cases —

- Where the provisions of ss 48, 50, 51, or 52 relating to jurisdiction have been contravened
- Where evidence of a nature prejudicial to the accused has been wrongfully 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 have legally convicted
- Where a special finding of guilty fails to disclose an offence of which the court might have legally convicted
- Where the charge is bad in law, even when the accused has pleaded guilty
- Where there has been such a deviation from the Rules of Procedure that injustice has been done to the accused

8 *Active service* See the definition in s 189

9 *India* See the definition in s 190 (21)

10 *Civil offence.* See s 41

55 —[Section 55 was repealed by A A A 1893]

56[1] —(1) An accused charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property

Conviction of less offence permissible on charge of greater

Part I. — s. 56.

(2) An accused charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying money or property

(3) An accused charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave

(4) An accused charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave

(4A) An accused charged before a court-martial with striking may be found guilty of using or offering violence

(4B) An accused charged before a court-martial with using violence may be found guilty of offering violence

(4C) An accused charged before a court-martial with using threatening language may be found guilty of using insubordinate language

(5) An accused charged before a court-martial with any other offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment [2]

(6) Where an accused is charged before a court-martial with a civil offence and the charge is one upon which, if he had been tried by a civil court he might have been found guilty of any other offence, the court-martial shall have power to find him guilty of that offence [3]

NOTE

1 Alternative charges should not be preferred in the cases provided for in subs (1) to (4C) of this section, but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient to prefer alternative charges, the more serious offence being placed first in order (see note 6 to R P 35) See R P , App I, note as to use of Forms of Charges (6), p 699

Except in the cases specified in this section a court 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 (see notes to R P 13) A court, however, may (as allowed by R P 44 (E)) find a person guilty of a charge with the exception of certain words or with certain immaterial variations, and this finding will be valid so long as in its reduced or varied form it discloses the offence which forms the subject of the charge

2 *E g* , a man charged with striking his superior officer in the execution of his office may be convicted of striking his superior officer, or a man charged with an offence committed on active service may be found guilty of the same offence committed not on active service, or a man charged with wilfully allowing the escape of a person in custody may be found guilty of allowing his escape without reasonable excuse The converse, of course, is not allowed, that is to say, a person charged with an offence cannot be convicted of a greater offence of the same class

3 Some examples of charges for civil offences upon which an accused person, if tried by a civil court, could be found guilty of certain other offences, are set out below For other examples see Table of Offences at end of Ch VII

Murder manslaughter
Assault occasioning actual bodily harm common assault
Burglary larceny in dwelling house to the value of £5, or housebreaking
Indecent assault common assault
Robbery with violence robbery, assault with intent to rob, larceny
Wounding with intent to murder unlawful wounding
Unlawful wounding common assault
Any felony or misdemeanour... ..attempt to commit same.

Commutation and remission of sentences

57 —(1) The confirming authority[1] may, when confirming[2] the sentence of any court-martial, mitigate[3] or remit[4] the punishment thereby awarded, or commute[5] such punishment for any less punishment or punishments[6] to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned, or, if such punishment is cashiering awarded for an offence under section sixteen of this Act, then for dismissal from His Majesty's service or such less punishment as is in this Act mentioned The confirming authority may also suspend for such time as seems expedient the execution of a sentence[7]

(2) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate[3] or remit[4] the punishment thereby awarded, or to commute[5] such punishment for any less punishment or punishments[6] to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned or, if such punishment is cashiering awarded for an offence under section sixteen of this Act, then for dismissal from His Majesty's service or such less punishment as is in this Act mentioned, that is to say,

(*a*) As respects offenders in whatever place they may for the time being be, His Majesty or the Army Council or the officer commanding the district or station where the offender may for the time be, or any prescribed officer[8], and

(*b*) As respects offenders who are for the time being in India[9], the Commander-in-Chief of the forces in India or such officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint, and

(*c*) As respects offenders who are for the time being in any colony[9] the officer commanding the forces in that colony, and

(*d*) As respects offenders who are for the time being in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place

(3) Provided that the power given by this section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised by such confirming authority or other superior military authority to exercise such power

(4) An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment

(5) The provisions of this Act with respect to an original sentence of penal servitude, imprisonment, or detention shall

Part I — s 57

apply to a sentence of penal servitude, imprisonment, or detention imposed by way of commutation

NOTE

1 See Ch V, paras 88–93, as to mitigation of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see R P 54 (A) See also as to duty of confirming officer, K R 659–665, and as to review of sentences in execution, see Part II of "Instructions regarding Suspension and Review of Sentences awarded by Courts Martial" on pp 801–3

2 The powers conferred by this section may be exercised by the confirming authority, as such, under subs (1), only when confirming the sentence After promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the above powers can only be exercised in the manner prescribed in the later parts of the section

3 *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

4. *Remission* may be remission of the whole or of part of the sentence, thus a sentence of imprisonment with hard labour may be remitted altogether, or a portion of the term, or the hard labour may be remitted As to notification of remission of imprisonment or detention, see K R 704

The confirming authority cannot remit such forfeitures of pay as follow automatically (under the P W) upon the *finding* of the court

5 *Commutation* is changing the description of punishment by awarding a punishment lower in the scale of punishments in s 44, as imprisonment in lieu of penal servitude, or dismissal in lieu of cashiering, or detention in lieu of imprisonment, but the effect of s 44 (1A) is that imprisonment can only be commuted to an equal or shorter term of detention, e g , the commutation of six months' imprisonment to seven months' detention would be illegal

The confirming authority as such cannot commute a punishment into general service, s 83 (7) and note

6 The earlier part of the section allows an authority to commute a punishment "for any less punishment *or punishments*" to which the offender might have been sentenced the later parts of the section omit the words "or punishments" but those words have been held to be implied in the words "such less punishment" There is no standard of comparison between one punishment and two or more punishments, and as it is necessary that the commuted sentence should be less than the original sentence, the validity of the commutation of one punishment to two or more punishments is liable to be questioned on that ground It is illegal to commute part of a punishment by substituting another punishment Thus, where a court passed a sentence of detention but omitted to pass a sentence of stoppages of pay which would have been valid, a portion of the detention cannot be commuted to stoppages

The penal servitude, imprisonment, or detention, under commutation, must commence on the date of the original sentence, even though that sentence was not one of penal servitude, imprisonment, or detention, as the case may be

If a confirming authority 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

Where a term of imprisonment, detention, or field punishment is reduced in length by mitigation or remission, automatic forfeiture of pay under s 138 and Royal Warrant is governed by the term actually undergone—not by that originally imposed So, too, pay is not automatically forfeited whilst a sentence is "suspended"

7. Suspension of the execution of a sentence can only take effect after confirmation A suspension under *this* section does not postpone the commencement of any term of penal servitude, imprisonment or detention, but see further as to suspension of sentences, s 57A See also Ch V, paragraph 97

8 *Prescribed officer* See R P 126 (B)

9 For definitions of *India* and *colony*, see s 190 (21) and (23)

Power to suspend sentences

57A [1]—(1) Where a soldier is sentenced to penal servitude, imprisonment or detention,[2] the confirming authority to whom the sentence is submitted for confirmation may, when confirming the sentence, direct that the soldier be not committed to prison or detention barracks until the orders of a superior military authority have been obtained

(2) A superior military authority may in the case of any soldier so sentenced—

(*a*) direct that a committal to prison or detention barracks shall not be issued until his orders have been obtained,

(*b*) suspend the sentence[3] whether or not the soldier has already been committed to prison or detention barracks

(3) Where a sentence of penal servitude, imprisonment or detention is suspended under this section before the soldier has been committed to prison or detention barracks, the soldier if in custody shall be released, and, notwithstanding anything in this Act, the sentence shall not begin to run until the soldier is ordered to be committed to prison or detention barracks under that sentence

(4) Where a sentence of penal servitude, imprisonment or detention is suspended under this section after the soldier has been committed to prison or detention barracks, he shall be discharged and the currency of the sentence shall be suspended from the day on which he is released until he is again ordered to be committed to prison or detention barracks under the same sentence

(5) Where a sentence has been suspended under this section, the case may at any time, and shall, at intervals of not more than three months, be reconsidered[4] by a competent military authority, and, if on any such reconsideration it appears to the competent military authority that the conduct of the soldier since his conviction has been such as to justify a remission[3] of the sentence, he shall remit it [5]

(6) A superior military authority may, at any time whilst a sentence is suspended under this section, order that the soldier be committed[3] to prison or detention barracks, and from the date of such order[6] the sentence shall cease to be suspended

(7) Where a soldier whilst a sentence on him is so suspended is sentenced to penal servitude, imprisonment or detention for a fresh offence, a superior military authority may direct that the two sentences shall either run concurrently or consecutively, so, however, that the aggregate term of imprisonment or detention served under two or more sentences of imprisonment or detention shall not exceed two consecutive years, provided that, where the sentence for such fresh offence is a sentence of penal servitude, then, whether or not that sentence is suspended, any previous sentence of imprisonment or detention which has been suspended shall be avoided

(8) The powers conferred by this section shall be in addition to and not in derogation of any other powers as to the mitigation, remission, commutation, or suspension of sentences conferred by

Part I. — ss 57A, 58.

this Act, and a superior military authority under this section shall be an authority having power to mitigate, remit, or commute sentences of penal servitude, imprisonment or detention under subsection (2) of section fifty-seven of this Act

(9) In this section—

The expression "superior military authority" means the Army Council and any general or air officer or brigadier whom the Army Council may appoint[7] for the purpose, or the officer (whether military or air force) in chief command of any force employed on active service beyond the seas, and any general officer or brigadier whom he may appoint for that purpose,

The expression "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

NOTE

1 This section makes permanent and extends the provisions introduced by the Army (Suspension of Sentences) Acts, 1915 and 1916, and the Naval, Military and Air Force Service Act, 1919, s 2 (3)—now repealed It only applies to sentences of penal servitude, imprisonment or detention, other sentences can be dealt with under s 57 As to the principles and practice to be followed in dealing with sentences under this section, see "Instructions regarding Suspension and Review of Sentences awarded by Courts-Martial" on p 795, *et seq*

2 A N C O sentenced by court-martial to penal servitude, imprisonment or detention is *ipso facto* reduced to the ranks, and the suspension of his sentence does not cancel or suspend the reduction There is, however, no legal bar to a soldier receiving promotion or an appointment whilst under a suspended sentence

3 An order for remission of sentence or committal to prison must be signed by the officer responsible for it, a minute of suspension may be signed by a staff officer "for" him, so long as it makes clear that the responsible officer himself considered the case and arrived at the decision

4 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

5 The section does not contemplate the partial remission of a sentence, the only power of remission under subs (5) is to remit the whole Partial remission must be effected (if at all) under s 57

6 When a soldier under suspended sentence is committed to prison, &c, the sentence begins to run from the date of the order committing him, and not from the date of his reception into prison, &c

7 The officers appointed to be superior military authorities under the section are notified from time to time in Army Orders (See A O 121 of 1928)

Penal Servitude

Effect of sentence of penal servitude

58 Where a sentence[1] of penal servitude is passed by a court-martial, the military convict[2] shall, as soon as practicable, be committed to a penal servitude prison[3] to undergo his sentence according to law [4]

Provided that where the sentence was passed for an offence committed on active service,[5] the competent military authority[6] may order that any part of the sentence, not exceeding two years, shall be served in a military prison[7] in accordance with rules made for the purpose under this Act,[8] and in such case the provisions of this Act with respect to penal servitude (except those relating

to the treatment of a military convict on arrival at a penal servitude prison), shall, with respect to the part of the sentence to be so served, have effect as though for references to a penal servitude prison there were substituted references to a military prison

NOTE

1 In the Army and Air Force (Annual) Act, 1926, the sections of the Army Act dealing with the execution of sentences and the nature and locality of the penal establishments in which those sentences are to be served (ss 58–68 and 131–135) were redrafted to give effect to the recommendations of the Army Act Revision Committee, who had reported that the provisions, as they then stood, constituted a very confusing piece of legislation, and had given rise to great difficulties in practice The redraft did not effect any substantial alteration of the law, except that of the addition of the proviso to this section which enables a soldier sentenced to penal servitude for an offence committed on active service to serve part of his sentence, not exceeding two years, in a military prison instead of in a penal servitude prison

2 See generally as to a military convict, K R 676–679 For commencement of term of penal servitude, see s 68 (1) For general provisions as to the forms of orders of military authorities, see s 172

3 *Penal servitude prison* For definition see s 68 (2) (*g*)

4 When a person sentenced to penal servitude is dismissed or discharged from His Majesty's service, he ceases to be subject to military law, but the Army Act applies to him during the term of his sentence See s 158 (2)

5 *On active service* For definition see s 189

6 *Competent military authority* See s 68 (2) (*h*) and R P 126 (C)

7 *Military prison* For definition see s 68 (2) (*d*)

8 *Rules made for the purpose under this Act* See s 132 (2) The rules are contained in Rules for Military Detention Barracks and Military Prisons, and Rules for Military Prisons in the Field

Place in which sentence to be served

59 The penal servitude prison[1] to which a military convict is committed shall be a penal servitude prison in the United Kingdom, unless the convict—

(*a*) was sentenced in India or a colony,[2] and belongs to a class of persons with respect to whom the Secretary of State by declaration laid before both Houses of Parliament has declared[3] that by reasons of climate, place of birth, place of enlistment or otherwise, transfer to the United Kingdom would not be beneficial, or

(*b*) was enlisted in a colony,[2] and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the Governor of that colony that they may, if sentenced to penal servitude, be transferred to or kept in the colony and there undergo sentence,

in either of which cases he may undergo his sentence in India or the colony, as the case may require

NOTE

1 *Penal servitude prison* For definition see s 68 (2) (*g*).

2 For definitions of *India* and *colony*, see s 190 (21) and (23), see also s 187 (2) as to the Channel Islands and Isle of Man, and as to a mandated territory, s 187A

3 Under this section the Secretary of State made a declaration dated 12th August, 1926, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of penal servitude —

(1) By reason of climate —
Asiatics and Africans
Other persons of colour.

Part I — ss.59-61

(2) By reason of place of birth —
Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom

(3) By reason of place of enlistment —
Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps

Interim custody of military convict before arrival at penal servitude prison

60 —(1) Until transferred to a penal servitude prison[1] a military convict—

(*a*) if in the United Kingdom or a foreign country,[2] shall be kept in military custody,

(*b*) if in India or a colony,[2] may be kept in military custody or in civil custody,[3] or partly in one description of custody and partly in the other, and may, by order of the competent military authority,[4] from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require

(2) A military convict in India or a colony[2] may, whilst in civil custody in any prison, be dealt with, in respect of hard labour and otherwise, according to the rules of that prison

NOTE

1 *Penal servitude prison* For definition see s 68 (2) (*g*)
2 For definition of *foreign country*, see s 190 (24), and for definitions of *India* and *colony*, see s 190 (21) and (23) For the purpose of the provisions of the Act relating to the execution of sentences of penal servitude, the Channel Islands and Isle of Man are deemed to be colonies, s 187 (2) As to a mandated territory, see s 187A
3 *Civil custody* For definition see s 68 (2) (*c*)
4 *Competent military authority* See s 68 (2) (*h*) and R P 126 (D).

Committal, removal, release, &c, of military convict

61.—(1) An order of the competent military authority[1] shall be a sufficient warrant for the committal[2] of a military convict to a penal servitude prison [3]

(2) An order of the competent military authority[4] shall be a sufficient authority for the transfer of the military convict from military custody to civil custody[5] and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient until he is transferred to a penal servitude prison

(3) A military convict at any time either before or after his arrival at a penal servitude prison, may, if his sentence is remitted,[6] be released by order of the competent military authority [7]

(4) A military convict may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal

NOTE

1 Subs (1) *Competent military authority* See s 68 (2) (*h*) and R P 126 (F)
2 For form of order of commitment, see R P , App III, Forms A and B
3 *Penal servitude prison* For definition see s 68 (2) (*g*)
4 Subs (2) *Competent military authority* See s 68 (2) (*h*) and R P 126 (H).
5 For definition of *civil custody*, see s 68 (2) (*c*)

6 It should be noted that under this section the release of a military convict can only be ordered by a competent military authority if his sentence is remitted by an authority having power to do so under s 57

7 Subs (3) *Competent military authority.* See s 68 (2) (*h*) and R P 126 (1).

Treatment of military convict in penal servitude prison

62. After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the same manner as an ordinary civil prisoner under sentence of penal servitude, and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly

NOTE

Penal servitude prison For definition see s 68 (2) (*g*)

Imprisonment and Detention

Effect of sentence of imprisonment or detention.

63.—(1) Where a sentence of imprisonment is passed by a court-martial, the military prisoner shall undergo the term of his imprisonment either in a military prison, or detention barrack, or in other military custody, or in a civil prison, or partly in one way and partly in another

(2) Where a sentence of detention is passed by a court-martial or a commanding officer, the person on whom that sentence has been passed shall undergo the term of his detention either in a detention barrack, or in military custody, or partly in one way and partly in the other, but not in a prison

NOTE

See generally as to soldiers under sentence, K R 680–690

For general provisions as to forms of orders of military authorities, see s 172 For commencement of term of imprisonment or detention, see s 68 (1) As to the place in which sentence is to be served, see s 64

For definitions of *military prisoner, military prison, detention barrack,* and *civil prison,* see s 68 (2) (*b*), (*d*), (*e*), and (*f*), respectively

When a person sentenced to imprisonment or detention is dismissed or discharged from His Majesty's service, he ceases to be subject to military law, but the Army Act applies to him during the term of his sentence See s 158 (2)

Place in which sentence to be served.

64 —(1) Subject to the provisions of this section, a military prisoner or soldier under sentence of detention who was sentenced or is undergoing his sentence in the United Kingdom shall not be removed to a prison or detention barrack elsewhere, unless he was enlisted in a colony[1] and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the Governor of that colony that they may, if sentenced to imprisonment or detention, be transferred to the colony and there undergo sentence, in which case he may be removed to a prison or detention barrack in that colony

(2) The competent military authority[2] may give directions for delivery into military custody of any military prisoner or soldier undergoing detention, and the removal[3] of such prisoner or soldier, whether with his corps or separately, to any place beyond the seas where the corps or any part thereof to which for the time being he belongs is serving or under orders to serve [4]

Part I. — s. 64.

(3) A military prisoner or soldier under sentence of detention who was sentenced in a foreign country[5] shall undergo his sentence either in that foreign country, or in any foreign country in which the force with which he is serving may be, or in the United Kingdom, or in such other place as may be prescribed [6]

(4) A military prisoner or soldier under sentence of detention who was sentenced in India or a colony[7] shall undergo his sentence either in India or in that colony (as the case may be), or in such other part of His Majesty's dominions as may be prescribed,[8] or in the United Kingdom

Provided that—

(*a*) if the term of his sentence exceeds twelve months, he shall be transferred as soon as practicable to a prison or detention barrack in the United Kingdom, unless—

(i) he belongs to a class of persons with respect to whom the Secretary of State by declaration laid before both Houses of Parliament has declared[9] that by reasons of climate, place of birth, place of enlistment or otherwise, transfer to the United Kingdom would not be beneficial, or

(ii) the court for special reasons otherwise orders, and any order which may be made under this provision by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence may be made by the authority commuting or remitting the sentence, and

(*b*) a military prisoner or soldier undergoing detention in India or a colony shall not, for longer than is absolutely necessary, be detained in any civil prison other than a prison in respect of which arrangements have been made by the Secretary of State under this Act with the Governor-General of India or the Governor of the colony

NOTE

1 For definition of *colony*, see s 190 (23) As to the Channel Islands and Isle of Man, see s 187 (2), as to a mandated territory, see s 187A

2 *Competent military authority* See s 68 (2) (*h*) and R P 126 (H)

3 See generally as to removal of soldiers under sentence, K R 691–703

4 The object of this sub section is to enable soldiers who are undergoing sentences of imprisonment or detention to be removed in custody for service abroad Soldiers sentenced for military offences (desertion, for instance), may in many cases be given a fresh opportunity of recovering their characters by being at once removed to a station abroad The section will prevent soldiers who are undergoing sentence for offences committed in order to avoid embarkation for service from achieving their object, but it gives no authority to commit such offenders to a prison or detention barrack on their arrival at a station abroad

5 For definition of *foreign country*, see s 190 (24)

6 *Or in such other place as may be prescribed* See R P 130

7 For definitions of *India* and *colony*, see s 190 (21) and (23) For the purpose of the provisions of the Act relating to the execution of sentences of imprisonment and detention, the Channel Islands and Isle of Man are deemed to be colonies, s 187 (2) As to a mandated territory, see s 187A

8 *Or in such other part of His Majesty's dominions as may be prescribed* See R P 130

Where a unit moves from one colony to another and takes its prisoners with it, they cannot be committed under their old sentences to a prison at the place

of destination of the regiment unless such prison has been prescribed, or is a military prison, and in the latter case the regulations on the subject must be observed A soldier sentenced to detention may be removed from any detention barrack to any other wherever situate, except that he cannot be removed from a detention barrack in the United Kingdom to a detention barrack elsewhere save as provided in subs (1)

9 Under this section the Secretary of State made a declaration dated 12th August, 1926, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of imprisonment or detention —

(1) By reason of climate —
Asiatics and Africans
Other persons of colour
(2) By reason of place of birth —
Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom
(3) By reason of place of enlistment —
Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps

Interim custody of military prisoner or soldier undergoing detention

65. A military prisoner or soldier undergoing detention may, until he reaches the prison or detention barrack in which he is to undergo his sentence, be kept in military custody or in civil custody,[1] or partly in one description of custody and partly in the other, and may, by order of the competent military authority,[2] from time to time be transferred from military custody to civil custody, and from civil custody to military custody as occasion may require

NOTE

1 For definition of *civil custody*, see s 68 (2) (*c*)
2 *Competent military authority* See s 68 (2) (*h*) and R P 126 (E)

Committal, removal, release, &c, of military prisoner or soldier undergoing detention

66 —(1) An order[1] of the competent military authority[2] shall be a sufficient warrant for the committal of a military prisoner to prison or a detention barrack, or a soldier under sentence of detention to a detention barrack

(2) An order[1] of the competent military authority[3] shall be a sufficient authority for the transfer of a military prisoner from prison to a detention barrack, or vice versa, or from one prison or detention barrack to another prison or detention barrack, or for the transfer of a soldier undergoing detention from one detention barrack to another, or for the delivery into military custody of a military prisoner or a soldier undergoing detention

(3) A military prisoner or a soldier undergoing detention may at any time, if his sentence is remitted,[4] be released by order of the competent military authority [5]

(4) A military prisoner or a soldier undergoing detention may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal

NOTE

1 For forms of orders, see R P App III
2 Subs (1) *Competent military authority* See s 68 (2) (*h*) and R P 126 (G)
3 Subs (2) *Competent military authority* See s 68 (2) (*h*) and R P. 126 (H)
4 It should be noted that under this section the release of a military prisoner or soldier undergoing detention can only be ordered by competent military

Part I. — ss.66–68

authority if the sentence is remitted by an authority having power to do so under s 57

5 Subs (3) *Competent military authority* See s 68 (2) (*h*) and R P 126 (I)

Treatment and classification of prisoners in civil prisons

67.—(1) A military prisoner while in a civil prison shall be confined, kept to hard labour, and otherwise dealt with in the same manner as an ordinary prisoner under a like sentence of imprisonment

(2) Where the hospital or place for reception of sick persons in a prison or a detention barrack is detached from the prison or detention barrack, a military prisoner or a soldier undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require

(3) Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, or sentenced to be discharged from the service with ignominy, a Secretary of State shall from time to time make rules[1] for the classification and treatment of such prisoners

NOTE

1 See generally K R 680, 715, and Rules for Military Detention Barracks and Military Prisons

Commencement of Sentence and Interpretation of Provisions as to Punishment

Commencement of sentence and interpretation of provisions as to punishments

68.—(1) The term of penal servitude, imprisonment, or detention to which a person subject to military law is sentenced by a court-martial, whether the sentence has been revised or not, and whether the person is already undergoing sentence or not shall (save as otherwise expressly provided in this Act),[1] be reckoned to commence[2] on the day on which the original sentence and proceedings were signed[3] by the president of the court-martial

(2) For the purpose of the provisions of this Act relating to penal servitude, imprisonment and detention unless the context otherwise requires—

(*a*) The expression "military convict" means a person under sentence of penal servitude passed by a court-martial

(*b*) The expression "military prisoner" means a person under sentence of imprisonment passed by a court-martial

(*c*) The expression "civil custody" means the custody of the police or other lawful civil authority authorised to retain in custody civil prisoners, and includes confinement in a civil prison

(*d*) The expression "military prison" means a building or part of a building set apart as such under this Act and includes (unless the Secretary of State otherwise directs) an air force prison

(*e*) The expression "detention barrack" means a building or part of a building set apart as such under this Act, and includes (unless the Secretary of State otherwise directs) an air force detention barrack.

(*f*) The expression "civil prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined, and any prison in India or a colony in which European offenders so sentenced can for the time being be confined

(*g*) The expression "penal servitude prison" means any prison or place in which a person sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, and any prison or place in India or a colony in which persons sentenced to penal servitude by a civil court in India or the colony can for the time being be confined

Provided that where there is no such prison or place in a colony the expression "penal servitude prison" shall, as respects that colony, mean a civil prison

(*h*) The expression "competent military authority" means in relation to persons—

(i) in the United Kingdom, the Army Council, and any prescribed officer[4],

(ii) in India or a colony any prescribed officer[4],

(iii) in a foreign country, the officer commanding the force to which the person under sentence belonged at the time of his being sentenced, and any prescribed officer[4]

Provided that different officers may be so prescribed as the competent military authority for different purposes of the said provisions, and provision may be made by rules of procedure as to whether the competent military authority, in relation to any person under sentence, shall be the competent military authority in the place where the sentence was passed or the competent military authority in the place where that person may be

NOTE

1: *Save as otherwise expressly provided in this Act* See s 57A with regard to suspension of sentences

2. Under this section a term of penal servitude, imprisonment or detention under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal servitude, imprisonment or detention, but must commence on the day on which the sentence is signed by the president of the court If, therefore, the court desire to inflict (*e g*) six months' additional imprisonment on a prisoner already in prison undergoing six months' imprisonment, of which three months are unexpired, the court must award nine months, and similarly with respect to sentences of penal servitude and detention The period of imprisonment or detention must, however, never exceed two consecutive years, whether under one or more sentences, s 44, proviso (1B)

A term of penal servitude, imprisonment or detention awarded by way of commutation must commence on the date of the original sentence even though such sentence was one of a different character, s 57 (5)

3 It is essential that the proceedings be dated as well as signed When however, a president, after recording the finding and sentence in his own handwriting, omitted to either sign or date the proceedings, it was ruled that even after confirmation he could sign them and date his signature as of the true date of the decision

4 *Prescribed officer* See R.P 126.

MISCELLANEOUS

Articles of War and Rules of Procedure

Power of His Majesty to make Articles of War

69. It shall be lawful for His Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act

Power of His Majesty to make rules of procedure

70 —(1) Subject to the provisions of this Act His Majesty may, by rules[1] to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them, that is to say,

(*a*) The assembly and procedure of courts of inquiry,
(*b*) The convening and constituting of courts-martial,
(*c*) The adjournment, dissolution, and sittings of courts-martial,
(*d*) The procedure to be observed in trials by court-martial,
(*e*) The confirmation and revision of the findings and sentences of courts-martial, and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a valid sentence for an invalid sentence of a court-martial,
(*f*) The carrying into effect sentences of courts-martial,
(*g*) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, imprisonment, or detention,
(*h*) Any matter in this Act directed to be prescribed,
(*i*) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law

(2) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act

(3) All rules made in pursuance of this section shall be judicially noticed

(4) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

(5) The rules as to the procedure of courts of inquiry may provide for evidence being taken on oath and may empower courts of inquiry to administer oaths for that purpose

(6) The rules as to the investigation of a charge may provide for a written summary of the evidence being taken on oath, and may empower a commanding officer or any officer, before whom he directs such summary to be taken, to administer oaths for that purpose

NOTE

1. The "Rules of Procedure" made under this section must not (see subs (2)) contain anything contrary to, or inconsistent with, any provision of the Act itself Consequently, if any rule is found to conflict with some section of the Act, the statutory provision must prevail

Command

Removal of doubts as to military command

71 —(1) For the purpose of removing doubts[1] as to the powers of command vested or to be vested in officers and others belonging to His Majesty's forces, it is hereby declared that His Majesty may, in such manner as to His Majesty may from time to time seem meet, make regulations[2] as to the persons to be invested as officers, or otherwise, with command over His Majesty's forces, or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised

(2) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in His Majesty

NOTE

1 This section removes all doubts as to the power of His Majesty to regulate the command by officers of the regular forces over those forces, or over any portion of the auxiliary forces, and the command by officers of any portion of the auxiliary forces over any other portion of those forces, or over any portion of the regular forces

2 The regulations are contained in K R 170-192

Inquiry as to and Confession of Desertion

Inquiry by court on absence of soldier.

72.—(1) When any soldier has been absent without leave from his duty for a period of twenty-one days,[1] a court of inquiry may as soon as practicable be assembled,[2] and inquire in the prescribed manner[3] on oath or solemn declaration (which such court is hereby authorised to administer) respecting the fact of such absence, and the deficiency[4] (if any) in the arms, ammunition, equipments, instruments, regimental necessaries, or clothing of the soldier, and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare[5] such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the absent soldier shall enter in the regimental books[6] a record of the declaration of such court [7]

(2) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion

NOTE

1. In calculating the period of 21 days, the day on which the soldier became absent and the day on which the court is assembled must be excluded from the reckoning If the court assembles a day too soon, the record of their declaration is not admissible in evidence.

2 In the event of a soldier being absent without leave for a period of 21 *clear* days (see preceding note), a court of inquiry must be assembled at once,

Part I. — ss 72,73

unless before such court of inquiry has been assembled it has come to the knowledge of the soldier's C O that the soldier has been apprehended or has surrendered In that case no court of inquiry will be held, and the fact of his absence and the deficiency (if any) of his clothing, &c , must be proved by oral evidence at any subsequent court martial (K R 742) No court of inquiry will be held in the case of absconded recruits

3 *Prescribed manner* See R P 125

4 Before declaring any deficiency of arms, &c , 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 They will record the values of the unexpired wear of all articles of government property found to be deficient (K R 742)

5 The declaration of the court should contain—

The date and place from which the soldier absented himself, and

The date of the deficiency (if any) of clothing, &c , and the place where it occurred

The procedure of such a court is detailed in R P 125 under that rule and this section the witnesses will be sworn, but not the members of the court As to the form of declaration, see notes to R P 125

6 In order to make the record admissible in evidence it must be a record in the regimental books of the unit to which the soldier belonged at the time, signed by the C O thereof (s 163 (1) (g)) See generally as to such record, K R , 1620

7 The actual proceedings of the court are not admissible in evidence They should be destroyed as soon as recorded in the regimental books See R P 125 (c)

The record of the court's finding will be admissible, notwithstanding that the soldier had already surrendered or been apprehended, provided that such surrender or apprehension had not come to the knowledge of his C O

When a soldier who has been "struck off" as a deserter, upon the finding of the court, rejoins, the C O , if satisfied that the evidence does not justify a charge of desertion, can legally deal with the case as one of absence without leave but as a rule he should refer it to superior authority

As to inquiry into absence from duty of a man of the Territorial Army, when subject to military law, see T R F Act, s 24 (4)

Confession by soldier of desertion or fraudulent enlistment

73.—(1) Where a soldier signs a confession[1] that he has been guilty of desertion or of fraudulent enlistment, a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures[2] and the same deductions from pay[3] (if any) as a court-martial could award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order

(2) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession

(3) The competent military authority for the purposes of this section means the Army Council, or any prescribed general officer or brigadier,[4] or, in the case of India,[5] the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint, and in the case of a colony[6] and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Army Council

NOTE

Part I.

1 Before accepting a confession of desertion or fraudulent enlistment signed by a soldier, care should be taken to ascertain that he fully understands the nature and consequences of his act See K R 608-613 ss 73-75

2 If he has not completed 12 years' service, *i e* , the term of his original enlistment, he will forfeit the whole of his prior service, and be liable to serve for the original term of his enlistment reckoned from the date of his trial being dispensed with, and the forfeited service can only be restored by the Army Council, s 79 (proviso), see also K R 246 A soldier serving on a re-engagement at the time of confessing will forfeit all prior service rendered during the period of such re-engagement See notes to ss 79 and 84

3 The deductions from pay are regulated by s 138 and the P W

4 *Prescribed general officer or brigadier* see R P 126 (j)

5 For definition of *India* and *colony*, see s 190 (21) and (23), and as to the Isle of Man and Channel Islands, see s 187 (2)

Provost Marshal

Provost Marshal

74.—(1) For the prompt repression of all offences which may be committed abroad, provost marshals[1] with assistants may from time to time be appointed by the general order of the general officer or brigadier commanding a body of forces

(2) A provost marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority

Provided that a provost marshal and his assistants shall, as respects any soldier in his or their custody and undergoing field punishment, have the same powers as the governor of a military prison [2]

NOTE

1 See generally as to provost marshal, Ch IV, para 40

2 *The governor of a military prison* The powers of such a governor are prescribed by the rules made under s 132

Restitution of Stolen Property

Power as to restitution of stolen property

75.—(1) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property,[1] and the property or any part thereof is found in the possession[2] of the offender, the authority confirming the finding and sentence of such court-martial, or the Army Council, may order the property so found to be restored to the person appearing to be the lawful owner thereof

(2) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or the Army Council to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained

(3) Moreover, where it appears to the confirming authority or the Army Council from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or the Army Council

Part I

75. may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the said sale or pawning shall be paid to the said person purchasing or taking in pawn

(4) An order under this section shall not bar the right[3] of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid [4]

NOTE

1. The word "property" should be construed in a wide sense as including, *e g*, money, *cf* s 18 (4), and see Larceny Act, 1916, s 16

2 *Found in the possession* This is not limited to property found "upon" the offender if he occupies a house, property found in it is *prima facie* in his "possession"

3 The stealing or embezzlement of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or embezzled is the lawful owner of it

4 An order under this section cannot be made by the court but the court should report to the proper authority any circumstances which appear to justify the making of an order

If the offender is sentenced by the court to be placed under stoppages in respect of the property stolen or unlawfully obtained, allowance must be made in enforcing such stoppages for money found upon him and appropriated in restitution, see K R 655

Part II.

s 76

PART II

ENLISTMENT

For history of service in the Army, see Ch IX, and for general explanation of this Part see Ch X

For regulations as to recruiting, transfers, discharge and service, see K R 222, et seq, and the Recruiting Regulations

As is recognised in s 80 (1), enlistment is a species of "contract" between the Sovereign and the recruit A man who repents of his bargain may within three months purchase his discharge (s 81), provided that no proclamation continuing soldiers in army service has been issued under s 88 (1), the Crown may lawfully discharge him at any time, and in practice his undertaking is so worded, viz, to serve for a fixed period "provided His Majesty should so long require your services" The provisions as to enlistment are contained in ss 76–101, supplemented by ss 13, 32–34, and 181 (1)

Period of Service

Limit of original enlistment.

76 A person may be enlisted[1] to serve His Majesty as a soldier of the regular forces for a period of twelve years, or for such less period[2] as may be from time to time fixed by His Majesty, but not for any longer period,[3] and the period for which a person enlists is in this Act referred to as the term of his original enlistment[4],

Provided that the Army Council in special cases or classes of cases may by order direct that where a boy is enlisted before attaining the age of eighteen, the period of twelve years shall be reckoned from the day on which he attains the age of eighteen years [5]

NOTE

1 The terms of enlistment for the various arms of the service are prescribed by the Regulations for Recruiting

2 In the case of men who enlist for less than 12 years at the outset, the Army Council may, under s 78 (1) (*c*), allow them to extend their term up to a total of 12 years (or less)

3 Though this section fixes 12 years as the maximum period for which a recruit may be allowed to bind himself at the outset, ss 84–86 contain provisions under which soldiers may be allowed to re engage or continue in the service for further periods Conversely, ss 87 and 88 contain provisions under which the Army Council have powers, in certain circumstances, to retain in army service soldiers who would normally be due for discharge or transfer to the reserve

4 *Original enlistment* For the purpose of this part of this Act, the term "original enlistment" has regard to the engagement on which a soldier is actually serving

5 The proviso, added by the A & A F (A) Act, 1922, gives the Army Council power to authorise the enlistment of boys for a period of twelve years from the date on which they reach the age of eighteen years

Terms of original enlistment.

77. The original enlistment[1] of a person under this Act shall be as follows, either—

(1) For the whole of the term of his original enlistment in army service[2], or

(2) For such portion of the term of his original enlistment as may be from time to time fixed by the Army Council, and specified in the attestation paper, in army service, and for the residue of the said term in the reserve

NOTE

1 *Original enlistment* See note 4 to s 76

2 "Army service" means "service with the colours"

Change of conditions of service

78.—(1) The Army Council may from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier of the regular forces in army service,[1] with their assent, either—

(*a*) To enter the reserve at once[2] for the residue unexpired of the term of his original enlistment,[3] or

(*b*) To extend[4] his army service for all or any part of the residue unexpired of such term, or

(*c*) To extend[4] the term of his original enlistment up to the period of twelve years, or any shorter period

(2) The Army Council may from time to time, by general or special regulations, vary the conditions of service so as to permit a man in the reserve, with their assent, to re-enter upon army service for all or any part of the residue unexpired of the term of his original enlistment, or for any period of time not exceeding twelve years in the whole from the date of his original enlistment.

Part II

ss. 78,79

NOTE

1 *Army service* See note 2 to s 77

2 This section deals only with variations made with the soldier's consent See K R 338 and 389 As to compulsory transfer in certain cases see s 89

3 *Original enlistment* See note 4 to s 76

4 As regards extension of service with the colours see K R 222–250, and Ch X, para 6

Reckoning and forfeiture of service

79 In reckoning the service of a soldier of the regular forces for the purpose of discharge or of transfer to the reserve—

(1) The service shall begin to reckon from the date of his attestation[1], but

(2) Where a soldier of the regular forces has been guilty of any of the following offences —

(*a*) Desertion from His Majesty's service, or

(*b*) Fraudulent enlistment,

then either upon his conviction by court-martial of the offence, or (if, having confessed the offence, he is liable to be tried[2]) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service[3] shall be forfeited[4], and he shall be liable to serve as a soldier of the regular forces for the term of his original enlistment,[5] reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date

Provided that the Army Council may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by the Army Council to merit such restoration of service, or may be recommended for such restoration of service by a court-martial [6]

NOTE

1 *Date of his attestation* In the case of a boy enlisted before attaining the age of 18 years under the terms of the proviso to s 76, the expression "date of his attestation" in this section means, in effect, the date specified in his attestation for the commencement of the "period of service," *i e* , the date on which 18 years of age is attained See also note 2 to s 84

2 *If he is liable to be tried* These words exclude the application of the paragraph in the case of a soldier who after three years of exemplary service has made a confession of desertion when not on active service, or of fraudulent enlistment Under s 161 a soldier making such a confession cannot be tried or punished, and it is not intended that he should forfeit his service under this section, but if the offence to which he confesses was that of fraudulent enlistment, he will under s 161 forfeit all service prior to the date of his fraudulent enlistment, except that if he fraudulently enlisted during a period of re-engagement, he will only forfeit the service rendered during such re-engagement Under the proviso to that section, on the other hand, the Army Council have the same power of restoring service so forfeited as they have under this section See K R 246, and note 6 to s 161

3 *The whole of his prior service* This refers to all his previous service rendered on any engagement current during the term of his original enlistment As to forfeiture of service in the case of a re engaged soldier, see s 84 (2) and note, and K R 246

4 A soldier will not forfeit service towards discharge for any absence or for any period of imprisonment or detention, but if he is convicted of desertion or fraudulent enlistment (or if having confessed and if he is liable to trial, trial is dispensed with), he will forfeit all his prior service rendered during the term of his original enlistment or during the period of re engagement, as the case may be, and begin again as if he had enlisted or re engaged at the date of his conviction (or date of order dispensing with trial), all variations of his original

conditions of service being automatically cancelled This applies to variations of conditions such as an extension of army service under s 78 (1) (*b*), but not to variations of the term of his original enlistment such as an extension of service under s 78 (1) (*c*)

In cases where, on a charge of desertion, the court find that the accused did the act which forms the subject of the charge but was insane at the time when he did the same, no service is forfeited, as such a finding negatives the intention which is a necessary element of the offence, and there is no conviction

Para (2) applies to the reckoning of service for purposes of discharge or transfer to the reserve only Forfeiture of ordinary pay is dealt with in s 138, and the Pay Warrant, while forfeiture of service towards pension is regulated by the Pay Warrant

If an army reserve man enlists and is sent back to the reserve, he does not forfeit any part of his service, but if retained with the colours, his service on new engagement will be reckoned from the date of his improper attestation, see K R 247

The paragraph does not apply to men of the Territorial Army

5 *Original enlistment* See note 4 to s 76

In a case of fraudulent enlistment, service is forfeited on all current engagements, and "original enlistment" here means the engagement on which the man is held to serve (See note 6)

6 The Army Council may restore all or part of the forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it See K R 246 A soldier who deserts and fraudulently re enlists has entered into two mutually incompatible engagements, and the Crown can elect upon which of them he shall be held to serve In either case, whether the soldier is held to serve on his last attestation or relegated to his former corps for the term of his original enlistment, the restored service will count for the purpose of reckoning service towards discharge or transfer to the reserve

Proceedings for Enlistment

Mode of enlistment and attestation

80 —(1) Every person authorised to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorised by the Army Council, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace either forthwith or at the time and place therein mentioned [1]

(2) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he has been served with and understands the notice and whether he assents to be enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor

(3) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken

(4) If he assents to be enlisted—

(*a*) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper[2] for the time being authorised by the Army Council, and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth

Part II.
—
ss 80,81

of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper

(*b*) Upon signing the declaration and taking the oath,[3] such person shall be deemed to be enlisted as a soldier of His Majesty's regular forces [4]

(*c*) The justice shall attest by his signature, in manner required by the said paper, the fulfilment of the requirements as to attesting a recruit, and shall deliver the attestation paper, duly dated to the recruiter

(*d*) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice

(*e*) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper

(5) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit

(6) The competent military authority,[5] if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists, and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper

(7) Where the regulations of the Army Council under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers [2]

NOTE

1 A man is under this Act enlisted by the act of attestation The recruiter will give the form authorised by the Army Council, directing the recruit to appear before a justice The man, if he fails to appear, cannot be arrested as a deserter No account will be taken of any man before he is actually attested before a justice As to the persons (including certain officers) entitled to exercise the functions of a justice in the United Kingdom and elsewhere, see s 94

2 The attestation paper is required to be in duplicate, K R 1613–1618

3 A recruit who objects to take the oath may "affirm" (*Towler* v *Sutton* (1916), 80 J P 461)

4 After attestation a man can only get off his contract of enlistment by purchasing his discharge under s 81 (*q v*)

5 *Competent military authority* As to the meaning of this expression, see s 101 and R P 128

Power of recruit to purchase discharge

81 If a recruit within three months after the date of his attestation pays for the use of His Majesty a sum not exceeding twenty pounds, he shall be discharged[1] with all convenient speed, unless he claims such discharge during a period when soldiers in army service, who otherwise would be transferred to the reserve, are required by a proclamation of His Majesty in pursuance of this Act to continue in army service, in which case he may be retained

in His Majesty's service during that period, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged

Part II. — ss 81-83

NOTE

1 See K R 370 (vii) for discharge procedure

Appointment to Corps and Transfers

82.—(1) Recruits may, in pursuance of any general or special regulations from time to time made by the Army Council, be enlisted for service in particular corps, but save as is provided by such regulations, if any, recruits shall be enlisted for general service

Enlistment for general service and appointment to corps

(2) The competent military authority[1] shall as soon as practicable appoint[2] a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to such corps as the competent military authority may think fit

Provided that in the case of a boy enlisted for general service before attaining the age of eighteen, he need not be appointed to a particular corps until he attains that age

NOTE

1 *Competent military authority* As to the meaning of this expression, see s 101 and R P 128

2 *Appoint* It may be convenient here to explain the meanings of the words "appoint" "post" "transfer" and "attach"

A soldier on attestation is "appointed" to a corps out of which he cannot be moved without his consent, except as mentioned in the Act This appointment differs from the appointment of a soldier to a particular office, inasmuch as it does not, like the latter appointment, require the consent of the soldier

Any disposition of a soldier within his corps which can legally be effected independently of his consent is termed "posting" He may be posted to any unit (*i e* battalion, depot, battery, company, &c ,) within his corps, to the regular establishment of a militia unit within such corps, or to the permanent staff of any Territorial Army unit belonging to such corps

"Transfer" is a disposition of the soldier which moves him out of the corps to which he was originally appointed, or to which for the time being he belongs, into another corps, either with his consent or under special conditions provided by the Act

"Attach" means removing temporarily a soldier either with or without his consent from his own unit and placing him with another unit, without affecting in any way his status in the first mentioned unit

83. A soldier of the regular forces, whether enlisted for general service or not, when once appointed[1] to a corps, shall serve in that corps for the period of his army service,[2] whether during the term of his original enlistment[3] or during the period of such re-engagement as is in this Act mentioned, unless transferred[1] under the following provisions —

Effect of appointment to a corps and provision for transfers

(1) A soldier of the regular forces enlisted for general service may within three months[4] after the date of his attestation or at any time whilst a Proclamation ordering the army reserve to be called out on permanent service is in force[5] be transferred to any corps of the same arm or branch of the service by order of the competent military authority[6]

(2) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority[6] to any corps .

Part II
—
s 83

(3) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority[6] may by order vary the conditions of his service[7] so as to correspond with the general conditions of service in the arm or branch to which he is transferred

(4) A soldier of the regular forces in any branch of the service may be transferred by order of the competent military authority[6] to any corps of the same branch which is serving in the United Kingdom in either of the following cases —

(*a*) When he has been invalided from service beyond the seas, or

(*b*) When, in the case of his corps or the part thereof in which he is serving[8] being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment, or of such re-engagement as is in this Act mentioned

(5) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving[8] being ordered to another station or to return home has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority[6] to any corps of the same branch which or a part of which is on service beyond the seas

(6) Where a soldier of the regular forces has been transferred to serve,[9] either as a warrant officer, or on the staff, or in any corps not being a corps of infantry, cavalry, artillery, or engineers,[10] he may by order of the competent military authority,[6] either during the term of his original enlistment or during the period of his re-engagement be removed from such service and transferred to any corps serving in the United Kingdom, or to any corps serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps in which he was serving prior to such first-mentioned transfer, either in the rank he holds at the time of his removal or any lower rank

(7) Where a soldier of the regular forces—

(*a*) Has been guilty of the offence of desertion from His Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or, having confessed the offence, is liable to be tried,[11] but his trial has been dispensed with by order of the competent military authority, or

(*b*) Has been sentenced by a court-martial for any offence to a punishment not less than detention for a term of three months,

such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps as the competent military authority[6] may from time to time order

(8) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of His Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority[6] to any corps near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is so transferred without prejudice to his subsequent trial and punishment

Where by Royal Warrant any corps is amalgamated with any one or more other corps, or the constitution of a corps is altered or any unit is transferred from one corps to another, any soldier who at the date of the amalgamation, alteration or transfer was serving in such corps or unit shall be liable to serve in the amalgamated corps or the altered corps or the corps to which his unit is transferred, as the case may be, in like manner as if it were the corps in which he was previously serving, but he shall not be liable without his consent to serve in any unit in that corps in which he could not, without his consent, have been required to serve if no such amalgamation, alteration or transfer had been effected

NOTE

1 *Appointed—transferred* See note 2 to s 82 See generally as to transfers, K R 292–303

2 *Army service* See note 2 to s 77

3 *Original enlistment* See note 4 to s 76

4 The transfer during these three months does not require the consent of the soldier During those three months he is entitled to his discharge under s 81 on proper demand and payment

5 The words "or at any time in force" do not apply to men enlisted before August 4th, 1914

6 *Competent military authority* As to the meaning of this expression, see s 101 and R P 128

7 *Vary the conditions of his service* This is to provide for such a case as the transfer of a man from the Royal Artillery to the infantry of the line, The period of service with the colours in the infantry is longer than in the Royal Artillery, and it would consequently be necessary to lengthen the army service of the man transferred

8 *Or the part thereof in which he is serving* These words are inserted in consequence of "corps" including the whole of an infantry regiment, part of which will probably be serving in and the other part out of the United Kingdom

9 *Transferred to serve* This applies to a warrant officer promoted to that rank in any corps other than those mentioned in para (6) or into any establishment which is not a "corps "

10 *Or in any corps not being a corps of infantry, cavalry, artillery, or engineers* For definition of "corps" see s 190 (15) See also Ch XI, paras 3 and 4

11 *Is liable to be tried* A soldier who, though having confessed an offence, is exempted by s 161 from trial and punishment, is by virtue of these words relieved from liability to general service under this paragraph The liability to general service is a commutation of punishment which may be allowed by the competent military authority, and is not a punishment which a court-martial can award Consequently it is not within the powers of mitigation and commutation given to confirming and other officers by s 57

An order made under this paragraph will be entered in the soldier's record of service, K R 657

Part II.

Re-engagement and Prolongation of Service

ss. 84,85

Re engagement of soldiers

84 —(1) Subject to any general or special regulations[1] from time to time made by the Army Council, a soldier of the regular forces, if in army service, and after the expiration of nine years from the date of his original term of enlistment,[2] may on the recommendation of his commanding officer, and with the approval of the competent military authority,[3] be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years of army service, reckoned from the date of his attestation,[2] and inclusive of any period previously served in the reserve

(2) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this part of this Act during the term of his original enlistment [4]

(3) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations

NOTE

1 For the regulations under this section of the Act, see K R 231–235

2 *Date of his original term of enlistment—date of his attestation* In the case of a boy enlisted before attaining the age of eighteen years under the terms of the proviso to s 76, the expression "date of his original term of enlistment" means, in effect, the date from which, on enlistment, he undertook that his "period of service" should reckon, *i e* , his 18th birthday The expression "date of his attestation" in this sub section will be similarly interpreted See also note 1 to s 79

3 *Competent military authority* As to the meaning of this expression see s 101 and R P 128

4 The effect of this sub-section is that a soldier serving on a re-engagement, who is convicted by court martial of desertion or fraudulent enlistment, or who, being liable to trial, has had his trial for either of these offences dispensed with by the competent military authority, forfeits all prior service rendered during the period of such re-engagement, *i e* , from the day following that on which he completed twelve years' service The Army Council may restore all or part of such forfeited service to a soldier where either the soldier performs good and faithful service, or a court martial recommends it, see proviso to s 79 and K R 246

Continuance in service after 21 years' service

85 A soldier of the regular forces who has completed, or will within one year complete, a total period of twenty-one years' service, inclusive of any period served in the reserve[1], may give notice to his commanding officer of his desire to continue in His Majesty's service in the regular forces, and if the competent military authority[2] approve he may be continued[3] as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged [4]

NOTE

1 *Inclusive of any period served in the reserve* This meets the case where a man has been transferred to the reserve, and after staying a time in the reserve has either been called out and re-engaged, or has been permitted to rejoin the colours and has re-engaged

2 *Competent military authority* As to the meaning of this expression see s 101 and R.P 128.

3 See K R 236–245, as to conditions, &c , of continuance in the service under this section

4 A soldier who continues his service under this section, and subsequently gives three months' notice thereunder, can be retained under s 87 (1) for twelve months from the expiry of his notice

Re engagement and continuance of service of non commissioned officers

86 The regulations from time to time made in pursuance of this part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage, under section eighty-four, and to continue his service, under section eighty-five of this Act, or to do either of such things, subject, nevertheless, to the veto of the Army Council or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations

NOTE

The object of this section is to enable regulations to be made by which a N C O , who agrees to extend his army service for the whole of his twelve years, may have the right to treat the army as his profession for life, and, if he makes himself efficient and conducts himself properly, to continue in the army until he has earned a pension For the regulations under this part of the Act, see K R 231–245

Prolongation of service in certain cases

87 —(1) Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between His Majesty and any foreign power, or while such soldier is on service beyond the seas, or while soldiers in the reserve[1] are required by proclamation,[2] in pursuance of the enactments relating to the calling out of the reserve on permanent service, to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further period, not exceeding twelve months, as the competent military authority[3] may order , but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall, as provided by this Act, be discharged with all convenient speed

(2) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between His Majesty and any foreign power, or while such soldier is on service beyond the seas, the soldier may be detained in army service for such further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall with all convenient speed be sent to the United Kingdom for the purpose of being transferred to the reserve, unless at that time a proclamation calling out the army reserve or any part thereof is in force

(3) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between His Majesty and any foreign power, to continue in His Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the

Part II. — ss 87,88.

same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged [4]

(4) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with any general or special regulations from time to time made by the Army Council

NOTE

1 *The reserve* see definition in s 101 (2)

2 *Required by proclamation, &c* See s 88, and Reserve Forces Act, 1882, s 12 (4)

3 *Competent military authority.* See s 101, and R P 128

4 This enables a man who is entitled to be discharged or transferred to the reserve to volunteer for service during the war without re-engaging, or extending his service

In imminent national danger, His Majesty may continue soldiers in army service or call out reserve for permanent service

88 —(1) It shall be lawful for His Majesty in Council in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament if Parliament be then sitting, or if Parliament be not then sitting declared by the proclamation, to order that the soldiers[1] who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service

(2) It shall be lawful for His Majesty by any such proclamation to order the Army Council from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for causing all or any of the soldiers mentioned in the proclamation to continue in army service

(3) Every soldier for the time being required by or in pursuance of such directions to continue in army service shall continue to serve in army service for the same period for which he might be required to serve, if he had been transferred to the reserve and called out for permanent service by a proclamation of His Majesty under the enactments relating to the reserve

(4) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by a proclamation[2] of His Majesty under the enactments relating to the calling out of the reserve on permanent service

NOTE

1 This section applies to all soldiers who have at any time been enlisted to serve part of their time in the reserve The effect of the Reserve Forces Act, 1882, s 14, is that all men in the reserve may be required to serve for a further period of twelve months in the circumstances in which a soldier may be detained in service under s 87

2 The proclamation calling out the reserve may be made under the Reserve Forces Act, 1882, in case of imminent national danger or of great emergency A man in Section A of the army reserve may be called out for permanent service under the Reserve Forces and Militia Act, 1898, without any proclamation or previous communication to Parliament (see Ch XI, paras 20 and 29)

Discharge and Transfer to Reserve Force Part II.

ss 89,90. Transfer of soldier to reserve when corps ordered abroad

89. In the following cases, that is to say,

(1) Where a soldier of the regular forces has been invalided from service beyond the seas, or

(2) Where a corps to which a soldier of the regular forces belongs, or the part thereof in which he is serving, is ordered on service beyond the seas, and the soldier is either unfit for such service by reason of his health, or is within two years of the end of the period of his army service in the term of his original enlistment,

the competent military authority[1] may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service

NOTE

1 *Competent military authority* See s 101 and R P 128

Discharged or transferred to reserve

90 —(1) Save as otherwise provided[1] by this Act or the Acts relating to the reserve forces, every soldier of the regular forces, upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged[2] with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces

(2) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere

(3) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his original enlistment, shall be transferred to the reserve,[2] but until so transferred shall be subject to this Act as a soldier of the regular forces

(4) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom[3] free of expense with all convenient speed, and on his arrival shall be transferred to the reserve

(5) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement, as mentioned in the second subsection of this section, or is transferred to the reserve, shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost Provided that in the case of transfer to the reserve he shall not be entitled to be so conveyed to any place out of the United Kingdom

Part II.

NOTE

ss 90,91.

1 *Save as otherwise provided* e g , s 87 provides for the temporary prolongation of service of a man entitled to discharge, and s 158 gives power to detain for trial a man charged with an offence under this Act, though entitled to his discharge or transfer to the reserve

As to time of discharge, see s 92, and as to postponement of transfer to the reserve, see s 87

2 The procedure for transfer to the army reserve or discharge is laid down in K R 338–391

When a soldier is transferred to the army reserve, he receives a "certificate of service" which embodies a certificate of transfer to the army reserve and character certificate, K R 392 See also note 4 to s 92

3 As to power to allow a reservist to reside out of the United Kingdom, see the Reserve Forces Acts, 1899 and 1906, pp 842–3, and K R 340, 457 See also P W 1161–1163

Delivery of lunatic soldier on discharge with his wife or child at workhouse, or of dangerous lunatic at asylum.

91.—(1) The Army Council or any officer deputed by them for the purpose, may, if they or he think proper, on account of a soldier's lunacy,[1] cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information to be chargeable, and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland[2] at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be

(2) Provided that the Army Council, or any officer deputed by them for the purpose, where it appears to them or him that any such soldier is a dangerous lunatic, and is in such a state of health as not to be liable to suffer bodily or mental injury by his removal, may, by order signified under their or his hand, send such lunatic direct to an asylum, registered hospital, licensed house, or other place in which pauper lunatics can legally be confined, and for the purpose of the said order the above-mentioned parish or union shall be deemed to be the parish or union from which such lunatic is sent

(3) In England the lunatic shall be sent to the asylum, hospital, house, or place to which a person in the workhouse aforesaid, on becoming a dangerous lunatic, can by law be removed[3], and an order of the Army Council or officer under this section shall be of the same effect as a summary reception order within the meaning of the Lunacy Act, 1890, and the like proceedings shall be taken thereon as on an order under that Act

(4) The Army Council or officer, before making the said order in respect of a lunatic who is liable to be delivered to the inspector of poor of a parish in Scotland, may require the inspector of poor of that parish to specify the asylum to which such lunatic if in the parish would be sent, and it shall be the duty of such inspector forthwith to specify such asylum, and thereupon the Army Council or officer may make the said order for sending the lunatic to that asylum, and such order shall be of the same effect as an order by the sheriff within the meaning of section fifteen of the Lunacy (Scotland) Act, 1862, and the like proceedings shall be taken thereon as on an order under that section.

(5) In the case of any such lunatic, who is liable to be delivered at a workhouse in Ireland[2] at which persons settled in the said union are received, the Army Council or any officer deputed by them for the purpose may, by order under their or his hand, send such lunatic to the asylum of the district in which such union is situate, and such order shall be of the same effect as a warrant under the hands and seals of two justices given under the provisions of the tenth section of the Act of the session of the thirtieth and thirty-first years of the reign of Her late Majesty, chapter one hundred and eighteen, intituled "An Act to provide for the appointment "of the officers and servants of district lunatic asylums in Ireland, "and to alter and amend the law relating to the custody of danger- "ous lunatics and dangerous idiots in Ireland"

NOTE

1 See further as to lunatic soldiers, K R 388–391
2 As regards the Irish Free State, see note 10 to s 190
3 *To the asylum to which, &c* i e, the mental hospital of the county, borough, &c

Regulations as to discharge of soldiers

92.—(1) A soldier of the regular forces shall not be discharged from those forces, unless by sentence of court-martial with ignominy, or by order of the competent military authority,[1] or by authority direct from His Majesty, and until duly discharged in manner provided by this Act and by regulations of the Army Council under this Act shall be subject to this Act [2]

(2) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge,[3] stating such particulars as may be from time to time required by regulations of the Army Council under this Act [4]

(3) Notwithstanding anything in Part III of the Territorial and Reserve Forces Act, 1907, a man who has been discharged from the regular forces may, if it is so prescribed by regulations under the Reserve Forces Act, 1882, and subject to the conditions (if any) so prescribed, enlist into the army reserve as a militiaman

NOTE

1 *Competent military authority* See s 101 and R P 128
2 The terms of the attestation of a soldier bind him to serve so long as his services are required Consequently the Crown has always a right to discharge him if his services are not required, see Ch X, para 30
A soldier's discharge is regarded as taking effect from the date of the confirmation of his discharge and not from the date of the delivery of the certificate of discharge to him, nor from the date of his sentence (or confirmation thereof) when a court martial has sentenced him to be discharged with ignominy
Until a soldier's discharge is confirmed, he remains subject to military law, but any undue delay in carrying out the discharge would give good ground for complaint on the part of a soldier
The conditions which must be fulfilled before a discharge is valid and complete, are those laid down in this sub section and in K R 338 to 377
3 This sub section and K R 392–410 give a statutory right to a soldier who has been duly discharged in accordance with subs (1) to demand a certificate of discharge, the delivery of the certificate is not a necessary condition of discharge, but rather a necessary consequence of it
4 A "certificate of service" which embodies certificate of discharge and certificate of character, is completed and signed by the prescribed authorities, and is delivered to the man in such manner as the Army Council may direct If possible it should reach him on or before his last day of service See Ch X para 31, and K R 392–410

Part II.

Authorities to enlist and attest Recruits

ss.93–95.

Regulations as to persons to enlist and enlistment of soldiers

93. The Army Council may from time to time make, and when made, revoke and alter a general or special order making such regulations, giving such directions, and issuing such forms as they may think necessary or expedient respecting the persons authorised to enlist recruits for His Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect, and any such order shall be of the same effect as if enacted in this Act

NOTE

See s 80 (ante) and the Recruiting Regulations

Justices of the peace for the purposes of enlistment

94 For the purposes of the attestation of soldiers in pursuance of this part of this Act—

An officer in the United Kingdom or elsewhere, if authorised in that behalf under the regulations of the Army Council,[1] also every person exercising the office of a magistrate in India or a colony,[2] and also each of the following persons, shall have the authority of a justice of the peace,[3] and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers[4], that is to say,—

In India,[2] any person duly authorised in that behalf by the Governor-General, and in the territories of any native state in India, the person performing the duties of the office of British resident or political agent therein, or any other person authorised in that behalf by the Governor-General of India, and

In a colony,[2] any person duly authorised in that behalf by the governor of the colony, and

Beyond the limits of the United Kingdom, India, and a colony, any British consul general, consul, or vice-consul, or person duly exercising the authority of a British consul

[*Subsection* (2) *repealed by* 46 *Vict c* 6 *s* 6]

NOTE

1 The officers authorised to attest recruits are specified in the Recruiting Regulations, para 76

2 For definitions of *India* and *colony*, see s 190 (21) (23)

3 It is open to doubt whether a justice of the peace can, in this matter, act when outside the county or borough for which he is justice

In Scotland a man is not to be taken for attestation before a magistrate who is not a justice of the peace

4 The persons named in this section are authorised to attest under s 80, but not to enlist ("recruit") (s 80 (1)), or to re-engage (see s 84 (3))

Special Provisions as to Persons to be enlisted

Enlistment of aliens, negroes, &c.

95—(1) Any person who is for the time being an alien[1] may, if His Majesty thinks fit to signify his consent through a Secretary of State, be enlisted in His Majesty's regular forces, so however, that the number of aliens serving together at any one time in any

corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in His Majesty's regular forces than that of a warrant officer or non-commissioned officer [2]

(2) Provided that notwithstanding the above provisions of this section any inhabitant of any British protectorate and any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this part of this Act, and when so enlisted, shall while serving in His Majesty's regular forces, be deemed to be entitled to all the privileges of a natural-born British subject

NOTE.

1 *"For the time being" an alien* A naturalised alien can, of course, enlist like any other British subject

2 See Ch X, paras 28 and 29

This section relates only to aliens enlisted under it, and prohibits their promotion to commissioned rank

S 3 of the Act of Settlement forbids an alien to enjoy any office or place of trust, but does not prevent honorary rank in the British Army being conferred upon an alien, whether or not such honorary rank is accompanied by a formal commission Such a distinction is a mere matter of honour and dignity, and does not fall within the Act so long as the possessor does not by virtue of his rank or commission exercise any actual command or power, or draw any emoluments An alien might, however, be employed under a civil contract to do special work with the forces, and then be given a honorary commission to give him *status*

Claims of masters to apprentices

96 The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him while under the age of twenty-one years as follows, and not otherwise —

(1) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect

(2) A court of summary jurisdiction [1] within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master, [2] but if satisfied that the apprentice stated on his attestation that he was not an apprentice, may, and if required by or on behalf of the said commanding officer, shall, try the apprentice for the offence of making such false statement, [3] and if need be may adjourn the case for the purpose

(3) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from His Majesty's service

(4) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound

Part II. — ss.96–99

(5) A master who gives up the indenture of his apprentice within one month after the attestation of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice

NOTE

1 *Court of summary jurisdiction* See ss 166–169 and 190 (34)–(36)
2 See K R 370 (iv) for discharge procedure
3 *Offence of making such false statement* As to this, see s 99

Application of apprentice provisions to indentured labourers

97 The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an indentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is above specified

Offences as to Enlistment

Penalty on unlawful recruiting

98 If a person without due authority—

(1) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for His Majesty's regular forces, or in relation to recruits for such forces, or

(2) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces, or

(3) Receives any person under any such advertisement as aforesaid, or

(4) Directly or indirectly interferes with the recruiting service of such forces,

he shall be liable on summary conviction[1] to a fine not exceeding twenty pounds

NOTE

1 *On summary conviction*, *i e*, on conviction before a court of summary jurisdiction in the manner provided by the Summary Jurisdiction Acts See s 190 (34) and (35) and ss 166 to 169

Recruits punishable for false answers

99 —(1) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice[1] before whom he appears for the purpose of being attested, he shall be liable on summary conviction[2] to be imprisoned with or without hard labour for any period not exceeding three months

(2) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority,[3] to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence [4]

NOTE.

1 "Justice" includes persons lawfully exercising authority under s 94
2 *On summary conviction* See note to s 98

3 *Competent military authority* See s 101, and R P 128

4 The effect of the section is that, if the offender has become subject to the Act, he can be prosecuted either before a court martial or before a court of summary jurisdiction, but if he has not become so subject, then only before the latter

The offender may be tried and punished in any place where he may for the time being happen to be (s 159 as to courts martial, and s 166 as to civil courts of summary jurisdiction), as well as in the place where the offence was committed, that is to say, where he made the false answer

A court of summary jurisdiction cannot entertain a charge of false answer on attestation when the answer was made more than six months before the time when proceedings are commenced See Summary Jurisdiction Act, 1848, s 11

Under 6 Edw VII, c 5, s 2, a person who uses, or gives for use, on enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds

See K R 370 (iii) for discharge procedure

Miscellaneous as to Enlistment

Validity of attestation and enlistment or re-engagement

100 —(1) Where a person after his attestation on his enlistment or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act, and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not, until such person is discharged in pursuance of his claim, affect his position as a soldier in His Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge

(2) Where a person is in pay as a soldier of the regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim, he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act [1]

(3) Where a person claims his discharge on the ground that he has not been attested or re-engaged, or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority,[2] who shall as soon as practicable submit it to the Army Council, and if the claim appears well grounded the claimant shall be discharged with all convenient speed

NOTE

1 The effect of this section is that if a person receives pay as a soldier of the regular forces without having been duly attested and enlisted, or without having been duly re engaged (as the case may be), he may be treated for all purposes as subject to military law until he is formally discharged It thus prevents a man who has actually served from suddenly repudiating his liability to the rules of the service, and thus evading punishment when charged with or sentenced for an offence

If there was no attestation and enlistment (or no re-engagement), he may claim his discharge at any time

If there was an attestation and enlistment (or a re engagement), but only an irregular or illegal one, he may similarly claim his discharge at any time until

Part II — ss 100, 101

he has received pay "during three months" After that date his attestation and enlistment (or re engagement) is presumed conclusively to be regular and valid

2 *Competent military authority* See s 101, and R P 128

Definition for purposes of Part Two of competent military authority and reserve

101 —(1) Any act authorised or required by this part of this Act to be done by, to, or before the competent military authority, may be done by, to, or before the Army Council, or any officer prescribed[1] in that behalf

(2) For the purposes of this part of this Act the expression "reserve" means the first class of the army reserve force [2]

NOTE

1 *Prescribed* See R P 128

2 The expression "army reserve force" means the army reserve under the Reserve Forces Act, 1882 (45 & 46 Vict, c 48), s 28 see Ch XI, para 17 *et seq*

Part III — ss 102, 103

PART III

BILLETING AND IMPRESSMENT OF CARRIAGES, &c

[*This part of the Act does not apply to the Channel Islands and the Isle of Man* (s 190), *or the Irish Free State* (*see note* 10 *to* s 190)]

Billeting of Officers, Soldiers, and Women

Suspension of 3 Chas I, c 1, 31 Chas 2 c 1 6 Anne (I), c 14, as to billeting

102 During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act

NOTE

The Acts suspended by this section are those referred to in the marginal note to this section See as to billeting generally, Ch IX, para 139, *et seq*

Obligation of constable to provide billets for officers, soldiers, and horses

103 [1] - (1) Every constable[2] for the time being in charge at any place[3] in the United Kingdom mentioned in the route[4] issued to the commanding officer of any portion of His Majesty's regular forces[5] shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses[6] and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters

(2) A route for the purposes of this part of this Act shall be issued under the authority of His Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the Army Council may from time to time order in that behalf

(3) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved[7] of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route

NOTE

1 See as to billeting generally, Ch IX, para 139, *et seq*

2 *Constable* See ss 108 (4), 120 and 190 (38) For offences by constables in relation to billeting, see s 109, and for offences by keepers of victualling houses, see s 110

3 As to adding places to, or omitting them from, the route, see s 108 (6) As to the area within which billets are to be found, see s 108 (4), (6)

4 The power to billet on a route depends on the existence of a route, when the forces have arrived at their destination, billets, in the ordinary course, should no longer be occupied If in exceptional circumstances it seems essential to continue to occupy them for a few days for military reasons, *e g*, pending the preparation of proper quarters, &c, they should be evacuated as soon as possible

5 The necessary modifications in the application of this section to the Territorial Army are provided in s 181 (4), and as regards the application of the provisions of this Act as to billeting in cases of "emergency," see s 108A

6 Except in an "emergency" (as to which see s 108A), the liability to provide billets is confined to occupiers of "victualling houses" as defined in s 104 (1)

7 This sub section provides that a route shall, so to speak, prove itself, *i e*, that it is not to be questioned except on evidence produced to show that it has not been duly issued or signed

Liability to provide billets,

104 —(1) The provisions of this part of this Act with respect to victualling houses shall extend to all inns or hotels (whether licensed or otherwise), livery stables, or alehouses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail, and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house"

(2) Provided that an officer or soldier shall not be billeted[1]—

(*a*) In any private house, nor

(*b*) In any canteen held or occupied under the authority of a Secretary of State, nor

(*c*) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licences for the sale of any intoxicating liquor, nor

(*d*) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tippling in such house, nor

(*e*) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and

Part III. — ss 104–106

strong waters, so as such shopkeeper does not permit tippling in such house, nor

(*f*) In a house of a person licensed only to sell beer or cider not to be consumed on the premises, nor

(*g*) In the house of residence of any foreign consul duly accredited as such

NOTE

1 In cases of "emergency" under s 108A, billets may be demanded of the occupiers of all public buildings (as defined in s 108A (5)), dwelling houses, warehouses, barns and stables

Officers, soldiers, and horses entitled to be billeted

105 —(1) All officers and soldiers of His Majesty's regular forces,[1] and

(2) All horses belonging to His Majesty's regular forces, and

(3) All horses belonging to the officers of such forces for which forage is for the time being allowed by His Majesty's regulations,

shall be entitled to be billeted

NOTE

1 As to the Territorial Army, see s 181 (3) (4) In cases of "emergency," women enrolled for employment by the Army Council can be billeted under s 108A (7)

As regards offences by officers and soldiers in connection with billeting, see ss 30, 111 and 121

Accommodation and payment on billet

106.—(1) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accommodation following, that is to say, lodging and attendance for the officer, and lodging, attendance, and food for the soldier, and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act [1]

(2) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise,[2] to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable[3] issuing the billets, he shall be relieved from providing the same in his victualling house

(3) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament [1]

(4) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any) have been billeted

(5) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to the Army Council, who shall forthwith cause the amount named in such account as due to be paid

NOTE

1 The details respecting the food, forage and accommodation to be furnished are contained in the second schedule the prices to be paid are contained in the Army and Air Force (Annual) Act for each year

2 This sub-section shows clearly the obligation of the innkeeper to provide elsewhere accommodation for a soldier or horse billeted on him if he has not got it on his own premises, or if by reason of his house being full or otherwise, he desires to be rid of the liability

3 The constable is made judge of the sufficiency of the substituted accommodation

Annual list of keepers of victualling houses liable to billets

107 —(1) The police authority[1] for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof [2]

(2) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just

NOTE

1 *Police authority* See definition in s 190 (39) See also s 120

2 The list merely determines the proportion in which the billets are to be distributed among the keepers of victualling houses, and does not relieve them from their liability to find accommodation for any number for whom quarters are required *Sharratt* v *Scotney*, L R (1892) 2 Q B 479

Regulations as to grant of billets

108 The following regulations shall be observed with respect to billeting in pursuance of this Act, that is to say,—

(1) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted

(2) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer

(3) If a keeper of a victualling house feels aggrieved by having an undue proportion[1] of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice[2] may complain to a court of summary jurisdiction,[3] and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just

Part III. — ss 108, 108A

(4) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses

(5) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable

(6) A justice of the peace on the request of an officer or non-commissioned officer authorised to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route

(7) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names of the keepers of victualling houses on whom such officers, soldiers and horses are billeted, and the locality of such victualling houses

NOTE

1 This appeal, like that given by s 107 (2), is only against the *proportion* The innkeepers of the place must take in somehow, either in their own houses or by "boarding out," all the men requiring billets (See *Sharratt* v *Scotney* in note 2 to s 107)

2 In the absence of a constable, a justice may make out billets (s 120 (1), (2))

3 *Court of summary jurisdiction* See definition in s 190 (35)

Billeting in cases of emergency

108A.—(1) His Majesty by Order distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant[1] by a like Order, signified by the Chief Secretary or Under-Secretary[2], may authorise any general or field officer commanding any part of His Majesty's forces in any military district or place in the United Kingdom, to issue a billeting requisition under this section [3]

(2) Any officer so authorised[4] may issue a billeting requisition under his hand reciting the said Order and requiring chief officers of police[5] to provide billets in such places and for such number of officers and soldiers, and their horses, and for such period, as may be specified in the requisition

(3) The provisions of this Act as to billeting shall apply to billeting under such a requisition as if for references therein to a route there were substituted references to such a requisition, subject, however, to the following modifications

(*a*) The occupiers[6] of all public buildings, dwelling-houses, warehouses, barns, and stables shall, as well as the keepers of victualling houses, be liable to billets, and the said provisions shall apply as if references to victualling houses and the keepers of victualling houses included references to such public buildings, dwelling-houses, warehouses, barns, and stables, and the occupiers thereof

(*b*) The powers and duties conferred or imposed on constables shall be exercised and performed by the chief officers of police, and accordingly for references to constables in the said provisions there shall be substituted references to the chief officers of police, and for the reference to a justice of the peace in subsection (7) of section one hundred and eight there shall be substituted a reference to a court of summary jurisdiction, but a chief officer of police in selecting the persons required to provide billets, and in determining the number of officers and soldiers to be billeted on any person shall, so far as practicable, have regard to the convenience of the several occupiers, and shall act in accordance with any general instructions which may have been issued by the police authority [5]

(*c*) The prices to be paid to an occupier other than the keeper of a victualling house for accommodation furnished, and food and fodder supplied by him shall be such as may be fixed by regulations made by the Army Council with the consent of the Treasury

(*d*) Subsection (2) of section one hundred and three (which defines a route), paragraph (6) of section one hundred and eight (which relates to the power of a justice to vary a route) and so much of paragraph (2) of Part I of the Second Schedule to this Act as limits the period during which meals are required to be furnished, and paragraph (2) of Part II of that Schedule (which requires billets to be made out to the less distant victualling houses) shall not apply

(4) Any regulations as to prices so made shall be laid before each House of Parliament as soon as may be after they are made, and if within forty days after they have been so laid either House presents an address to His Majesty praying that any such regulations may be annulled, His Majesty may thereupon by Order in Council annul the same, and the regulations so annulled shall thenceforth become void without prejudice to anything done thereunder in the meantime

(5) For the purposes of this section—

The expression " public building " includes any building wholly or partially provided or maintained out of the rates, and any building to which the public habitually have access, whether on payment or otherwise,

The expression " chief officer of police "

(*a*) As respects the city of London, means the Commissioner of City Police, and elsewhere in England has the same meaning as in the Police Act, 1890,

(*b*) In Scotland has the same meaning as in the Police (Scotland) Act, 1890,

(*c*) As respects the police district of Dublin metropolis, means the Chief Commissioner of Police for that district, and elsewhere means a county inspector of the Royal Irish Constabulary [7]

Part III. — s 108A

In the case of unoccupied premises this section shall apply as if the owner were the occupier thereof

(6) Compensation shall be paid by the Army Council out of money voted by Parliament for Army services in respect of any damage caused by any officer or soldier billeted under this section to the premises in which he is billeted, and the amount of such compensation shall in the event of disagreement be determined—

(*a*) In England by arbitration under the Arbitration Act, 1889

(*b*) In Scotland in the same manner as a question of disputed compensation under subsection (10) of section twenty-five of the Local Government (Scotland) Act, 1894,

(*c*) In Ireland[7] by arbitration under the Common Law Procedure Amendment Act (Ireland), 1856, as amended by any subsequent enactment

(7) The provisions of this Act as to billeting shall, whilst any Order of His Majesty under this section is in force, apply to women who are enrolled for employment by the Army Council as they apply to soldiers, and for the purpose of those provisions as so applied officers of any troops with whom the women to be billeted are employed and the officer commanding those troops shall be deemed in relation to such women to be their officers and commanding officer, and if any such woman is guilty of an offence in relation to billeting mentioned in section thirty of this Act she shall be punishable on summary conviction in manner provided by subsection (2) of section one hundred and eleven of this Act

NOTE

1 *Lord Lieutenant* The Irish Free State (Consequential Provisions) Act, 1922 (13 Geo V, c 2, sess 2) provides (First Schedule, para 1 (1)) that in any enactment references to the Lord Lieutenant shall, in their application to Northern Ireland, be construed as references to the Governor of Northern Ireland This part of the Act does not apply to the Irish Free State

2 *Chief Secretary or Under Secretary* The Government of Ireland (Adaptation of Enactments) (No 3) Order, 1922, provides (para 41) that the reference to the Chief Secretary in this section shall be construed as a reference to a Secretary of State or an officer appointed by a Secretary of State to act for the purpose, and that the reference to the Under-Secretary shall not apply This part of the Act does not apply to the Irish Free State

3 This section extends the power of billeting in cases of "emergency," when men of the Regular or Territorial Army may be billeted not only in the places mentioned in s 104 (1) but also in public buildings, dwelling houses, warehouses, barns and stables

4 The officers authorised to issue billeting requisitions will include divisional, brigade and battalion commanders of the Territorial Army

5 The duty of selecting the houses in which the men, &c, are to be billeted is to be performed by the chief officer of the police, who, however, is required to act under the instructions of the police authority, that is to say, in England (elsewhere than in the metropolitan police district), the standing joint committees in counties, and the watch committees in boroughs having a separate police force (see also Ch IX, para 152)

6 *Occupiers* The owner of an unoccupied building may be treated as occupier (See subs (5))

7 *Royal Irish Constabulary* The Constabulary Act (Northern Ireland), 1922 (12 & 13 Geo V c 8), provides (section 1) —

"(4) Where any enactment or other provision of law provides for the exercise of any power by, or imposes any duty on, any officer or constable of the Royal Irish Constabulary, that enactment or provision shall, subject as in this Act provided, have effect in Northern Ireland as if the said power were exerciseable

by, or the said duty were imposed on, the officer or constable, by whatever title designated, of the Royal Ulster Constabulary having corresponding rank and functions, and references in any such enactment or provision to any officer or constable of the Royal Irish Constabulary shall be construed accordingly "

This part of the Act does not apply to the Irish Free State

Offences in relation to Billeting

Offences by constables

109. If a constable commits any of the offences following, that is to say,

(1) Billets any officer, soldier, or horse, on any person not liable to billets without the consent of such person, or

(2) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable, or from his liability to billets, or from any part of such liability, or

(3) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted, or

(4) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted,

he shall, on summary conviction,[1] be liable to a fine of not less than forty shillings and not exceeding ten pounds

NOTE

1 *On summary conviction* See note to s 98

Offences by keepers of victualling houses

110. If a keeper of a victualling house[1] commits any of the offences following, that is to say,

(1) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act, or

(2) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable, or from his liability to billets, or any part of such liability, or

(3) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation,

he shall, on summary conviction,[2] be liable to a fine of not less than forty shillings and not exceeding five pounds

NOTE

1 When an "emergency" Order under s 108A is in force, these penal provisions apply to all persons liable to provide billets

2 *On summary conviction* See note to s 98

Offences by officers or soldiers

111.—(1) If any officer quarters or causes to be billeted any officer, soldier, or horse, otherwise than is allowed by this Act upon any person, he shall be guilty of a misdemeanor.

(2) If any officer or soldier commits any offence[1] in relation to billeting for which he is liable to be punished under Part One of

Part III — ss 111, 112

this Act, other than an offence in respect of which any other remedy is given by this Part of this Act to the person aggrieved, he shall, upon summary conviction, be liable to a fine not exceeding fifty pounds [2]

(3) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to the Army Council

NOTE

1 For other offences by officers and soldiers in connection with billeting, see s 30

2 This section punishes with a fine on summary conviction all the offences in relation to billeting which have been made military offences by s 30, except those for which the injured person can obtain compensation through a court of summary jurisdiction under s 119

Under s 108A (7) women billeted may be tried under this subsection for offences in connection with billeting

Impressment of Carriages, &c

Supply of carriages, &c, for regimental baggage and stores on the march

112.—(1) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of His Majesty's regular forces[1] shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him, and on production of such route,[2] issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages[3], animals, and drivers as are stated to be required for the purpose[4] of moving the regimental[5] baggage and regimental stores of the forces mentioned in the route in accordance with the route, and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose

(2) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this part of this Act with respect to billeting [2]

(3) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officer to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route

(4) The warrant ordering carriages, animals and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places

(5) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency

(6) A fee of one shilling and no more shall be paid for the warrant by the officer or non-commissioned officer applying for the same and shall be paid to the clerk of the justice

(7) Where a carriage has one or more alternative bodies the carriage may be demanded with any one or more bodies, and where a carriage is used for haulage the carriage may be demanded with or without the vehicles ordinarily hauled [6]

NOTE

1 See generally as to impressment of carriages, Ch IX, para 156 *et seq* As to the application of this section to the Territorial Army, see s 181 (3) and (4)

As to penalties for failure to comply with requirements, and for other offences against the Act, see ss 31, 116–118, 121

2 The same route is in practice used to obtain both billets and carriages

3 See definition of "carriage" in s 190 (40A) Persons who are required to furnish carriages and horses for the purpose of moving regimental baggage and stores can be required to furnish also the harness ordinarily used with them

4 Except in cases of "emergency", which are provided for by s 115, carriages, &c, can only be impressed for this purpose, and use of them for any other purpose is penal (s 31 (5))

5 For definition of "regimental" see s 190 (17)

6 The power to impress a mechanically propelled vehicle relates to a complete vehicle but where a vehicle has alternative bodies any one or more bodies can be taken at the discretion of the requisitioning authority This does not preclude the taking of a vehicle to which a carrying structure is not fitted, but which is in other respects a complete vehicle This is of particular application in the case of impressment for purchase under s 115 (7)

Payment for and regulations as to carriages, animals, &c

113 [1]—(1) There shall be paid in respect of carriages and animals furnished in pursuance of the foregoing section of this Act the rates of payment commonly recognised or generally prevailing in the district at the time of impressment,[2] and if any difference arises respecting the amount payable, the amount shall be such as may be fixed by a certificate of a county court judge[3] having jurisdiction in any place in which the carriage or animal was furnished or through which it travelled

(2) For the purposes of fixing such amount the provisions set out in the Sixth Schedule to this Act shall have effect

(3) Where a sum has been paid or tendered by or on behalf of the Army Council under this section, that sum shall be deemed to be the amount due unless within three weeks of the date of the payment or tender an application is made to a county court judge for a certificate or formal notification is made to the Army Council that application for the certificate of a county court judge will be made in the event of a settlement not otherwise being arrived at If such formal notification is made, the three weeks mentioned in this paragraph shall not be deemed to have commenced to run until the Army Council notifies the claimant that no further payment will be made beyond the amount tendered, except under a certificate of a county court judge

When formal notification is made to the Army Council, the sum already tendered may be accepted without prejudice to the right of applying to the county court judge [4]

Part III. — ss 113, 114

(4) The possessor of any carriage or animal at the time of impressment shall be deemed to be the owner for the purposes of the procedure of impressment where it is not otherwise declared at the time, and payment made to the possessor shall be deemed to be payment to the owner In the event of the property being vested in another person or persons, the possessor shall notify all others interested in the property and adjust the amount received in due proportion In the event of any difference arising, the amounts shall be apportioned on a certificate of a county court judge as aforesaid [5]

(5) The officer or non-commissioned officer who demands carriages or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the carriages or animals, and one third part of such payment shall in each case, if required, be made before the carriage is loaded , and such payments shall be made, if required, in the presence of a justice or constable

(6) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such owner or driver and sign an account of the amount due to him, and forthwith transmit the account so signed to the Army Council, who shall forthwith cause the amount named therein to be paid to such owner or driver

NOTE

1 The A & A F (A) Act, 1925, amended the provisions of subs (1) (4) of this section

2 This subsection provides for the payment of the appropriate local rates for existing forms of transport in lieu of the rates laid down in the former Third Schedule which is repealed It relates to impressment for hire

3 *County court judge* For definition as respects Scotland and Ireland, see s 190 (37)

4 This subsection gives a right of appeal to a county court judge to fix the amount due in the case of impressment for hire in the same manner as hitherto applied to purchase It provides for the suspension of the three weeks' limit for appeal action without prejudice to the owner's rights, pending attempted settlement by negotiation The provisions of this subsection by s 115 (3) are made applicable equally to impressment in emergency whether for hire or for purchase , the former subs (4) of s 115 was in consequence repealed by A & A F (A) Act, 1925

5 This subsection removes the onus hitherto held to have rested on the requisitioning authority of ascertaining the extent of any rights of property in the article requisitioned, which may be vested in parties other than the possessor for the time being It provides for the settlement of any dispute as to the division of the amount received in payment, by reference of the parties concerned to a county court judge, without the intervention of the requisitioning authority

Annual list of persons liable to supply carriages and animals

114 —(1) The authority hereinafter mentioned for any place may cause annually a list to be made out of all persons in such place, or any particular part thereof, liable to furnish carriages and animals under this Act, and of the number and description of the carriages and animals of such persons , and where a list is so made, any justice may by warrant require any constable or constables having authority within such place to give from time to time, on demand by an officer or non-commissioned officer under this Act, orders to furnish carriages and animals, and such warrant

shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars as such special warrant

(1A) For the purpose of assisting the authority hereinafter mentioned in the preparation of such list as aforesaid, any proper officer authorised in that behalf by the authority shall be entitled at all reasonable times to enter any premises in which he has reason to believe that any carriages or animals are kept, and to inspect any carriages or animals which may be found therein

In this provision the expression "proper officer" means any officer or person of such rank, class, or description as may be specified in an order of the Army Council made for the purpose

(1B) With respect to horses, the following provisions shall have effect—

(*a*) it shall be the duty of the owner of any horse, and the occupier of any premises where horses are kept, to furnish, if so required, to the authority hereinafter mentioned before such date in each year as may be prescribed a return specifying the number of horses belonging to him or kept on his premises, and giving with respect to every horse such details as may be so prescribed, he shall also afford all reasonable facilities for enabling any horse belonging to him or kept on his premises to be inspected and examined as and when required by the said authority, if any person fails to comply with any of the requirements of this paragraph, he shall be liable on summary conviction for each offence to a fine not exceeding fifty pounds,

(*b*) the Army Council may, for the purposes of this subsection, make regulations prescribing anything which under this subsection is to be prescribed, and prescribing the forms to be used, and generally for the purpose of carrying this subsection into effect,

(*c*) regulations made by the Army Council may provide for excepting from the provisions of this subsection horses of any class or description specified in the regulations

(2) The authority hereinafter mentioned shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to furnish any number or description of carriages or animals which he is not liable to furnish, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just

(3) All orders given by constables for furnishing carriages and animals shall, as far as possible, be made from such list in regular rotation

(3A) If any officer is obstructed in the exercise of his powers under this section, a justice of the peace may, if satisfied by information on oath that the officer has been so obstructed, issue a search warrant authorising the constable named therein, accompanied

Part III. — ss 114, 115

by the officer, to enter the premises in respect of which the obstruction took place at any time between six o'clock in the morning and nine o'clock in the evening, and to inspect any carriages or animals that may be found therein

(4) The authority for the purposes of this section shall be the Army Council or any authority or persons to whom the Army Council may delegate their powers under this section

NOTE

The procedure with regard to the annual classification of horses is fully dealt with in Remount Regulations, 1924, and in the pamphlet "The Impressment of Horses and Horse Drawn Vehicles in Time of National Emergency"

Supply of carriages, vessels, &c., in case of emergency

115 —(1) His Majesty by order, distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant[1] by a like order, signified by the Chief Secretary or Under Secretary[1], may authorise any general or field officer commanding His Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency)

(2) The officer so authorised may issue a requisition of emergency under his hand[2] reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatsoever upon any canal or navigable river, and also of food, forage, and stores of every description [3]

(3) A justice of the peace, on demand by an officer of the portion of His Majesty's forces mentioned in a requisition of emergency, or by an officer of the Army Council authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, vessels, food, forage and stores as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition, the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels, food, forage and stores, in like manner in all respects as they apply to carriages

(3A) A requisition of emergency may authorise any officer mentioned therein to require any carriages and horses furnished in pursuance of this section to be delivered at such place (not being more than one hundred miles in the case of a motor car or other locomotive, and not being more than ten miles in the case

of any other carriage or horse, from the premises of the owner) and at such time as may be specified by any officer mentioned in the requisition, and in such case it shall be the duty of a constable executing a warrant issued by a justice of the peace under this section upon the demand of an officer producing the requisition of emergency to insert in his order such time and place for delivery of any vehicle or horse to which the order relates as may be specified by such officer, and the obligation of owners to furnish carriages and horses shall include an obligation to deliver the carriages and horses at such place and time as may be specified in such order notwithstanding that a receipt may be given by the officer mentioned in the warrant at the time of impressment, and the provisions of this Act shall have effect as if references therein to the furnishing of carriages and horses included, as respects any such carriage or horse as aforesaid, delivery at such time and place as aforesaid The carriages or horses mentioned in the order shall not be deemed to have been furnished until proper delivery has been made to the place and at the time stated in the order

(4) The sum to be paid for any article shall be deemed to have been tendered when a formal receipt for the article setting forth the amount is handed to the owner or his representative, but the property in a carriage or animal impressed shall be vested in the owner until such time as the carriage or animal has been duly furnished at the place and time stipulated [4]

(5) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom And any toll collector who demands or receives toll in contravention of this exemption shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings

(6) A requisition of emergency, purported to be issued in pursuance of this section and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of His Majesty's forces or of the Army Council shall be a sufficient authority to such officer to demand carriages, animals, vessels, food, forage and stores in pursuance of this section, and when produced by such officer shall be conclusive evidence[5] to a justice and constable of the authority of such officer to make such demand in accordance with such requisition, and it shall be lawful to convey on such carriages, animals, and vessels, not only the baggage, provisions, and military stores of the troops mentioned in the requisition of emergency, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same

(7) Whenever a proclamation ordering the Army Reserve to be called out on permanent service is in force, the order of His Majesty authorising an officer[6] to issue a requisition of emergency may authorise him to extend such requisition to the provision of carriages, animals, vessels, food, forage and stores for the purpose of being purchased, as well as of being hired, on behalf of the Crown

Part III. — s 115

(8) Where a justice, on demand by an officer and on production of a requisition of emergency, has issued his warrant for the provision of any articles, and any person ordered in pursuance of such warrant to furnish any such article refuses or neglects to furnish the same according to the order, then, if a proclamation ordering the Army Reserve to be called out on permanent service is in force, the said officer may seize (and if need be by force) the article requisitioned, and may use the same in like manner as if it had been furnished in pursuance of the order, but the said person shall be entitled to payment for the same in like manner as if he had duly furnished the same according to the order [7]

(9) The Army Council may, by regulations under the Territorial and Reserve Forces Act, 1907, assign to county associations established under that Act the duty of furnishing, in accordance with the directions of the Army Council, such carriages, animals, vessels, food, forage and stores as may be required on mobilisation for the regular or auxiliary forces, or any part thereof, and where such regulations are made an officer of a county association shall have the same powers as are by this section conferred on an officer of the Army Council

(10) A requisition of emergency issued under this section may prohibit, during such period and to such extent as may be specified in the requisition, the sale and purchase of horses or carriages or the sale and purchase of horses or carriages of any class or description so specified to or by any person other than a person appointed by the Army Council to purchase horses or carriages, and if any person sells or purchases or is concerned in the sale or purchase of a horse or carriage in contravention of such prohibition, he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both such imprisonment and fine [8]

(11) The power conferred by this section to issue a requisition of emergency shall include power to issue a requisition of emergency revoking, amending or varying a requisition of emergency previously issued

NOTE

1 *Lord Lieutenant* *Chief Secretary or Under Secretary* See notes 1 and 2 to s 108A

2 See R P 131, under which requisitions of emergency may be signed on behalf of a general officer commanding by a deputy assistant director of remounts, or an assistant (or deputy assistant) director of supplies and transport

3 Carriages and horses of every description (including motor cars, &c), barges and other vessels used in inland navigation, and food, forage and stores of every description may, in case of "emergency," be impressed under this section for any military purpose mentioned in the requisition, carriages, &c, may be impressed for the conveyance of persons as well as of baggage The expression "horses" includes mules and other beasts of burden or draught, s 190 (40) For definition of "carriage," see s 190 (40A) Bicycles may be impressed under this section

As in the case of impressment under s 112, the power to impress carriages, animals and vessels extends to any harness, saddlery or tackle ordinarily used The power to impress mechanically propelled vehicles extends to their ordinary accessories, but not to spare parts not ordinarily carried on the vehicle

4 This subsection fixes the moment of tender in order to determine the day from which the three weeks shall commence to run, within which notice of appeal may be lodged under s 113 (3).

This subsection and subs (3A) make it clear that the requisition has not been complied with until the article is furnished at the place appointed, and that the property in the carriage, &c , and consequently any risks attaching thereto, remain with the owner until formal delivery

5 The requisition of emergency is made to prove itself, see note 7 to s 103

6 The actual requisitioning for purchase of horses and carriages, as defined in s 190 (40), (40A), will normally be carried out by officers detailed for the purpose by the Army Council

7 Every person who has articles suitable for the purpose is liable to furnish them if properly called upon to do so

8 This subsection enables the requisitioning authority to prohibit, if necessary, the trading in horses or carriages likely to be requisitioned, and thus prevent their removal from local jurisdiction or their speculative handling to the prejudice of the purchasing authority

Offences in relation to the Impressment of Carriages, &c

Offences by constables

116 Any constable who—

(1) Neglects or refuses to execute any warrant of a justice, requiring him to provide carriages, animals, vessels, food, forage or stores , or

(2) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing any such article , or

(3) Orders any such article to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished,

shall, on summary conviction,[1] be liable to a fine of not less than twenty shillings nor more than twenty pounds

NOTE

1 *On summary conviction* See note to s 98

Offences by persons ordered to furnish carriages, animals, vessels, &c

117. A person ordered by any constable in pursuance of this Act to furnish any article who—

(1) Refuses or neglects to furnish the same according to the orders of such constable and this Act , or

(2) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any article in pursuance of this Act , or

(3) Does any act or thing by which the execution of any warrant or order for providing or furnishing any article is hindered,

shall, on summary conviction,[1] be liable to pay a fine of not less than forty shillings nor more than ten pounds

NOTE

1 *On summary conviction* See note to s 98

Offences by officers or soldiers

118.—(1) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part I of this Act, other than an offence in respect of which any other remedy[1] is given by this part of this Act to the

Part III. — ss 118–120

person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings

(2) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to the Army Council.

NOTE

1 *Any other remedy* Viz , under s 119 The provisions of s 162, as to the adjustment of military and civil law, should also be borne in mind

Supplemental Provisions as to Billeting and Impressment of Carriages

Application to court of summary jurisdiction respecting sums due to keepers of victualling houses or owners of carriages, &c

119 —(1) The following persons , that is to say,—

(*a*) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due , or

(*b*) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if the owner of any article or the person in charge of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place only after first making due complaint, if practicable to such commanding officer,

may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to the Army Council, who shall forthwith cause the amount due to be paid

(2) Provided that the Army Council, if it appear to them that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just

Provisions as to constables, police authorities, and justices

120.—(1) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority ,[1] and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself exercise the powers and perform the duties by this part of this Act vested in or imposed on a constable, and in such case every such person is in this part of this Act included in the expression " constable "

(2) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or

indirectly, be concerned, as a justice or constable, in the billeting of or appointing quarters for any officer or soldier or horse of the corps, or part of a corps, under his immediate command, and all warrants, acts, and things made, done, and appointed by such person for or concerning the same shall be void

NOTE

1 *Police authority* See definition in s 190 (39)

121. If any person— Fraudulent claim for carriages animals, &c

(1) Forges or counterfeits any route or requisition of emergency, or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited, or

(2) Personates or represents himself to be an officer or soldier authorised to demand any billet, or any carriage, animal, vessel, food, forage or stores, or to be entitled to be billeted, or to have his horse billeted, or personates or represents himself to be a person authorised to act in the purchase or hire, for the purposes of His Majesty's military service, of any carriage, animal, vessel, food, forage or stores, or

(3) Produces to a justice or constable a route or requisition which he is not authorised to produce, or a document falsely purporting to be a route or requisition,

he shall be liable, on summary conviction,[1] to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds

NOTE

1 *On summary conviction* See note to s 98

PART IV

GENERAL PROVISIONS.

Supplemental Provisions as to Courts-martial

122.—(1) His Majesty may, subject to the provisions of this Act, by any warrant or warrants[1] under His Sign Manual, in such form as His Majesty may from time to time direct, from time to time— Royal warrant required for convening and confirming general courts-martial

(*a*) Convene or authorise any qualified officer to convene a general court-martial for the trial under this Act of any person subject to military law, and

(*b*) Give a general authority to any qualified officer to convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command, and

(*c*) Empower any qualified officer to delegate to any officer under his command, not below the degree of field officer, a

Part IV.
—
s. 122.

general authority to convene general courts-martial for the trial, under this Act, of such persons subject to military law as are for the time being under or within the territorial limits of his command, and

(*d*) Reserve for confirmation by His Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial, and

(*e*) Empower any officer for the time being authorised to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer, and

(*f*) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force

Provided that where it appears to His Majesty that, in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorised under this section to be delegated to a field officer

(2) The same officer may or may not be appointed convening and confirming officer

(3) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to His Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions, and conditions as to such officer may seem fit

(4) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer

(5) Any warrant of His Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act

(6) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without His Majesty's dominions; it also includes the Lord Lieutenant of Ireland,[2] the Governor-General of India, and a Governor of any colony on whom the command of any part of His Majesty's forces may be conferred

by His Majesty,[3] it also includes, in the case of a body of His Majesty's military forces when serving beyond the seas, the officer not below the rank of field officer or corresponding rank commanding that body or the command within which they are serving, whether such officer is an officer of the navy, army, or air force

NOTE

1 See Ch V, paras 3–9 and 87–93

For forms of court-martial warrants, see pp 788–793

When a warrant has been issued and its contents communicated to the addressee, he can act upon it before it actually reaches him

2 *Lord Lieutenant of Ireland* The Irish Free State (Consequential Provisions) Act, 1922 (13 Geo V c 2, sess 2) provides (First Schedule, para 1 (1)) that in any enactment references to the Lord Lieutenant shall, in their application to Northern Ireland, be construed as references to the Governor of Northern Ireland As regards the Irish Free State, see note 10 to s 190

3 Under this sub section a governor of a colony can by warrant be authorised to convene, and confirm the findings and sentences of, general courts-martial, if he has had conferred upon him the command of any of His Majesty's forces For the present the issue of general court martial warrants has been restricted to governors of colonies in which there are no regular troops

A governor to whom a general court martial warrant is issued may convene and confirm general courts martial within the territorial limits of the colony for the trial of offences committed against the Army Act by persons subject to that Act For instance, if a force is raised in the colony under the Army Act, any offence committed against that Act by a member of such force while within the territorial limits of the colony may be tried by a court martial—the court being convened and the proceedings confirmed under authority of the warrant issued to the governor Or, again, when a force raised in the colony under a colonial enactment is serving for the time being solely under the Army Act, and *not* under the colonial enactment, offences against the Army Act may be dealt with by court martial within the colony under the general court martial warrant issued to the governor

The governor cannot convene or confirm a court martial held outside the territorial limits of the colony, but where troops who are subject to the Army Act are embarked in ships (not being ships commissioned by His Majesty) at ports in a colony where there are no regular troops for conveyance to a seat of war, the governor of that colony, if in possession of a general court-martial warrant, may issue a warrant, on A F, A 5, to the officer commanding troops on board any such ship, if not below the rank of captain, empowering him to convene and confirm district courts martial held for the trial of a person under his command who is subject to the Army Act The warrant thus given (A F A 5) should be granted for the period of the voyage only, and will become inoperative as soon as the troops reach the port of disembarkation when they come under the command of an officer of the regular forces having power to convene and confirm general courts martial

When the force is returning to the colony an officer of the regular forces having power to convene general courts martial (usually the general officer commanding at the port of embarkation) will give to the officer commanding troops on board a ship (not being a ship commissioned by His Majesty), if he is not below the rank of captain, a warrant on A F, A 5 for use during the voyage to the colony This latter warrant will lapse as soon as the troops disembark in the colony

123 —(1) Any officer or person authorised to convene general courts-martial may— Authority of officer empowered to convene general courts-martial required for convening and confirming district courts martial

(*a*) Convene a district court-martial for the trial under this Act of any person under his command who is subject to military law, and

(*b*) Empower any person under his command not below the rank of captain[1] to convene a district court-martial[2] for the trial under this Act of any person under the command of such last-mentioned officer who is subject to military law,[3] and

Part IV — ss 123, 124.

(c) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district courts-martial to confirm[4] the finding and sentence of any district court-martial [3]

(2) The same officer may or may not be appointed convening and confirming officer under this section

(3) The power of convening, and of confirming the findings and sentences of, district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet [1]

(4) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may, or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer [2]

NOTE

1 General officers commanding in-chief may delegate the power of convening and confirming district courts martial to the following officers —

General officers commanding divisions, including Territorial Army divisional commanders,

General or other officers not below the rank of lieutenant colonel, commanding brigades of the regular forces, and coast defence commanders

The power may also be delegated, in case of necessity, to other officers not below the rank of lieutenant colonel

For forms of warrants, see pp 788–793

2 In granting a delegated warrant on A F A 5, it should be clearly shown that during the absence of the officer to whom such warrant is issued, the powers therein conferred may be exercised by the officer on whom the command devolves, if he is not under the rank of Lieutenant colonel But if such officer is the commanding officer of the person to be tried, or an officer who has investigated the case, he cannot (except on board ship or in such special cases as may be determined by the Army Council) afterwards act as convening officer in the same case, but must refer it to a superior authority, K R 617

3 A warrant to convene and confirm district courts-martial is given to every O C the troops on board a transport or troop freight ship, not below the rank of captain The warrant is operative for the period of the voyage only, K R 1091

4 A commanding officer who has investigated a case in his capacity as commanding officer cannot subsequently act as confirming officer in any court-martial proceedings arising out of the same matter, except where he has authority to convene a court martial under K R 617 (*b*) See K R 660, and note 2 above

Right of person tried to copy of proceedings of court-martial

124 Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years,[1] and in the case of any other court-martial within three years,[1] after the confirmation of the finding and sentence of the court or after his acquittal, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate,[2] not exceeding twopence for every folio of

seventy-two words, and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner [3]

Provided that, when any person tried by court-martial dies within the above-mentioned periods of seven or three years, his next of kin shall, within a period of twelve months after his death, have the same right to obtain a copy of the proceedings

NOTE

1 Courts-martial proceedings will be kept for the period of time mentioned in this section and in R P 98, and the officer or person having the custody of them will give copies in accordance with this section and R P 99, see K R 670

2 *Prescribed rate* See R P 99 If an application is made for a copy of part only of the proceedings, it should be complied with

3 *Prescribed manner* See R P 98

Summoning and privilege of witnesses at courts-martial

125 —(1) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner [1]

(2) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest[2] as he would have if he were a witness before a superior court of civil jurisdiction

(3) For the purposes of this and the next succeeding section, the expression "a court-martial" shall be deemed to include an officer taking a written summary of evidence[3] in accordance with rules of procedure made under this Act, and references to the president or members of a court-martial shall be construed as including references to such officer

NOTE

1 *Prescribed manner* See R P 4 (H), 78 For form of summons, see R P App II, p 761

2 *Privilege from arrest* This privilege is from arrest on civil process while going to the place of trial, attending there, and returning home There is no privilege from arrest on any criminal process The remedy for an improper arrest is to apply to the court on whose process the arrest took place, or to apply for a *habeas corpus*

3 Civilian witnesses can be required to attend at the taking of a summary of evidence, but see R P 4 (G)

Misconduct of civilian at court-martial

126.—(1) Where any person who is not subject to military law commits any of the following offences, that is to say,

(*a*) On being duly summoned as a witness before a court-martial,[1] and after payment or tender of the reasonable expenses of his attendance, makes default in attending[2], or

(*b*) Being in attendance as a witness[1]—

(i) Refuses to take an oath legally required by a court-martial to be taken, or

(ii) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him, or

Part IV — s. 126.

(iii) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify[3] the offence of such person under his hand to any court of law[4] in the part of His Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court

(2) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial[1] wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury,[5] or the offence by whatever name called in the part of His Majesty's dominions in which the offence is tried which, if committed in England, would be perjury

(3) Where a person not subject to military law is guilty of any contempt towards a court-martial,[1] by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify[3] the offence of such person, under his hand, to any court of law[4] in the part of His Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court

1 Subs (3) of s 125 makes the provisions of s 126 applicable as regards civilian witnesses at the taking of a written summary of evidence

2 A civilian witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom, nor if in the United Kingdom can he be compelled to attend a court-martial abroad

3 The certificate of the president need not be in any particular form, but should be addressed to the court to which the certificate is to be sent, and should state the name, address, and description of the person who has committed the offence, and the offence which he has committed It will usually be desirable to make a formal application to the court to act upon the certificate

4 The object of this subsection is to enable courts martial to obtain the punishment of civilians guilty of contempt of court Usually exclusion from the court will be the best mode of dealing with the case, care being taken not to use any unnecessary force If it is requisite to apply to a court, the application should be made in England or Northern Ireland to the High Court of Justice or the County Court, and in Scotland to the Court of Session or the Sheriff Court

5 *The offence of perjury* See the Perjury Act, 1911 (1 & 2 Geo V c 6)

127 A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872,[1] or to any Act, law, or ordinance of any legislature[2] whatsoever other than the Parliament of the United Kingdom

Court martial governed by English law only

NOTE

1 A soldier, wherever he goes, carries with him the military law of his country, that is to say, the Army Act The Indian Evidence Act, 1872, enacted that the law of evidence of that country should apply to courts martial, and this was interpreted as applying to British courts martial, consequently it was thought necessary to reverse the Indian enactment

2 This section, however, applies only to courts martial held directly under this Act A colonial legislature, when applying the Act to its colonial military force, could modify the provisions of the section

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England, and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court

Rules of evidence to be the same as in civil courts

NOTE

As to evidence generally, see Ch VI, and R P 73–86

129 Whereas it is expedient to make provision respecting the conduct of counsel[1] when appearing on behalf of the prosecution or defence at courts-martial in pursuance of rules under this Act, be it therefore enacted as follows —

Position of counsel at courts martial

(1) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before His Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial, and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court

(2) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly, and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court

(3) A court-martial may, by order under the hand of the president, cause a counsel to be removed[2] from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section

Part IV

NOTE.

1 See as to counsel, R P 88 to 93

ss. 129, 130. 2 The removal of a counsel from the court could only be justified under very grave circumstances

Provision in case of insane persons

130 —(1) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity[1] unfit to take his trial, the court shall find specially that fact, and such person shall be kept in custody in the prescribed manner[2] until the directions of His Majesty thereon are known, or until any earlier time at which such person is fit to take his trial

(2) Where, on the trial by court-martial of a person charged with an offence, it appears that such person did the act or made the omission with which he is charged, but that he was insane at the time when he did or made the same, the court shall find specially that the accused was guilty of the act or omission charged but was insane at the time when he did the act or made the omission,[3] and such person shall be kept in custody in the prescribed manner[2] until the directions of His Majesty thereon are known

(3) In either of the above cases His Majesty may give orders for the safe custody of such person during his pleasure, in such place and in such manner as His Majesty thinks fit

(4) A finding under this section shall be subject to confirmation in like manner as any other finding

(5) If a person imprisoned or undergoing detention by virtue of this Act[4] becomes insane, then, without prejudice to any other provision for dealing with such insane person, a Secretary of State in any case, and in the case of a person confined in India the Governor-General of India, or the Governor of any presidency in which the person is confined, and in the case of a person confined in a colony the Governor of that colony, may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such person to an asylum or other proper place for the reception of insane persons in the United Kingdom, India, or the colony, according as the person is confined in the United Kingdom,[5] India, or the colony, there to remain for the unexpired term of his imprisonment or detention, and, upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison or detention barrack in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.

NOTE

1 As to insanity in connection with responsibility for crime, see Ch. VII, para 8

2 *Prescribed manner* See R P 57 (C) and note

3 Where a court-martial find that an accused person did the act (or made the omission) which forms the subject of the charge or charges but was insane at the time when he did or made the same, 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, and could not, therefore, have acted with a felonious or malicious mind (*Felstead*

v *Rex* L R [1914] A C 534) If such a finding is recorded in a case where a soldier is charged with desertion—

(i) no prior service is forfeited under ss 79 or 84, and

(ii) no pay is forfeited in respect of the period during which the soldier is in custody awaiting trial, or for the actual period of absence

4 *Imprisoned or undergoing detention by virtue of this Act* This refers only to persons under sentence, and not to persons in custody awaiting trial

5 This sub-section does not apply to persons undergoing imprisonment or detention in England The removal of such persons to criminal lunatic asylums is the province of the Home Secretary, see the Criminal Lunatics Act, 1884 (47 & 48 Vict c 64)

General Provisions as to Prisons and Detention Barracks

Duty of governor of prison to receive prisoners, deserters and absentees without leave

131 —(1) The governor of every prison in the United Kingdom shall receive and confine, until discharged or delivered over in due course of law—

(*a*) all prisoners[1] sent to such prison in pursuance of this Act, and

(*b*) every person delivered into his custody as a deserter or absentee without leave[1] by any person conveying him under legal authority on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, which order shall continue in force until the deserter or absentee without leave has arrived at his destination

(2) Every such governor shall also receive into his custody for a period not exceeding seven days any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier [2]

(3) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined

NOTE

1 See ss 58–68 as to execution of sentences of penal servitude and imprisonment, and as to deserters or absentees without leave, see s 154

2 The object of this is to provide for the safe keeping during a halt on the line of march of soldiers in military custody For form of order, see R P , App III, Form Q A soldier in a military capacity cannot, whether under one or more warrants, be legally confined in a prison, police station, &c , for any period in excess of seven days under the provisions of this subsection

Establishment and regulation of military prisons and detention barracks

132 —(1) It shall be lawful for a Secretary of State, and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison or detention barrack [1]

(2) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter and repeal rules[2]—

(*a*) for the government, management, and regulation of military prisons and detention barracks, and

(*b*) for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof, and

Part IV. — ss 132, 133

(*c*) for the labour of military or other prisoners and soldiers undergoing detention therein, and for enabling such prisoners or soldiers to earn, by special industry and good conduct, a remission of portion of their sentence, and

(*d*) for the safe custody of such prisoners or soldiers and the maintenance of discipline among them, and the punishment by personal correction, restraint or otherwise of offences committed by such prisoners or soldiers:

Provided that—

(i) such rules shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment or detention more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877, and

(ii) all the regulations made under the Prison Act, 1898,[3] as to the duties of gaolers and medical officers and all regulations contained in the Coroners Act, 1887, as to the duties of coroners with respect to inquests in prisons and detention barracks, shall be contained in such rules, so far as the same can be made applicable

The Secretary of State and Governor-General shall by rule under this subsection make special provision as to the treatment of military convicts under sentence for an offence committed on active service who, in pursuance of the provisions of this Act, are required to serve part of their sentences in a military prison

(3) Rules under this section may apply to military prisons and detention barracks any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners

(4) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made.

NOTE:

1 For definitions of *military prison* and *detention barrack*, see s 68 (2) (*d*) and (*e*)

2 The orders for the interior management of military prisons and detention barracks are laid down in K R 715, *et seq*, and Rules for Military Detention Barracks and Military Prisons

3 *Regulations made under the Prison Act*, 1898, &c See Local Prison Rules, 87–113, Rules for Convict Prisons, 1899, 157–175, and s 3 of the Coroners Act, 1887

Provisions as to military prisons and detention barracks on active service

133. In any country in which operations against the enemy are being conducted,[1] the powers of a Secretary of State under the last foregoing section with respect to military prisons and detention barracks shall be exercisable by the officer commanding-in-chief in the field, and shall include a power of declaring any place to be a military prison or a detention barrack, and the limitations contained in that section on the power of making rules as to the punishment of prisoners and soldiers undergoing detention and as to the severity of imprisonment and detention shall not apply Provided that nothing in this section, or in

any rules made thereunder, shall authorise flogging or other corporal punishment to be inflicted for any offence [2] Part IV. —

ss. 133–136.

NOTE

1 This section will not automatically cease to operate immediately upon operations ceasing For a considerable time thereafter appointed prisons will continue to be military prisons, and prisoners will be detained in them until they can conveniently be removed

2 This prohibition will apply to native personnel if subject *only* to the Army Act, but the local law under which they are recruited may make native formations liable to corporal punishment

Inquests on deaths in military prisons and detention barracks in India

134.—(1) On all occasions of death by violence or attended with suspicious circumstances, in any military prison or detention barrack in India, an inquest shall be held to make inquiry into the cause of death

(2) The commanding officer shall cause notice to be given to the nearest magistrate duly authorised to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure

(3) Where there is no such magistrate available, the commanding officer shall convene a court of inquest which shall be convened and shall hold the inquest in such manner as may be prescribed [1]

NOTE

1 *As may be prescribed* See R P 127

Arrangements as to civil prisons in India or colony

135 A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act and of deserters or absentees without leave from His Majesty's service, on payment of such sums as may be provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation[1] as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters and absentees without leave, and the provisions of section one hundred and thirty-one of this Act shall apply accordingly with this modification, that the reference to orders from a Secretary of State shall be construed as including orders from the Governor-General of India or the Governor of the colony as the case may be

NOTE

1 *Same obligation* See s 131

Pay

Authorised deductions only to be made from pay

136 The pay of an officer or soldier of His Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any Royal Warrant for the time being, or by any law passed by the Governor-General of India in Council

Part IV. — **137.** The following penal deductions[1] may be made from the ordinary pay[2] due to an officer of the regular forces —

s. 137. Penal stoppages from ordinary pay of officers

(1) All ordinary pay[2] due to an officer who absents himself without leave[3] or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been approved by the Army Council

(2) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by[4] the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence.

(3) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay

(4) The sum required to make good any loss, damage, or destruction of public or regimental property[5] which, after due investigation, appears to the Army Council, or in the case of officers serving in India[6] the Governor-General, to have been occasioned by[4] any wrongful act or negligence on the part of the officer Provided that where deductions have been so made from the pay of an officer serving in India the case shall, if he so require, be reported to the Secretary of State for India in Council, who may make such order thereon as he thinks fit [6]

NOTE

1 This section states the penal deductions that may be made from the ordinary pay of an officer, and by implication excludes other penal deductions, but it does not prohibit deductions not penal, as for instance, in respect of rations As to stoppages from pay, &c , to meet public claims, or regimental debts or claims, see P W 9 and 23

2 *Ordinary pay* The term "ordinary pay" of an officer for the purposes of this section means *all* military pay accruing to him by virtue of his rank, appointment, employment, and professional qualifications It does not include what are commonly termed "allowances," nor does it include half-pay, retired pay or pension

3 *All ordinary pay due to an officer who absents himself without leave* This means all ordinary pay for the period of absence without leave If pay has not been drawn during a period of absence without leave, such pay is forfeitable under para (1), if pay has been drawn during a period of absence without leave, the issue constitutes an overissue due to an error as to facts, and the amount is recoverable as a public claim under the terms of the Pay Warrant

4 *Occasioned by* In order to put an officer under stoppages by way of penal deduction, under either para (2) or para (4), it is not sufficient to show merely that the loss, &c , was facilitated or made possible by his act or neglect It is necessary to show that the loss was " occasioned by " in the sense of being the natural result of the conduct of the officer

5 The words "of public or regimental property" qualify "loss" and "damage" as well as "destruction "

Furniture, &c , hired by the military authorities for military use may be treated as "public" or "regimental" property *pro tem*

6 The effect of the words "or in the case of officers serving in India," &c , and the proviso to this paragraph, is that in India the Viceroy will decide whether or not any particular loss or damage was occasioned by an officer's wrongful act or negligence, but the officer will have a right of appeal to the Secretary of State for India in Council

Part IV.

s. 138.

Penal stoppages from ordinary pay of soldiers

138. The following penal deductions[1] may be made from the ordinary pay[2] due to a soldier of the regular forces —

(1)[3] All ordinary pay[2] for every day of absence[4] either on desertion[5] or without leave,[6] or as a prisoner of war[7], and for every day of penal servitude or imprisonment[8] awarded by a civil court or court-martial, or, if he is on board one of His Majesty's ships, by the commanding officer of that ship, for every day of detention[8] or field punishment[9] awarded by a court-martial or by his commanding officer, and for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a civil court or court-martial, or on a charge of absence without leave for which he is afterwards awarded detention or field punishment by his commanding officer

(2) All ordinary pay[2] for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence[10] under this Act committed by him

(3) The sum required to make good such compensation[11] for any expenses, loss,[12] damage, or destruction occasioned by[13] the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence or by the authority dealing summarily with a charge under section forty-seven of this Act, or if he is on board one of His Majesty's ships, by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order[14] under section seventy-three of this Act as may be awarded by that order or by any other order of a competent military authority under that section [15]

(4) The sum required to make good such compensation[16] for any expenses caused by[17] 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[18], as may be awarded by his commanding officer,[19] or by the authority dealing summarily with a charge under section forty-seven of this Act, or, in case he requires to be tried by a court-martial,[20] by that court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship[15]

(4A) The share he is required to contribute as belonging to a unit towards compensation for barrack damage which after due investigation, to be held in the manner provided in the King's Regulations, appears to have been occasioned by the wilful act or negligence of a person or persons who cannot be identified, belonging to the unit, during the period while such unit was in occupation

For the purposes of this paragraph, the expression "barrack damage" means damage to or loss or destruction of any premises in which soldiers are quartered or

Part IV
—
s. 138

billeted, or any appurtenances, fixtures, furniture or effects therein or appertaining thereto, and the expression "unit" includes any part of a unit

(5) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment

(6) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by His Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days

(7) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court,[21] and

(8) The sum required to pay any sum ordered by the Army Council, or any officer deputed by them for the purpose, to be paid as mentioned in this Act[22] for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child

Provided that—

(*a*) the total amount of deductions from the ordinary pay due to a soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid shall not exceed such sum as will leave to the soldier after paying for his messing and washing, less than one penny a day,[23] and

(*b*) a person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum,[24] and

(*c*) where a soldier who is sentenced or ordered in respect of an offence on active service to forfeit all ordinary pay is liable to any other penal deductions from pay, the sentence or order shall apply only to so much of his ordinary pay as remains after those other deductions have been made[25]

NOTE

1 Note 1 to s 137 applies to this section also

2 *Ordinary pay* The term "ordinary pay" of a soldier for the purposes of this section means *all* military pay accruing to him by virtue of his rank, appointment, employment, and proficiency It does not include what are commonly termed "allowances," nor does it include pension

3 The Pay Warrant makes provision as to the cases in which pay is to be forfeited under this para (P W 879–885, see also Ch IV, para 34), and no discretion is given to the commanding officer whether or not to enforce wholly or partially the forfeiture

4 Section 140 (2) lays down six hours as the minimum period of absence that will count as a day of absence unless two conditions are fulfilled, first, that the absentee was prevented from fulfilling a military duty, and second, that the duty was thrown upon some other person

Six clear hours must therefore elapse, and they must be reckoned consecutively

The period of absence must be reckoned as from the time the absence commenced

If the period does not amount to six hours or upwards no pay is forfeited, except when the absence prevents the absentee from fulfilling some military duty which was thereby thrown on some other person, in which case the absentee would forfeit a day's pay no matter how short his absence might be

If the absence amounts to six hours but not to twenty four, one day's pay is forfeited whether the absence falls wholly on one natural day (reckoned from midnight to midnight) or partly on one natural day and partly on another

If the period of absence exceeds twenty four hours the number of days' pay forfeited will be the period in hours divided by twenty four, any fraction over being counted as an additional day

For instance, if a soldier absented himself from 9 p m on the 2nd October and returned at 2 45 a m on the 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 soldier had to go on guard or perform that duty then he would forfeit one day's pay

Again, if a soldier 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 eight days' pay, for in the latter case he would be 172 hours absent, or seven full days of twenty four hours each, and an additional period of four hours for which one day's pay would be forfeited, making eight days' pay in all

In all cases the soldier must be found guilty of the absence, either by a court martial or by his commanding officer (see R P 129), before forfeiture of pay for such absence can be enforced

5 Under s 73 (1) the competent military authority can order that the soldier shall forfeit his pay for every day in custody on a charge of desertion or fraudulent enlistment when he confesses his guilt and his trial is dispensed with

6 Upon a charge of 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 results See also note 4 to s 79 and note 3 to s 130

7 Absence as a prisoner of war, however, does not cause a forfeiture of pay, unless a court of inquiry decide that the soldier was taken prisoner through neglect or misconduct on his own part, and at most only the balance of pay unissued at the date of rejoining is forfeited, P W 885

8 As to the reckoning of a day's imprisonment or detention, see s 140 (2)

9 Under art 879 (*b*) of the Pay Warrant a soldier does not forfeit pay while under sentence of field punishment except for days upon which he is *in custody*, unless he has been ordered to forfeit pay under s 44 (6) or 46 (2) (*d*) *in addition to* the sentence of field punishment

10 This deduction is only authorised where the sickness is caused by an offence of which a soldier has been found guilty and therefore does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court martial or under the award of a commanding officer) for an offence by which the sickness was caused 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 The certificate alone is not sufficient See K R 570, 571 The Pay Warrant provides that where the deduction is authorised under this paragraph the pay is in every case to be forfeited, (P W 879 (*d*))

11 As to the statement of the ground for compensation in the charge, see R P 13 (F) and note, and App I, note as to the use of forms of charges (23), p 701

12 The words "loss" and "expenses" would cover loss of wages and doctor's expenses incurred by a civilian But military tribunals should not, as a rule, be used as a means for enforcing civil claims It must be remembered, where there is any doubt as to the merits, that the soldier is bound by the court's decision if adverse to him, whilst the civilian is not bound if it is in the soldier's favour

13 As to the meaning of "occasioned by" see note 4 to s 137

14 *Dispensed with by order* As this is limited to an order under s 73, a commanding officer who of his own authority abstains from sending an accused soldier for trial must dismiss the charge (see s. 46 (1), R.P 4 (A) and note),

Part IV — s 138.

and therefore cannot in the technical sense exercise any power under this paragraph of ordering any deduction from the soldier's pay

15 Under paras (3) and (4) a soldier is not liable for the ordinary expenses of his prosecution, capture, or conveyance, or indirect losses of a similar kind Nor would a soldier be liable under them for damage to a military policeman's clothes because the policeman fell down and damaged them while in pursuit of the soldier when endeavouring to escape But where a soldier refused to march, being able to do so, and a cab had to be hired for his conveyance, he was held liable for the expense thus incurred by his contumacy

16 For the purposes of trial, the amount of compensation will be estimated as follows —

Where an article which has an official value has been lost or rendered unserviceable, a witness is required who would prove the present value of the article upon a basis of its age and by reference to the regulations for fixing the value of the article at that age This value would be included in the particulars of the charge

When the article has no official value expert evidence is required to prove the approximate value, which will be included in the particulars

When an article has been damaged but not rendered unserviceable, expert 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

17 *Caused by* This has the same meaning as the expression "occasioned by" See note 4 to s 137

18 *Buildings or property* 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 damages for careless damage to dentures supplied to him at the public expense, 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

19 Where a soldier has been convicted by court martial for an offence, his commanding officer cannot subsequently award compensation for damage caused through that offence

20 *Requires to be tried by a court-martial* See s 46 (8)

21 This paragraph will enable an officer to pay a fine imposed on a soldier by a civil court, and deduct it from his pay, and thus prevent the soldier from being imprisoned for non-payment of the fine A court martial or a commanding officer cannot award a fine except for drunkenness See s 44 (*n*), and note 16 thereto

22 See s 145, under which the Army Council or the officer deputed by them for the purpose can order this deduction, either in accordance with the order of court or otherwise

23 If a soldier is subjected to a deduction in respect of one matter up to the full amount allowed by this proviso, any deduction subsequently imposed cannot begin to be enforced till the whole sum in respect of which the first deduction was imposed is satisfied If a soldier under deductions not up to the full amount allowed by this proviso is subjected to a further deduction or deductions, which taken altogether would exceed that amount, the latter deductions must abate in order of priority, so that in no case may the soldier have less than the penny a day See, however, Army Council's instructions to art 890 of the Pay Warrant laying down that, except in special cases, the issue of cash may be a sum not exceeding sixpence a day in the case of British soldiers, or fourpence a day (or the equivalent in local currency) in the case of Maltese and non European soldiers In the case of a married man to whom marriage allowance is in issue direct to himself and not to his family this minimum cash payment may be increased by an amount equal to 50 per cent of the appropriate compulsory allotment

24 The court will necessarily take care to find as accurately as possible the amount for which deductions are to be made from a soldier's pay, but as in some cases they will be unable to ascertain the amount accurately, and in others may be mistaken, care will have to be taken in enforcing their sentence not to contravene this proviso The sentence of the court will not justify any deduction which exceeds the actual loss

If a soldier 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 soldiers were convicted of having jointly injured public property, each was held to be rightly sentenced to make good the whole amount of the injury sustained, and in the event of one soldier dying, or otherwise ceasing to be amenable to the award, the whole amount might legally be levied upon the other Where, however, both remained 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

25 As to the power to order forfeiture of pay for offences committed on active service, see ss 44 (6) and 46 (2) (*d*) The effect of the proviso is that any forfeiture ordered under those provisions will only take effect on the balance of the soldier's pay which remains after providing for any other penal deductions to which he may be liable at the time See also K R 560 (*a*) (v) and 561

How deduction of pay may be remitted

139 Any deduction of pay authorised by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Army Council

Supplemental as to deductions from ordinary pay

140 —(1) Any sum authorised by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due[1] to such officer or soldier, in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Army Council

(2) And any such regulation or order may from time to time declare what shall be deemed for the purposes of the provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment or detention,[2] so, however, that—

(*a*) no person shall be treated as absent, imprisoned or detained, for the purposes aforesaid, unless the absence, imprisonment or detention has lasted six hours or upwards, except where the absence prevented the absentee from fulfilling any military duty which was thereby thrown on some other person,

(*b*) a period of absence, imprisonment or detention which commences before and ends after midnight may be reckoned as a day,

(*c*) the number of days shall be reckoned as from the time when the absence, imprisonment, or detention commences, and

(*d*) no period of less than twenty-four hours shall be reckoned as more than one day

(3) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until His Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

Part IV

—

ss 140–142

NOTE

1 *Sums due* This will allow the amount to be deducted from a gratuity, prize money, or other sums *earned by* but not paid to an officer or soldier It would not include money lodged in a fund of whatever description

2 *Day of absence, imprisonment or detention* See P W and note 4 to s 138.

Prohibition of assignment of military pay, pensions, &c

141. Every assignment[1] of, and every charge on, and every agreement to assign or charge, any deferred pay, or military reward payable to any officer or soldier of any of His Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his wife, widow, child, or other dependant, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant[2] for the benefit of the family of the person entitled thereto, or as may be authorised by any Act[3] for the time being in force, be void

NOTE

1 At common law an assignment of "pay" is void, independently of express statutory provision The common law also regarded as inalienable any allowances, such as half pay, in which part of the consideration was the recipient's liability to serve the Crown again On the other hand, pensions awarded entirely as consideration for past services were alienable *Croad v Price* (1889), L R , 22 Q B D 429 The present section removed this distinction, and made pensions also inalienable except as therein mentioned

2 *In pursuance of a Royal Warrant* See P W 1098, 1099, under which part of a pension may in some cases be paid to the Poor Law authorities

Reserve pay cannot be stopped for the maintenance of a reservist's wife or family or for settlement of a civil debt, as no provision exists in the Pay Warrant for such a stoppage to be made

3 *Authorised by any Act* By the Bankruptcy Act, 1914, s 51 (1), if an officer becomes bankrupt, the trustee is to receive for distribution amongst the creditors so much of the officer's pay as the court, with the consent of the chief officer of the department concerned, may direct

Before making any order the court will communicate with the chief officer as to the amount, time and manner of payment to the trustee, and will obtain his written consent to the terms of such payment

By s 51 (2) (3) of the same Act, the court can, without the consent of the chief officer, deal with half pay, retired pay, pensions, &c, see *In re Ward* L R [1897], 1 Q B 266

Punishment of false oath and personation

142 —(1) Where any regulations made by the Army Council or the Commissioners of His Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, or with respect to the grant of any relief, benefit, or advantage in connection with military service, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connexion with such payment, delivery or grant, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury

(2) Any person who falsely represents himself to any military, naval, air force, or civil authority to belong to, or to be a particular man in, or who has been in, the regular reserve or auxiliary forces shall be deemed to be guilty of personation

(3) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or to any relief, benefit, or advantage granted in connexion with military service, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds

(4) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence

NOTE

If a man personates another with intent to obtain any money or property he is guilty of an offence under the False Personation Act, 1874, and, if convicted on indictment, is liable to penal servitude for life In a very serious case a man might be indicted under that Act, in less serious cases it will be better to prosecute under this section

Persons guilty of obtaining pay or pensions by fraudulent means can also be proceeded against, either by indictment or summarily, under the Pension and Yeomanry Pay Act, 1884, s 3

Personation of the holder of a certificate of service or discharge may also be punished under the Seamen's and Soldiers' False Characters Act, 1906

Under this section a man who falsely represents himself to any authority to belong to part of His Majesty's forces, or to be a particular man in, or who has been in, any of His Majesty's forces, may be punished, although he does not do it with intent to obtain any money But it will not be desirable to institute a prosecution in such cases, unless the man has, in fact, obtained some advantage, or has put the authorities to expense and inconvenience Care must be taken not to prosecute a man for what may be mere idle talk or bravado, without any guilty intention

In this, as in every other case of an offence punishable by a court of summary jurisdiction, a person who aids and abets the offence is, in England, equally punishable with the principal offender Consequently, if A personates B, a reservist man, and thereby obtains B's pay, and hands the pay over to B or B's wife, B or B's wife is punishable as aiding and abetting the offence of personation by A

A reservist who commits any offence under subs (2) or (3) in the presence of an officer may, at the discretion of the officer, be ordered into either military or civil custody, and in the latter case will be tried before a court of summary jurisdiction Reserve Forces Act, 1882, s 6 (3)

Exemptions of Officers and Soldiers

Exemptions of officers and soldiers from tolls

143.—(1) All officers and soldiers of His Majesty's regular forces[1] on duty or on the march, and

Their horses and baggage, and

All prisoners under military escort, and

All carriages and horses belonging to His Majesty or employed in his military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same,

shall be exempted[2] from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parlia-

Part IV — ss 143, 144

ment already passed or hereafter to be passed, or by virtue of any Act, Ordinance, order, or direction of the legislature or other authority in India or any colony [3]

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels

(2) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers, and shall pay for himself and each soldier one half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time and shall in all such cases pay only half the ordinary rate for such boat

(3) Any person who demands and receives any duty, toll, or rate in contravention of this section shall, on summary conviction, [4] be liable to a fine not exceeding five pounds nor less than ten shillings

NOTE

1 *Regular forces* This expression in this section includes the Marines and His Majesty's Indian forces, also the reserve forces when subject to military law see s 178 See also s 190 (8) and Reserve Forces Act, 1882, ss 14 (2), 23 (1) As to the application of this section to the Territorial Army, see T R F Act, s 28 (2)

2 The exemption is not a personal one, but is confined to officers and soldiers when on duty or on the march, thus an officer driving from his private house to barracks would not be entitled to the exemption

3 For definition of *India* and *colony*, see s 190 (21), (23)

4 *On summary conviction*, see note to s 98

Exemption of soldiers in respect of civil process

144 —(1) A soldier[1] of His Majesty's regular forces shall not be liable to be taken out of His Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them, that is to say,

(*a*) On account of a charge of or conviction for crime, or

(*b*) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit

(2) For the purposes of this section a crime shall mean a felony, misdemeanor, or other crime or offence punishable, according to the law in force in that part of His Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract

(3) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate

(4) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be

sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be indorsed upon any process or order issued against a soldier

(5) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void, and where complaint is made[2] by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court or some judge thereof shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court

Provided that—

(1) Any person having cause of action or suit against a soldier of the regular forces may notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, regimental necessaries, or clothing of such soldier, and

(2) This section shall not prevent such proceedings with respect to apprentices and indentured labourers as is authorised by this Act

NOTE

1 The history of this section is given in Clode, Mil Forces, i 208 It exempts a soldier from appearing in person, though not from being sued, in case of a debt under £30 The exemption does not apply to a soldier required to attend as a witness before a court of law The section does not apply to an officer

2 A commanding officer should complain direct to the court He need not send the complaint through a superior military authority

Liability of soldier to maintain wife and children

145.—(1) A soldier of the regular forces shall be liable to contribute[1] to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier, but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person,[2] pay, arms, ammunition, equipments, instruments, regimental necessaries, or clothing, nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place

(2) When any order or decree[3] is made under any Act or at common law for payment by a man who is or subsequently becomes a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall

Part IV — s 145.

be sent to the Army Council, or any officer deputed by them for the purpose,[4] and in the case—

(*a*) Of such order or decree being so sent, or

(*b*) Of it appearing to the satisfaction of the Army Council or any officer deputed by them for the purpose[4] that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under sixteen years of age,

the Army Council or officer shall order to be deducted from the daily pay of the soldier, and to be appropriated in liquidation of the sum adjudged to be paid by such order or decree, or towards the maintenance of the wife or children of the soldier, as the case may be, in such manner as the Army Council or officer think or thinks fit, a portion of such daily pay not exceeding—

Where the soldier is a warrant officer (Class I or Class II) —in respect of a wife or children whether legitimate or illegitimate, four shillings, and

Where the soldier is a non-commissioned officer who is not below the rank of serjeant—in respect of a wife or children whether legitimate or illegitimate, three shillings, and

In the case of any other soldier—in respect of a wife or children whether legitimate or illegitimate, two shillings

(3) Where a proceeding is instituted[5] against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, then—

(*a*) if at the date of service of the process the soldier is quartered out of the jurisdiction of the court, or (where the proceeding is before a court of summary jurisdiction), out of the petty sessional division in which the proceeding is instituted, the process shall be served on his commanding officer, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if any order or decree is made against the soldier) of a sufficient amount to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose,

(*b*) in any other case the process may be served either on the commanding officer or on the soldier, provided that where the process is served on the soldier, a copy thereof shall be sent by the court by which it is issued to the commanding officer by registered post as soon as possible after the process is served, and in any case at least four days before the day fixed for the hearing of the case

Provided that no proceedings in this section mentioned shall be valid against a soldier of the regular forces if his commanding officer certifies that the soldier is under orders for service beyond the seas,[6] and that in his opinion it will not be possible for the soldier to attend the hearing and return to his quarters in sufficient time to enable him to embark for such service Every such

certificate shall be sent to the court and shall be final and conclusive

Part IV
ss. 145, 146.

Where, by an order or decree sent to the Army Council or officer in accordance with subsection (2) of this section, the soldier is adjudged to pay as costs incurred in obtaining the order or decree any sum left in the hands of the commanding officer[7] under this subsection, the Army Council may cause a sum equal to the sum so left to be paid in liquidation of the sum so adjudged to be paid as costs, and the amount so paid by the Army Council shall be a public debt from the soldier against whom the order or decree was made, and, without prejudice to any other method of recovery, may be recovered by deductions from his daily pay, in addition to those mentioned in subsection (2) of this section

(4) Where any arrears have accumulated in respect of sums adjudged to be paid by any such order or decree as aforesaid whilst the person against whom the order or decree was made was serving as a soldier of the regular forces, whether or not deductions in respect thereof have been made from his pay under this section, then after he has ceased so to serve an order of committal shall not be made in respect of those arrears unless the court is satisfied that he is able, or has since he ceased so to serve been able, to pay the arrears or any part thereof, and has failed to do so

NOTE

1 See generally Part IV, Appendix V, Pay Warrant

2 K R 370 (xiv) provides for handing over to the parish authority in certain cases a married soldier who on attestation falsely represented himself to be single

3 A judgment upon a covenant for payment of alimony contained in a separation deed is an order or decree within the meaning of this subsection A voluntary agreement to contribute to the support of a bastard child will not justify an order for stoppages under subs (2) (*a*), a judgment must first be obtained on it

4 A list of officers to whom the Army Council have deputed their powers for the purpose of this subsection is published from time to time in Army Orders (See Army Order 6 of 1929)

5 This subsection deals with the method of procuring the attendance of a soldier to answer process, which may, of course, lead to the making of such an "order or decree" as is referred to in subs (2)

6 The words "under orders for service beyond the seas" protect a man who is in England on short leave from overseas, and also a man who is one of a draft or unit already warned for service abroad (In the case of soldiers on leave from overseas, the officer i/c records is for this purpose the O C)

7 *Any sum left in the hands of the commanding officer* This does not mean "any sum remaining, &c " It means the total sum handed to the commanding officer under subs (3) (*a*)

Officers not to be sheriffs or mayors

146 An officer of the regular forces on the active list within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom Provided that nothing in this section shall disqualify any officer for being elected to or being a member of a county council

NOTE

It is generally understood that officers on full pay and soldiers are exempt from serving all offices which require the personal discharge of duty, and do not admit of the appointment of a deputy. See Ch. XII, para 9.

Part IV — ss 147-153A

Exemption from jury

147 Every soldier in His Majesty's regular forces shall be exempt from serving on any jury

NOTE

See Ch XII, para 9, as to the exemption of soldiers and officers from liability to serve on juries

Court of Requests in India

148-151 [These sections, relating to the above subject, were repealed in 1888 and 1895.]

Legal Penalties in Matters respecting Forces

Punishment for pretending to be a deserter

152 Any person who falsely represents himself to any military, naval, air-force or civil authority to be a deserter from His Majesty's regular forces[1] shall on summary conviction[2] be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months

NOTE

1 *His Majesty's regular forces* See definition in s 190 (8)
2 *On summary conviction* See note to s 98

Punishment for inducing or assisting officers or soldiers to desert or absent themselves without leave

153 Any person[1] who in the United Kingdom or elsewhere by any means whatsoever—

(1) Procures or persuades any officer or soldier to desert or absent himself without leave, or attempts to procure or persuade any officer or soldier to desert or absent himself without leave, or

(2) Knowing that an officer or soldier is about to desert or absent himself without leave, aids or assists him in deserting or absenting himself without leave, or

(3) Knowing any officer or soldier to be a deserter or absentee without leave, conceals such officer or soldier, or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be liable, on summary conviction,[2] to be imprisoned, with or without hard labour, for a term not exceeding six months

NOTE

1 An offence of procuring, &c, desertion under para (1) if committed by a person subject to military law can be dealt with under s 12 (1) (*b*) That section does not, however, apply to absence without leave
2 *On summary conviction* See note to s 98

Penalty for interference with military duties, &c

153A Any person who in the United Kingdom or elsewhere,

(*a*) wilfully obstructs, impedes, or otherwise interferes with any officer or soldier in the execution of his duties, or

(*b*) wilfully produces any disease or infirmity in, or maims or injures, any man whom he knows to be a soldier with a view to enabling such man to avoid military service, or

(*c*) with the intent of enabling a soldier to render himself, or induce the belief that he is, permanently or temporarily unfit for service, supplies to or for such soldier any drug

or preparation calculated or likely to render him or lead to the belief that he is permanently or temporarily unfit for service,

shall be liable, on summary conviction, to a term of imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine

Apprehension of deserters or absentees without leave

154. With respect to deserters and absentees without leave[1] the following provisions shall have effect —

(1) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction

(2) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter or absentee without leave is or is reasonably suspected to be within his jurisdiction, issue a warrant authorising such deserter or absentee without leave to be apprehended and brought forthwith before a court of summary jurisdiction

(3) Where a person is brought before a court of summary jurisdiction charged with being a deserter or absentee without leave under this Act, such court may deal with the case[2] in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence

(4) The court, if satisfied either by evidence on oath or by the confession[3] of such person that he is a deserter or absentee without leave, shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody

(5) Where the person confessed[3] himself to be a deserter or absentee without leave, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom, to the Army Council, or as they may direct, and if in India[4] to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony[4] to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and

Part IV. — s 154.

being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by the Army Council

(6) The court may from time to time remand the said person for a period not exceeding eight days in each instance and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information

(7) Where the court cause a person either to be delivered into military custody or to be committed as a deserter or absentee without leave, the court shall send, if in the United Kingdom, to the Army Council, or as they may direct, and if in India or a colony[4], to the general or other officer commanding as aforesaid, a descriptive return in relation to such deserter or absentee without leave, for which the clerk of the court shall be entitled to a fee of two shillings

(8) The Army Council shall direct payment of the said fee

(9) Where a person surrenders himself to a constable in the United Kingdom as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that that person is a deserter or absentee without leave, he may cause him to be delivered into military custody without bringing him before a court of summary jurisdiction under this section, and in such case shall send to the Army Council or as they may direct a certificate[5] signed by himself as to the fact, date, and place of such surrender

NOTE

1 This section prescribes the proceedings to be taken for apprehending suspected deserters and absentees, and for dealing with persons arrested as, or surrendering themselves as, deserters or absentees Briefly stated its provisions are as follows —

By para (1) upon *reasonable* suspicion any person may without a warrant arrest the suspect, but, of course, he must be prepared to justify the reasonableness of his suspicion, if in fact he is wrong As to escape from custody, see s 22 Para (2) provides for the issue of a search warrant

If a man surrenders to the police and states that he is a deserter or absentee, then, if the officer in charge of the station is reasonably satisfied of the truth of the confession—as he may be in many cases without corroborative evidence —it is not necessary to take him before a court The officer himself hands him over to military custody under para (9), and has, of course, implied authority to detain him for a reasonable time—pending arrival of an escort or conducting N C O

If a man is apprehended on suspicion, or if he has surrendered but the police officer is not satisfied, he must be brought before a court The court deal with him under para (4) if they are reasonably satisfied—as they may be without corroboration, if not satisfied, they deal with him under paras (5) and (6) In either case they send a "descriptive return", (for form, see Schedule 4, p 609) As to admissibility in evidence of a "descriptive return" see s 163 (1) (a)

As to the duties of a commanding officer on receiving information of an arrest, see K R 581–597, especially 590, *et seq*

2 Para (3) does not make the man's desertion or absence a civil offence punishable by the court of summary jurisdiction In England the court for the purposes of this section may consist of one justice only, *Walder* v *Turner* L R [1917] 1 K B 39

3 As to the penalty for false confession see s 159
4 For definition of *India* and *colony*, see s 190 (21), (23)
5 The form of certificate referred to is A F O 1617

Penalty on trafficking in commissions

155. Every person (except the Army Purchase Commissioners and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871) who negotiates, acts as agent for, or otherwise aids or connives at—

(1) The sale or purchase of any commission in His Majesty's regular forces, or

(2) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein, or

(3) Any exchange which is made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875 and in respect of which any sum of money or other consideration is given or received,

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service

Penalty on purchasing from soldiers regimental necessaries, equipments, stores, &c and for unlawful possession of military certificates, &c

156.—(1) Every person[1] who—

(*a*) Buys, exchanges, takes in pawn, detains, or receives from any person, on any pretence whatsoever, or

(*b*) Solicits or entices any person to sell, exchange, pawn, or give away, or

(*c*) Assists or acts for any person in selling, exchanging, pawning, or making away with

any of the property following, namely, any arms, ammunition, equipments, instruments, regimental necessaries, or clothing issued for the use of officers or soldiers, or any military or air force decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier, or his horse,[2] or of any horse employed in His Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or that the same was sold by order or with the consent of the Army Council, or some competent military authority, or that the same was the personal property of an officer who had retired or ceased to be an officer, or of a soldier who had been discharged, or of the legal personal representatives of an officer or soldier who had died, be liable on summary conviction to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both such fine and imprisonment

(2) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction,[2] and if such court have reasonable ground to believe that the

Part IV. property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then
s 156 if such person does not satisfy the court that he came by the property so found lawfully[3] and without any contravention of this Act, he shall be liable on summary conviction to the same penalties as are prescribed in the case of a contravention of the last preceding subsection

(3) A person charged with an offence against this section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case [4]

(4) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction[2], and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction

(5) A court of summary jurisdiction,[2] if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods , and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law

(6) For the purposes of this section, property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another

(7) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores issued as regimental necessaries or otherwise within the meaning of section thirteen of that Act

(8) It shall be lawful for the Governor-General of India or for the legislature of any colony,[2] on the recommendation of the Governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor-General or legislature appear to be better adapted to the pecuniary means of the inhabitants.

(9) Every person who—

(*a*) receives, detains or has in his possession any identity certificate, life certificate or other certificate, or official

document evidencing or issued in connection with the right of any person to a military pension, pay or reserve pay, or to any bounty, allowance, gratuity, relief, benefit or advantage granted in connection with military service, as a pledge or security for a debt, or with a view to obtain payment from the person entitled thereto of a debt due either to himself or to any other person , or

(*b*) without lawful authority or excuse (the proof whereof shall lie on the accused) has in his possession any such certificate or document, or any certificate of discharge or any other official document issued in connection with the mobilisation or demobilisation of any of His Majesty's forces or any member thereof,

shall be liable on summary conviction to the like penalty as for an offence under subsection (1) of this section, and any such certificate or other document shall be deemed to be property within the meaning of this section

NOTE.

1 This section applies also to natives of India and to the arms, &c , of Indian soldiers

2 For definition of *India, colony, court of summary jurisdiction*, and *horse*, see ss 190 (21), (23), (35), (40)

3 It was held in *Laws* v *Read* (63 L J (Q B) 683) that the arrest, without warrant, of a person found in possession of stores was lawful, even though the person was charged with and convicted of purchasing the stores from a soldier under subs (1), and that an action for false imprisonment in such a case would not lie

4 This sub section is virtually repealed by the Criminal Evidence Act, 1898, which enables persons charged with offences, and the wives or husbands of such persons, to give evidence subject to certain conditions, and supersedes all existing enactments authorising such persons to give evidence See R P 80, and note

156A If— Unauthorised use of decorations, &c

(1) any unauthorised person uses or wears any military decoration or medal, or medal ribbon, or any badge, wound stripe, or emblem supplied or authorised by the Army Council, or any decoration, medal, or medal ribbon, badge, wound stripe, or emblem so nearly resembling the same as to be calculated to deceive , or

(2) any person falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, medal, or medal ribbon, badge, wound stripe, or emblem as aforesaid , or

(3) any person without lawful authority or excuse supplies or offers to supply any such decoration or medal as aforesaid to any person not authorised to use or wear the same ,

such person shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding three months

Provided that nothing in this section shall be deemed to prohibit the wearing or supply of ordinary regimental badges or any brooch or ornament representing the same

Part IV.

Jurisdiction.

ss 157, 158

Person not to be tried twice

157. Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence

NOTE

A conviction by court-martial, if not confirmed, is of no validity, in such case, therefore, the accused has not been convicted, and may legally be tried again (Ch V, para 87, and s 54 (6))

In cases requiring confirmation by the King, and where such has been withheld, a re trial is not to be ordered unless directions by His Majesty for such re-trial have been issued, in other cases where re trial may legally take place, it should not be ordered until the Judge Advocate General has been consulted, if it is practicable to do so

Where a court is not legally constituted and has no jurisdiction—as, for example, if the convening order is not signed, or is signed by 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 inadvertently been 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

It is a general principle of English 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 for practical purposes, 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 any charge 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 56 (3), 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 without leave, and this finding is not confirmed, he has not been acquitted of absence, and can be charged again with that offence

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, &c , when confirming the proceedings, if a greater punishment has been awarded on the second trial

Where a new trial is ordered, no officer may serve on it who sat on the former court, (R P 19 (B) (iii))

This section only prohibits a second trial *by court-martial* after acquittal or conviction by court-martial As to the legality of a civil trial after trial by court martial, see s 162

Liability to military law in respect of status

158 —(1) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law,[1] in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment, unless his trial commences within three months[2] after he had ceased to be subject to military law, but this section shall not affect the jurisdiction of a civil

court in the case of any offence triable by such court as well as by court-martial, and the limitation of time imposed by this proviso shall not apply in the case of a person who has been attached to or seconded for service with His Majesty's military forces and has ceased to be subject to military law by reason only of the termination of such attachment or seconding

(2) Where a person subject to military law is sentenced by court-martial to penal servitude, imprisonment, or detention, this Act shall apply to him[3] during the term of his sentence, notwithstanding that he is discharged or dismissed from His Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, made to undergo detention, and punished accordingly as if he continued to be subject to military law

NOTE

1 This section meets the case of a person who commits an offence against this Act whilst subject to it, and then ceases to be subject to it It applies where a charge is made that an offence has been committed, even if it eventually proves that the accused was innocent, (*Marks* v *Frogley* [1898] 1 Q B 888) Such cases will occur, for example, when an officer relinquishes his commission or is dismissed, when a soldier is discharged, or transferred to the reserve, or transferred from the Army to the Air Force, or when reservists return home after a period of training Again, members of the Territorial Army are constantly changing their status, as they are subject to military law only in the circumstances stated in s 176 (6A)

By subs (1), such a person, though he has ceased to be subject to military law even before discovery of the offence, may nevertheless be arrested, tried and punished just as if he were still so subject, with the exceptions mentioned in the proviso See specimen charge sheet No 108, p 734

A sentence of dismissal or cashiering is not operative until promulgated Therefore an officer sentenced to be dismissed who commits another offence between trial and promulgation, can be tried for it under this section even after promulgation of the sentence of dismissal

2 The proviso to subs (1) enacts that a person who since the commission of the offence has ceased to be subject to military law can only be tried within three months after he has ceased to be so subject, the three months will not be deemed to have expired if the trial has commenced within that period (Ch V, para 12) An exception is made in the case of mutiny, desertion and fraudulent enlistment, for which he can be tried at any time, subject to the restrictions in s 161, and in the case of attached, &c, personnel returning to the Air Force Further exceptions are made by the Reserve Forces Act, 1882, s 26 (2) See also as to the Territorial Army, 1 R I Act, s 25 (2)

When the three months have once expired, the offender is protected, and his liability is not revived by his again becoming subject to military law

3 Subs (2) deals with the case of a person who is tried and sentenced whilst still subject to military law It enacts that a sentence shall not be affected by the offender being discharged or dismissed, or otherwise ceasing to be subject to military law, but the Act applies only for the purpose of completing the sentence

Liability to military law in respect of place of commission of offence

159. Any person subject to military law who within or without His Majesty's dominions commits any offence for which he is liable to be tried by court-martial, may be tried and punished for such offence at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial

Part IV

ss 160 162.

Punishment no increased by trial elsewhere than offence committed

160 No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed

Liability to military law in respect of time for trial of offences

161 A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years[1] before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment[2], but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial, and where a soldier has served continuously in an exemplary manner[3] for not less than three years as a soldier of the regular forces he shall not be tried for any such offence of desertion (other than desertion on active service)[4], or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment[5] all service prior to such enlistment shall be forfeited[6] Provided that a soldier who has fraudulently enlisted during a period of re-engagement shall only forfeit the service rendered during such re-engagement, and that the Army Council may restore all or any part of the service forfeited under this section to any soldier who may perform good or faithful service or may otherwise be deemed by the Army Council to merit such restoration of service

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 either by court martial, or by his commanding officer, 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 56 (3) 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

2 Mutiny may be tried at any time With regard to desertion and fraudulent enlistment it is provided that except in the case of one of the greatest of all military offences—desertion on active service—an offender is not to be tried for the offence if he has served continuously in an exemplary manner for three years as a soldier of the regular forces

3 *In an exemplary manner* This means that the man has had no entry in the regimental conduct sheet for a continuous period of three years, K R 548

4 *Active service* For definition, see s 189

5 In the case of fraudulent enlistment, inasmuch as he has chosen to quit his old corps and enter into a new contract to serve for a further term of years, he will be held to serve according to that contract

6 The service rendered prior to such fraudulent enlistment is forfeited, except that a soldier who fraudulently enlisted during a period of re engagement will only forfeit the service rendered during such re engagement Under the power given by the proviso to the section, the Army Council may restore the service so forfeited, and K R 246 gives authority for its restoration The restored service will count for the purpose of reckoning service towards discharge or transfer to the reserve

Adjustment of military and civil law

162.—(1) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence, that court shall, in awarding

punishment, have regard to the military punishment he may have already undergone

(2) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law,[1] when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of His Majesty's service

(3) If an officer—

(*a*) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command, who is so accused or convicted as aforesaid, or

(*b*) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of His Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor

(4) A certificate of a conviction of an officer under this section, with the judgment of the court thereon in such form as may be directed by the Army Council, shall be transmitted to the Army Council

(5) Any offence committed by any such commanding officer out of the United Kingdom shall, for the purposes of the apprehension, trial and punishment of the offender, be deemed to have been committed within the jurisdiction of His Majesty's High Court of Justice in England, and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England [2]

(6) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act [3]

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 civil offence serious enough to be called a "crime" —as to which see s 144—he may be tried and punished by a civil court, and if such a court either convicts or acquits him he cannot be tried again under this Act for the same offence On the other hand, a person acquitted or convicted of an offence by a court-martial may still be tried by a civil court for the same offence (if an offence against the civil law), but in such case the civil court in awarding punishment must have regard to any punishment which the accused may already have undergone

2 See also s 170 (3)

3 If a N C O is convicted by a civil court, the case is to be reported to an officer not below the rank of brigadier so that he may consider whether it is desirable to recommend the reduction of the offender under s 183 (2), K R 573

Evidence

163 —(1) The following enactments shall be made with respect to evidence[1] in proceedings under this Act, whether before a civil court or a court-martial, that is to say,

Regulations as to evidence

(*a*) The attestation paper purporting[2] to be signed by a person on his being attested as a soldier, or the declaration

Part IV

s 163

purporting[2] to be made by any person upon his re-engagement in any of His Majesty's regular forces, or upon any enrolment in any branch of His Majesty's service, shall be evidence of such person having given the answers[3] to questions which he is therein represented as having given

The enlistment[3] of a person in His Majesty's service may be proved by the production of a copy of his attestation paper purporting[2] to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper

(*c*) A letter, return, or other document respecting the service[1] of any person in, or the discharge of any person from, any portion of His Majesty's forces, or respecting a person not having served in or belonged to any portion of His Majesty's forces, if purporting[2] to be signed by or on behalf of a Secretary of State or the Army Council, or of the Commissioners of the Admiralty, or of the Air Council, or by the commanding officer of any portion of His Majesty's forces, or of any of His Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document

(*d*) Copies purporting to be printed by a Government printer of King's regulations, or regulations referred to in section one hundred and forty-two of this Act or royal warrants, of army circulars or orders, and of rules made by His Majesty, or a Secretary of State or the Army Council, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars or orders, and rules

(*e*) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer or to be issued, if in the United Kingdom, by His Majesty's Stationery Office, and if in India, by some office under the Governor-General of India shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong

(*f*) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders purporting[2] to be certified to be true copies by the officer therein alleged to be authorised by a Secretary of State or the Army Council to certify the same shall be admissible in evidence

[Paragraph (*f*) is repealed by the Reserve Forces Act, 1882, but see s 24 (2) of that Act]

(*g*) Where a record is made in one of the regimental books[5] in pursuance of any Act or of the King's regulations,

or otherwise in pursuance of military duty, and purports[2] to be signed[6] by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence[7] of the facts thereby stated

(*h*) A copy of any record in one of the said regimental books purporting[2] to be certified to be a true copy by the officer having the custody[8] of such book shall be evidence of such record

(*i*) A descriptive return within the meaning of this Act, purporting[2] to be signed[9] by a justice of the peace, shall be evidence of the matters therein stated[10] :

(*j*) Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has surrendered himself into the custody of a provost marshal, assistant provost marshal or other officer, or any portion of His Majesty's forces, a certificate[11] purporting[2] to have been signed by such provost marshal, assistant provost marshal or other officer, or by the commanding officer of the portion of His Majesty's forces to whom the surrender was made, and stating the fact, date, and place of such surrender shall be evidence of the matters so stated[12]

(*k*) Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has been delivered into military custody by a police officer in charge of a police station in the United Kingdom, a certificate[13] purporting[2] to be signed[14] by such police officer, and stating the fact, date, and place of the surrender of the officer or soldier shall be evidence of the matters so stated

(*l*) Any document which would have been admissible in any proceeding under the Air Force Act by virtue of section one hundred and sixty-three of that Act shall in like manner and for the same purpose be admissible in evidence under this Act

(*m*) Where an officer or soldier has been apprehended and on arrest taken to a police station in any place in any part of His Majesty's dominions, or has on surrender been taken into custody at any such police station, then for the purpose of any proceedings against that officer or soldier, a certificate[15] purporting[2] to be signed[16] by the police officer in charge of that police station, stating the fact, date, and place of arrest or surrender, shall be evidence of the matters so stated

(*2*) For the purposes of this Act the expression "Government printer" means any printer to His Majesty, and in India any Government press

NOTE

1 See generally as to evidence of documents, Ch VI, paras 31–40, and as to the application of this section to proceedings under the T R F Act and the Reserve Forces Act, 1882, see s 26 (2) of the former and s 27 (2) of the latter Act

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 evidence, therefore evidence may be given to contradict them

Part IV

s 163

A document purporting to be such a document as is specified in the various paras of subs (1) is upon mere production to the court *prima facie* evidence of the facts therein stated, but, of course, it is not admissible evidence that the accused is the person to whom it relates, and evidence must be given on oath by a witness to prove that the accused is in fact the person referred to in the document If the accused disputes the identification, 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

Documents made admissible in evidence by this section except those mentioned in subs (1) (*c*) and (*d*) can only be received as such when produced by a witness on oath

2 *Purporting.* This expression means that if the paper appears to be certified or to be signed as mentioned in the paragraph, it can be accepted without calling a witness to prove that it has been so certified, signed, &c unless indeed some evidence is given to the contrary If any evidence is produced casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, &c , to be given by a witness

3 In cases of fraudulent enlistment the enlistment may be proved by a copy of the attestation paper, but such copy must be signed by the officer having the custody of it, and not by a subordinate officer "for" him , and if any question arises as to the signature or handwriting the original or duplicate must be produced In cases of false answer on attestation a copy is not admissible in evidence, and the original or duplicate must be produced

4 Para (*b*) is limited to proof of the fact or length of service or date of discharge, it does not assist proof of particular incidents occurring during such service

5 As to what books are recognised as "regimental books" see K R 1598 and App XXV

6 For the purpose of this paragraph it is important that the records in the regimental books shall be signed by the proper officer, namely, the officer required by this Act, by the King's Regulations, or by his military duty, to make the record A record in books not being "regimental books" is not made evidence

7 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 72 be held before 21 clear days have expired, a record of its finding is inadmissible

8 Such a copy cannot be certified by another officer "for" the officer having the custody of the book

9 A descriptive return (A F O 1618) is admissible in evidence, though not signed by the deserter or absentee, if not signed by the justice it is inadmissible

10 When it is necessary to produce A F O 1618 (descriptive return) in evidence before a court martial, the "particulars in the evidence on which the prisoner is committed" given on page 2 of the form should be previously examined If these particulars are found to contain any statement regarding the accused which, on the grounds of irrelevancy, would not be admissible as *viva voce* evidence before a court martial (*e g* , that accused had been previously convicted, or that he was arrested on suspicion of having committed some other offence), or if containing any alleged admission by the accused which might prejudice him on his trial, a copy of the whole entry should be made and returned by the O C unit to which the man belongs The entry on page 2 of the form, or such part of it as may be irrelevant or prejudicial as above, should then be pasted over, so that it may not come under the notice of the court prior to the finding

11 For form of certificate, see K R 586 (*c*)

12 A statement in the certificate of surrender to the effect that the man was wearing civilian clothes is admissible as part of the fact of the surrender

13 The form of certificate is A F O 1617

14 The certificate must be signed by the officer indicated, and not by another officer "for" him This paragraph is applicable only to cases of "surrender."

15 The following form of certificate will invariably be obtained from the police official concerned, care being taken that no irrelevant facts are recorded thereon —

Certificate in accordance with section 163 (1) (m) of the Army Act

I certify that the person whose description is given below was arrested (*or* surrendered) at (*place*), at (*hour*), on the day of , 19

Regimental particulars of officer or soldier referred to above { No / Rank / Name / Unit

Description { Age / Height / Complexion / Hair / Eyes / Marks

Signature of officer of police in charge of police station where the above named person was taken, or placed in custody, on arrest or surrender { (In charge of Police Station)

16 Where it is necessary to produce evidence in the form of the certificate of apprehension or surrender under this paragraph such certificate can only be admitted as evidence when it embraces the essential particulars laid down In particular, it is essential that it should be actually signed by the police officer *in charge* of the station where the accused person was taken into custody, and that the police officer should show on the certificate that he is, in fact *in charge* of the station

164 Whenever any person subject to military law has been tried by any civil court, the clerk of such court or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment or order of the court thereon, or if he was acquitted, the acquittal, and shall be allowed for such certificate a fee of three shillings Any such certificate shall be sufficient evidence of the conviction and sentence or of the order of the court or of the acquittal of the prisoner, as the case may be

Evidence of civil conviction or acquittal

NOTE

The object of this section is to facilitate the proof of a conviction or acquittal by a civil court

In England and Wales, under Rule 13 of the Criminal Appeal Rules, 1908, a certificate of conviction cannot issue under this section in the case of any person convicted on indictment until ten days after the date of conviction, and where the person convicted appeals against the conviction or applies for leave to appeal, not until the appeal or application has been determined A person applying for a certificate of conviction is therefore required to satisfy

Appeal, Royal Courts of Justice, London, W C

165 The original proceedings of a court-martial, purporting[1] to be signed by the president[2] thereof and being in the custody of the Judge Advocate General, or of the officer having the lawful custody[3] thereof, shall be deemed to be of such a public nature[4] as to be admissible in evidence[5] on their mere production from

Evidence of conviction by court-martial

Part IV — 83. 165, 166

such custody, and any copy purporting to be certified by such Judge Advocate General or his deputy authorised in that behalf, or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence without proof of the signature of such Judge Advocate General, deputy, or officer, and a Secretary of State upon production of any such proceedings or certified copy, may, by warrant under his hand,[6] authorise the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned

NOTE

1 *Purporting* See note 2 to s 163

2 To be admissible in evidence under this section the proceedings must be signed by the president, see R P 50

3 As to the custody of courts martial proceedings, see R P 96-98

4 *Shall be deemed to be of such a public nature, etc* See the Evidence Act, 1851, s 14, which makes a certificate of the document by the officer having the custody of it admissible in evidence, and requires the officer to furnish certified copies upon payment of not more than 4*d* for every folio of 90 words, and enacts a punishment for false copies, and for the forgery of the officer's signature or seal

5 This section facilitates the proof of transactions of court martial, by declaring that the proceedings or certified copies thereof shall be admissible in evidence It is to be observed, however, that for the purposes of proving a previous conviction, in addition to the production of the proceedings evidence must be available to show the identity of the person mentioned in the proceedings with the person charged

6 *A Secretary of State, by warrant under his hand* The object of this is to avoid such difficulties as arose in Lieutenant Allen's case (see Ch VIII, para 21, note 7), where there is no doubt that an officer or soldier convicted abroad has been properly convicted, but no proper warrant has been sent home authorising his retention in custody, see s 172 (4) and note

Summary and other Legal Proceedings

Prosecution of offences, and recovery and application of fines

166 —(1) A court of summary jurisdiction having jurisdiction in the place where the offence was committed or in the place where the offender may for the time being be shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment, and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts

(2) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable

(3) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one half to be paid to the informer

(4) Where the maximum fine or imprisonment[1] which a court of summary jurisdiction in England, when sitting in an occasional courthouse, is authorised by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may

impose the maximum fine or imprisonment which such court is authorised by law to impose, but if required by either party, shall adjourn the case to the next practical petty sessional court

(5) The court of summary jurisdiction in Ireland,[2] when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace

(6) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act if recovered in England, be paid into the Exchequer, and if recovered in Ireland,[2] shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same

NOTE

1 Under the Summary Jurisdiction Acts, two justices, if not sitting in a petty sessional courthouse, have only limited powers of fine and imprisonment, and in some cases such powers do not extend to imposing the minimum fine or imprisonment fixed by this Act In such a case they may, under this subsection, impose the maximum fine or imprisonment which they can impose in ordinary cases, *i e*, 20*s* or 14 days (Summary Jurisdiction Act, 1879, s 20 (7))

2 As regards the Irish Free State, see note 10 to s 190

Summary proceedings in Scotland

167.—(1) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorised by the Army Council, or of any person authorised by this Act to complain

(2) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K of the Summary Procedure Act, 1864 [1]

(3) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the King's and Lord Treasurer's Remembrancer, on behalf of His Majesty

(4) It shall be no objection to the competency of a person to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person

(5) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction

(6) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace

Part IV — ss 167–170

(7) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form

NOTE

1 The Summary Procedure Act, 1864, was repealed by the Summary Jurisdiction (Scotland) Act, 1908, and the form of conviction will now be in accordance with the provisions of that Act, see s 53 thereof

Summary proceedings in Isle of Man, Channel Islands, India and the colonies

168 All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony[1] in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law or as near thereto as circumstances admit

NOTE

1 For definitions of *India* and *colony* see s 190 (21), (23)

Power of Governor-General of India and legislature of colony as to fines

169 It shall be lawful for the Governor-General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act

Protection of persons acting under Act

170 — (1) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof

(2) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment, but this provision shall not affect costs on any injunction in the action

(3) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence

shall be brought in one of His Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any Colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever

Part IV — ss 170 172

NOTE

With respect to actions for damages and other proceedings against officers acting without jurisdiction or in excess of their jurisdiction, see Ch VIII, para 30 This section prevents any such action or other proceeding being instituted after the expiration of six months from the date of the act or default complained of See Ch VIII, para 62

Actions can be brought in courts at home in respect of acts done abroad See Ch VIII, paras 32, 33

Miscellaneous

171. 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, or according to rules made under section seventy of this Act

Exercise of powers vested in holder of military office

NOTE

The object of this section is to prevent any legal difficulties arising from the usage of the army relating to the delegation of authority by one officer to another For instance, a report which is directed by this Act to be made to a general officer or to an officer having power to convene or confirm courts-martial may be addressed to the staff officer, adjutant, or other person to whom such reports are usually addressed See also R P 131, and note 1 to s 172

172 —(1) Where any order is authorised by this Act to be made by the Army Council, or by the Commander-in-Chief or Adjutant-General of the forces in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders[1] on behalf of the Army Council or such Commander-in-Chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised

Provisions as to warrants and orders of military authorities

(2) The foregoing enactment of this section shall extend to any order or direction issued in pursuance of this Act in relation to a military convict or military prisoner or soldier undergoing detention, and any such order or directions shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict or prisoner or soldier has been convicted, and there is a good and valid conviction to sustain the order or directions [2]

(3) An order in any case if issued in the prescribed form[3] shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation [2]

Part IV — ss 172, 173.

(4) Where any military convict or military prisoner or soldier undergoing detention is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict or prisoner or soldier 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 or in pursuance whereof such convict or prisoner or soldier was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly [4]

(5) Where a military convict, or a military prisoner, or a soldier undergoing detention, or a person who is subject to military law and charged with an offence, is a prisoner or soldier in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner or soldier to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner or soldier in custody and convey him in accordance with the order, and the prisoner or soldier while so kept shall be deemed to be kept in military custody

NOTE

1 The object of this subsection is similar to that of s 171 It will allow orders of a general or other officer to be signed by the staff officer or adjutant as authorised by the custom of the service but the confirmation of courts-martial, and warrants or other documents relating to imprisonment or detention or the infliction of any other punishment must be signed by the officer himself So, too, must an order convening a field general court-martial

2 Subs (2) and (3) are introduced with a view to prevent military proceedings from being rendered void by merely technical objections

3 *Prescribed form* See R P 133

4 This subsection is introduced for the same object as subs (2) and (3) These subsections would probably not meet a case where the order, warrant, or document is issued by a person having no authority to issue it In such a case it will be advisable to procure a warrant from a Secretary of State under s 165

Furlough in case of sickness

173. If any soldier on furlough is detained by sickness or other casualty[1] rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month[2], and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier, if known, and if not, then to the Army Council The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough, be liable to be treated as a deserter, or as absent without leave

NOTE

1. A soldier who makes a false statement to an officer or justice in respect of extension of his furlough may be tried and punished by court-martial, s 27 (4).
2. See K R 1518–9.

174.—(1) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any licence for the time being required to enable such person to obtain or hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licences, and excise licences may be granted to such persons accordingly

Part IV — ss 174, 174A

Licences of canteens

(2) For the purposes of this section the expression licence includes any licence or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise licence for the sale of any intoxicating liquor

NOTE

This section now applies only as regards Northern Ireland, having been repealed as regards England in 1902, and as regards Scotland in 1903

Under the provisions of s 111 (2) (*l*) of the Licensing (Consolidation) Act, 1910, and s 50 of the Licensing (Scotland) Act, 1903, excise licences for military canteens may be granted in England and Scotland without a justice's licence or certificate to any persons holding canteens under the authority of a Secretary of State

174A Notwithstanding anything in the Disorderly Houses Act, 1751, or in any similar enactment contained in any other Act whether public, general or local or personal, or in the Theatres Act, 1843, where a recreation room is managed or conducted under the authority of a Secretary of State or the Admiralty, it may be used for public dancing, music, or other public entertainment of the like kind or for the public performance of stage plays, without any licence in pursuance of those Acts, or either of them

Use of recreation rooms without licence

PART V

Part V.

APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS

Introductory Note as to Application of Military Law

1 Persons subject to military law are divided by this part of the Act into (1) persons so subject as officers and (2) persons so subject as soldiers

Application of military law

2 The expression "officer" is defined in s 190 (4) as meaning an officer commissioned or in pay as an officer in His Majesty's forces, of any arm, branch, or part thereof, and as also including—

Persons subject to military law as officers

(*a*) A person who, by virtue of his commission, is appointed to any department or corps of His Majesty's forces, or of any arm, branch, or part thereof,

(*b*) A person whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's forces, or of any arm, branch, or part thereof, and

(*c*) Any officer of His Majesty's naval or air forces who is for the time being subject to military law

Part V

Officers holding honorary commissions are included in the definition of officer Every officer, as so defined, is not necessarily subject to military law The persons subject to military law as officers are —

(1) Officers of the regular forces on the active list, and officers not on the active list if employed on military service under an officer of the regular forces (s 175 (1)) also officers of His Majesty's Air Force attached to, or seconded for service with, the regular forces, subject to certain modifications contained in this Act, (ss 175 (1A) and 179A),

The meaning of the "active list" must be ascertained by reference to the Pay Warrant Under the Warrant now in force the active list is comprised of officers of the regular forces, whether on full pay, half pay, or otherwise, prior to their retirement, and does not include officers who have retired and are subsequently recalled to service under article 521, or re employed under article 504, P W (P W 21)

The expression "regular forces" means the British and Indian forces, the Royal Marines, soldiers of the reserves when called out on permanent service, and forces raised in a colony by direct order of His Majesty, such as the Royal Malta Artillery Certain modifications of the Act, in its application to the Royal Marines and Indian forces, are contained in ss 179 and 180

(2) Officers of the Territorial Army and the Territorial Army Reserve in the circumstances mentioned in s 175 (2) and (3A),

(3) Officers of forces raised out of the United Kingdom and India and serving under an officer of the regular forces (see s 175 (4)),

(4) Persons who under the orders of the Army Council or of the Governor-General in India accompany in an official capacity any of His Majesty's troops on active service in any place, with the qualification that such a person if a native of India will be subject to Indian military law (see s 175 (7) and note),

(5) Persons accompanying a force on active service and holding from the commanding officer of the force passes entitling them to be treated as officers (see s 175 (8) and note),

(6) Officers belonging to the Reserve of Officers, and the Indian Army Reserve of Officers, or the Army in India Reserve of Officers, in the circumstances mentioned in paragraphs (10) and (9) respectively of s 175 (see also the Pay Warrant),

(7) Officers of the Militia (see s 175 (10)),

(8) Officers of forces raised in India or a colony when attached to or doing duty with troops in the United Kingdom in the circumstances mentioned in s 175 (11),

(9) Officers of a force raised in India or a colony to which the Army Act is applied by the law of India or the colony, &c (s 175 (12))

The Act further makes provision with respect to officers of the Volunteers, but as this force is not now raised it is unnecessary to summarize those provisions of the Act

Persons subject to military law as soldiers

3 The persons subject to military law as soldiers are set out in s 176 (*q v*) The provisions, however, respecting the men of the Volunteers, are not at present important, as this force is not now raised in the United Kingdom

It is to be observed that the expression "soldier" includes warrant officers and non commissioned officers (s 190 (5) and (6)), subject, however, to the special provisions with respect to them in ss 182 and 183

It is further to be noted that in spite of the limitations contained in s 176 (5) a man of the Army Reserve (including the Militia) is, in a modified way, at all times subject to military law, inasmuch as he is liable to be tried by a court-martial under s 6 of the Reserve Forces Act, 1882, for the offences mentioned in that section, which are failure to attend at any place when required, insubordinate behaviour to superior officers, and non-compliance with the regulations for the payment or government of the force

Persons not belonging to His Majesty's forces subject to military law as soldiers

4 It will be observed that the above summary includes amongst the persons subject to military law certain civilians When troops are on active service it is absolutely necessary for the sake of military operations and discipline that civilians who accompany them should be under the control of military officers and tribunals

The only modification in the application of the Act to persons who do not belong to His Majesty's forces which requires notice here is that such persons cannot be punished by a C O (s 184 (2))

5 As to the trial and punishment of a person who, or whose corps, has ceased to be subject to military law since the commission of the offence, see s 158 and note

Trial of persons who have ceased to be subject to military law

Persons subject to Military Law

175 The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified, that is to say,

s. 175. Persons subject to military law as officers

(1) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces, who is subject to military law

(1A) Any officer of His Majesty's air force who is attached to, or seconded for service with, the regular forces, subject, however, to the modifications[1] contained in this Act

(2) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law

[*Paragraph* (3) *repealed by T A & M Act*, 1921]

(3A) Officers of the territorial army, other than members of the permanent staff, if on the active list at all times and if on the territorial army reserve, at any time when they are doing duty with any body of troops for the time being subject to military law or are ordered on any duty or service for which as such reserve officers they are liable

(4) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order of His Majesty beyond the limits of the United Kingdom and of India,[2] and serving under the command of an officer of the regular forces

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony

(5) Officers of the volunteers, whenever in actual command of men who are in pursuance of this Act subject to military law, or when their corps is on actual military service

(6) Any officer of the volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject to military law, whether of the regular or auxiliary forces, or with his own consent, is ordered on duty by the military authorities

(7) Every person not otherwise subject to military law who, under the general or special orders of the Army Council or of the Governor-General of India, accompanies in an official capacity equivalent to that of officer any of His

Part V. — ss. 175, 176

Majesty's troops on active service in any place,[3] *subject to this qualification, that where such person is a native of India he shall be subject to Indian military law as an officer* [4]

(8) Any person, not otherwise subject to military law, accompanying a force on active service, who shall hold from the commanding officer of such force, a pass, revocable at the pleasure of such commanding officer, entitling such person to be treated on the footing of an officer [4]

(9) The persons holding commissions as officers in the Indian army reserve of officers or the Army in India reserve of officers when such officers are called out in any military capacity

(10) Any reserve officer within the meaning of the Royal Warrant regulating the composition of the reserve of officers, if an officer holding a commission as officer in the militia at all times, and if not holding such a commission when he is ordered on any duty or service for which, as such reserve officer, he is liable [5]

(11) All officers belonging to a force raised in India or a colony, when attached to or doing duty with any portion of the regular, reserve, or auxiliary forces in the United Kingdom

(12) All officers of a force raised in India or a colony to which this Act is, in whole or in part, applied by the law of India or the colony, at such times and subject to such adaptations, modifications, and exceptions as may be specified in such law

NOTE

1 *Modifications* Sec s 179A

2 This is not meant to include strictly colonial forces, but only forces raised at the Imperial expense see Ch XI, part 8 See also s 176 (3) and note As to strictly colonial forces, see s 177

3 See s 184 for special provisions applicable to persons made subject to military law by this paragraph

4 Paras (7) and (8) These paragraphs make certain persons subject to military law as officers who would otherwise be subject under s 176 (10) to trial and punishment as soldiers The first extends to persons attached to a military expedition by order of the Army Council or the Governor General of India in a diplomatic, scientific, or other official capacity The second would apply to persons like contractors or newspaper correspondents, who obtain passes from the commanding officer of the force directing them to be treated as officers It will be observed that an official of the Governor General, who is a native of India, will be subject to Indian military law See s 180 (2)

5 Under this paragraph an officer of the Militia is at all times subject to military law Other officers of the Reserve of Officers (which includes the Supplementary Reserve) are so subject when ordered on any duty or service for which, as reserve officers, they are liable, and in addition they become subject to military law in the circumstances stated in the concluding part of s 175 (1), that is to say, when employed on military service under the orders of an officer of the regular forces who is himself so subject

Persons subject to military law as soldiers

176 The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified, that is to say,

(1) All soldiers of the regular forces

(1A) All airmen of the air force who are attached to the regular forces, subject, however, to the modifications[1] contained in this Act

(2) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces[2] who are not otherwise subject[3] to military law

(3) All non-commissioned officers and men serving in a force raised by order of His Majesty beyond the limits of the United Kingdom and of India,[4] and serving under the command of an officer of the regular forces

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony

(4)[5] All pensioners not otherwise subject to military law who are employed in military service[6] under the orders of an officer of the regular forces

(5)[5] All non-commissioned officers and men belonging to the army reserve force[7]—

(*a*) When called out for training and exercise, and
(*b*) When called out for duty in aid of the civil power, and
(*c*) When called out on permanent service, and
(*d*) When employed in military service[6] under the orders of an officer of the regular forces

[*Paragraph* (6) *repealed by T A & M Act*, 1921]

(6A) All non-commissioned officers and men belonging to the territorial army—

(*a*) When they are being trained or exercised either alone or with any portion of the regular forces or otherwise, and
(*b*) When attached to or otherwise acting as part of or with any regular forces, and
(*c*) When embodied, and
(*d*) When called out for actual military service, for purposes of defence in pursuance of any agreement

[*Paragraph* (7) *repealed by T A & M Act*, 1921]

(8) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom—

(*a*) When they are being trained or exercised with any portion of the regular forces, and
(*b*) When they are attached to or otherwise acting as part of or with any regular forces, and
(*c*) When their corps is on actual military service

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service:

Part V — s 176

(8A) All non-commissioned officers and men belonging to a force raised in India or a colony when attached to or otherwise acting as part of or with any portion of the regular, reserve, or auxiliary forces in the United Kingdom

(9)[8] All persons who are employed by or are in the service of any of His Majesty's troops when employed on active service, and who are not under the former provisions of this Act subject to military law

(10)[8] All persons not otherwise subject to military law[9] who are followers of or accompany[10] His Majesty's troops, or any portion thereof, when employed on active service, subject to this qualification that, where any such persons are employed by or are followers of, or accompany any portion of, His Majesty's forces, consisting partly of His Majesty's Indian forces subject to Indian military law, and such persons are natives of India, they shall be subject to Indian military law

(11) All non commissioned officers and men belonging to a force raised in India or a colony to which this Act is, in whole or in part, applied by the law of India or the colony, at such time and subject to such adaptations, modifications, and exceptions as may be specified in such law

NOTE

1 *Modifications* Secs 179A

2 Secs 181 (2)

3 *Otherwise subject, &c* Soldiers of the regular forces posted to the permanent staff of the auxiliary forces would be "otherwise" (*i e*, as being in the regular forces) subject to military law

4 This is not intended to include strictly colonial forces, but only forces raised at the Imperial expense, whose maintenance is voted annually by Parliament It might, however, no doubt extend to a force raised under a colonial Act, but under Imperial control But strictly colonial forces are dealt with by s 177 See further Ch XI, para 83

5 Secs 178

6 *Military service* The term "military service" as here used cannot be satisfactorily defined without relation to the special circumstances of each particular case In no circumstances, therefore, should a pensioner or reservist be considered as subject to military law under the provisions of paras (4) and (5) (*d*) unless a definite decision to that effect has been obtained from the Army Council

It has been decided that paid pensioner recruiters are in "military service" within the meaning of para (4)

7 As to the power to try by court martial a man of the Army Reserve who on two consecutive occasions fails to comply with the regulations respecting pay, or fails to attend at an appointed place, or is insubordinate to a superior officer, or obtains pay by any fraudulent means, or fails to comply with the regulations for the government of the forces, see s 6 of the Reserve Forces Act, 1882

8 Paras (9) and (10) See s 184 for special provisions applicable to persons made subject to military law by these paragraphs

9 See note 4 to s 175, under which some of the persons indicated here might be subject to military law "as officers"

10 Members of the crew of a transport hired by the Government would not be persons "accompanying, &c."

Persons belonging to colonial forces, and subject to military law as officers or soldiers

177 Where any force of volunteers, or of militia, or any other force, is raised in India or in a colony,[1] any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without[2] the limits of India or the colony, and any such law may apply, in relation to such force and to any officers, non-commissioned officers, and men thereof, all or any of the provisions of this Act, subject to such adaptations, modifications, and exceptions as may be specified in such law, and where so applied this Act shall have effect in relation to such force subject to such adaptations, modifications, and exceptions as aforesaid, and where any such force is serving with part of His Majesty's regular forces,[3] then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the officer, whether military or air force, not below the rank of colonel or group captain, commanding His Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers and men of such force, in like manner as they apply to the officers, non-commissioned officers, and men of the regular forces

This section shall not apply to any officer belonging to any such force when attached to or doing duty with, or to any non-commissioned officer or man belonging to any such force when attached to or otherwise acting as part of or with, any portion of the regular, reserve, or auxiliary forces in the United Kingdom [4]

NOTE

1 For definitions of *India* and *colony* see s 190 (21), (23)

This section applies to what may be termed strictly colonial forces, that is to say, forces raised on the responsibility of the government of the colony Colonial legislatures can apply the whole of the Army Act, or any part of it, to the forces of the colony, subject to such adaptations as may be necessary to make them applicable

2 So long as such forces are within the colony their discipline can be provided for by the law of the colony This section removes any doubts as to whether that law would apply to such forces when outside the limits of the colony

3 In order to prevent difficulties arising from deficiencies of the colonial law in cases where the colonial forces are serving with the regular forces, the section provides that such deficiencies may be remedied by the application of the Army Act, subject to any modification made by general orders of the officer, whether military or air force, not below the rank of colonel or group captain, commanding the regular forces in question

4 *This section shall not apply, &c* The effect of this provision is that where the Army Act applies to colonial forces serving with the regulars (see, for instance, s 175 (11) and s 176 (8A)), it will apply to them as if they were regulars

Mutual relations of regular forces and auxiliary forces.

178 When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any reserve officers, or retired officers, or any pensioners,[1] are subject to military law in pursuance of this Act, and when non-commissioned officers and men belonging to the reserve forces[2] are subject to military law in pursuance of this Act, otherwise than when called out on permanent service, such officers, non-commissioned officers, men and pensioners shall be subject to this Act[3] in all respects[4] as if they were part of the

Part V — ss 178, 179

regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men and pensioners were included in the expression "regular forces" Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man, or of any pensioner

NOTE

1 Officers of the auxiliary forces, if on the active list, are subject to military law at all times (s 175 (2) (3A)), N C Os , and men of the auxiliary forces and pensioners are so subject in cases specified in s 176 (4), (6A), (8) As to reserve officers, see s 175 (10), and as to retired officers see the latter part of s 175 (1)

2 N C Os , and men of the Army Reserve are subject to military law in cases specified in s 176 (5), when called out on permanent service they actually "form part of" the regular forces (s 190 (8), Reserve Forces Act, 1882, s 14 (2)) Consequently this contingency is omitted from the provision that they shall be subject to the Act "as if they were" part of such force

3 As to command, rank and precedence of the officers mentioned in this section, see s 71, and K R 170, *et seq*

4 Under s 158 a member of the Territorial Army who has ceased to be subject to military law can, within three months afterwards, be tried by court-martial for an offence committed whilst he was so subject See also 1 R I Act, s 25 (2)

Modification of Act with respect to Royal Marines

179 In the application of this Act to His Majesty's Royal Marines the following modifications shall be made —

(1) Nothing in this Act shall prejudice any power of the Admiralty[1] to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command the Royal Marines than they have heretofore used, and a general court-martial[2] for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorised by a warrant from the Admiralty in pursuance of this section, and except that, where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive), there is not present any officer authorised by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorised to convene general courts-martial, may try such officer or man

(2) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces

(3)[3] Any power in relation to the convening of courts-martial, or of authorising an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act His Majesty may exercise by any warrant

or warrants, may be exercised in His Majesty's name by a warrant or warrants from the Admiralty, and any such warrant may be addressed to any officer to whom any warrant of His Majesty can be addressed

(4)[3] Any power vested by this Act in His Majesty in relation to the confirmation of the findings and sentences of courts-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty

(5)[3] Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under this section to convene the same, or by any officer otherwise authorised[4] under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces

(6) Any power vested in His Majesty by this Act in relation to the making of rules, or to any order with respect to pay or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for His Majesty, as well as for the Secretary of State and the Army Council

(7) Anything required or authorised by this Act to be done by, to, or before a Secretary of State, the Army Council, or Judge Advocate General, may, as regards the Royal Marines, be done by, to, or before the Admiralty, and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Army Council," and "Judge Advocate General," wherever those words occur

(8) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere, may as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and, if no such appointment is made, by such Commander-in-Chief or general or other officer

(9) Anything authorised by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by Warrant of the Admiralty, and the provisions of this Act with respect to Royal Warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act

(10) Anything authorised to be done by the deputy of the Judge Advocate General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty

Part V — s. 179

(11) In the provisions of this Act with respect to evidence, the expression "King's Regulations" shall be deemed to include Admiralty Regulations

(12) Nothing in the provisions of this Act relating to the term of enlistment,[5] to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service, or to forfeiture of service of a soldier of the regular forces, or to the rules for reckoning service for discharge or transfer to the reserve, shall apply to the Royal Marines

Save that if regulations made by the Army Council and the Admiralty provide for the transfer of men of the Royal Marines to any other part of His Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations shall become a soldier of the said part of His Majesty's regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act

And save that if any regulations so made provide for the transfer to the Royal Marines of men belonging to any other part of His Majesty's regular forces, a man belonging to such part may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations, shall become a man of the Royal Marines in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of the Acts relating to the Royal Marines

(13) A marine on his re-engagement shall make a declaration, either before a justice of the peace or person having under this Act the same authority as a justice of the peace, for the purposes of enlistment, or before a naval officer commanding any ship commissioned by His Majesty, or before the commanding officer of any battalion or detachment of Royal Marines, in the form from time to time directed by the Admiralty

(14) A man in the Royal Marines shall for absence without leave, on conviction of that offence by court-martial, and for fraudulent enlistment, forfeit his service in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines

(15) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by His Majesty (unless made subject to military law as hereinafter provided),[6] shall be subject to the Naval Discipline Act, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried and punished for any offence in the same manner as officers and seamen in the Royal Navy

Provided that—

(*a*) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having

any relations with any such officer or man of the Royal Marines or to any such officer or man if found on shore as a deserter or absentee without leave[7], and

(*b*) If any such officers or men of the Royal Marines are employed on land,[8] the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment, be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly

(16) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by His Majesty commits an offence for which he is not amenable to a naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act

(17) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence[9] committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by His Majesty

(18) Where any officer or man of the Royal Marines is on board any ship commissioned by His Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act to such extent and under such regulations as His Majesty by Order in Council from time to time directs, and, so far as he does not so direct, as is for the time being directed by Order in Council with respect to the other regular forces

(19) Any naval prison within the meaning of the Naval Discipline Act shall be deemed to be included in the definition of a military prison for the purposes of this Act relating to imprisonment, and the Admiralty shall not have any authority to establish any military prison under this Act

(19A) For the purposes of the attestation of men of the Royal Marines the expression "officer" in section ninety-four of this Act includes an officer of the Royal Navy [10]

(20) In this section the expression "Admiralty" means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being, or any two of them

(21) The expression "man of the Royal Marines" includes a non-commissioned officer of the Royal Marines, and also a Marine raised or enrolled under the Naval Reserve Act, 1900, or the Naval Forces Act, 1903, when called into actual service and when being trained or exercised

NOTE

1 As the Admiralty by commission from the Crown exercise the powers of the Crown in relation to the Navy, the powers which by this Act are vested in His Majesty in relation to the Army are by this section given to the Admiralty

2 This paragraph prevents an officer of the Army from convening a general court martial for the trial of an officer or man in the Marines except in the

Part V — 38 179 179A

circumstances here mentioned The confirmation is provided for by paras (4) and (5) See K R 673 as to the procedure to be followed when it is decided to try an officer or man of the Marines serving at home by general court martial under the Army Act

3 Paras (3)–(5) These confer on the Admiralty the power of convening and of confirming the findings and sentences of general courts martial, and of conferring by warrant on officers the power to convene, and to confirm the findings and sentences of, both general and district courts martial

4 Para (5) provides that, in the absence of any such confirmation by the Admiralty or by an officer holding a warrant from the Admiralty, the finding and sentence of a general or district court martial on a marine may be confirmed by an officer holding a warrant which enables him to confirm the findings and sentences of general or district courts martial, as the case may be, on soldiers of other portions of the regular forces

5 The formalities in the enlistment of the Marines will be those contained in Part II of this Act (see ss 80, 81), but the term of enlistment, the conditions of service, transfer, and forfeiture of service, will remain under the Acts relating to the Marines, 10 & 11 Vict c 63, 20 Vict c 1

6 (*Unless made subject to military law as hereinafter provided*) See proviso (*b*)

7 This proviso refers to ss 154 and 156 See also note 3 to s 13

8 *Employed on land* This refers to employment for a length of time amounting to an expedition, and does not refer to the mere landing of marines for a temporary purpose

9 *Offence* This means an offence punishable under this Act

10 This paragraph permits officers of the Navy who are appointed by the Admiralty as recruiting officers to attest recruits for the Marines

Attaching of officers and soldiers to the air force, and provisions as to officers and airmen attached to the regular forces

179A.—(1) The Army Council may direct from time to time that any officers or soldiers of the regular forces shall, under such conditions as may be prescribed by regulations made by the Army Council and the Air Council, be temporarily attached to the air force

(2) Where an officer or airman of the air force is attached to, or seconded for service with, the regular forces, this Act shall apply to him, subject to the following modifications —

* * * * *

(*c*) The finding and sentence of any general court-martial for the trial of any such officer or airman may be confirmed by His Majesty, or by an officer authorised to confirm the findings and sentences of general courts-martial under the Air Force Act, and not otherwise, except that when such officer or airman while subject to this Act is serving beyond the seas with a military force, and in the opinion of the general or other officer commanding that force (such opinion to be stated in the confirmation and to be conclusive) there is not present any officer authorised to confirm the findings and sentences of general courts-martial under the Air Force Act, the findings and sentences may be confirmed by a general or other officer authorised to confirm findings and sentences of general courts-martial under this Act,

(*d*) Anything required or authorised by this Act to be done by, to, or before the Army Council or Judge Advocate General may as regards any such officer or airman be done by, to, or before the Air Council, and the provisions of this Act shall be construed, so far as respects any such officer or airman, as if "the Air Council" were substituted for "the Army Council" and "Judge Advocate General" wherever those words occur

(*e*) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere, may as regards any such officer or airman be done by, to, or before such officer as the Air Council may appoint in that behalf, and, if no such appointment is made, by such Commander-in-Chief or general or other officer, Part V. — s 179A

(*f*) If any such officer or airman commits an offence for which he is not amenable under this Act, but for which he can be punished under the Air Force Act, he may be tried and punished for such offence under that Act,

(*g*) The power of a court-martial to inflict on an officer the punishment of forfeiture of seniority of rank shall include power to inflict a punishment of forfeiture of seniority of rank in the air force or any corps or unit thereof or both

NOTE

This section was added by the Air Force (Constitution) Act, 1917

Under the section members of the regular forces may be temporarily attached to, or seconded for service with, the Air Force, and when so attached or seconded air force law applies to them, subject to the modifications contained in s 179A of the Air Force Act

Conversely, by the last named section, members of the regular Air Force may be temporarily attached to the military forces, and when so attached or seconded the Army Act applies to them (ss 175 (1A) and 176 (1A)), subject to the modifications contained in s 179A of the Army Act

"Attachment" is a personal attachment Units, as such, cannot be attached, but a unit could in effect be made subject to military law (or air force law) by attachment of the individual officers and men of the unit under s 179A of either Act Under s 184A (1A) personnel of a body of the Air Force serving with a body of the military forces on active service may be made subject to military law as if they were officers and airmen *attached* to the Army, and conversely under the Air Force Act

The regulations relating to attachments, referred to in subs (1), are set out at pp 810-813

The modifications above referred to consist of stipulations in regard to *general* courts martial A general court martial held under the Army Act for the trial of a member of the Air Force attached to the military forces, though convened by an officer of the Army, will be confirmed by His Majesty (being referred by the military authorities to the air force authorities for that purpose) or by an officer authorised to confirm the findings and sentences of general courts martial under the Air Force Act except that overseas, in stated circumstances, confirmation may be effected by a general or other officer authorised to confirm findings and sentences of general courts martial under the Army Act In the case of military personnel attached to the Air Force the converse procedure applies

The following examples are given by way of illustration —

(*a*) An air force officer while attached to the Army commits an offence against the Army Act, the army commanding officer investigates the charge and signs the charge sheet, an army officer convenes a general court-martial under the Army Act, an air force officer (or His Majesty) confirms

(*b*) Conversely, an army officer while attached to the Air Force commits an offence against the Air Force Act, the air force commanding officer investigates the charge and signs the charge-sheet, an air force officer convenes a general court martial under the Air Force Act, an army officer (or His Majesty) confirms

As the modifications above mentioned apply only to *general* courts martial, it follows that they do not apply to field general or district courts martial, and consequently such courts for the trial of air force personnel attached to the Army may not only be convened by army officers but may also be confirmed by a military authority empowered to confirm findings and sentences under the Army Act.

Part V

ss 179A–180

As regards members of the Air Force attached to the Army, all powers of remission, mitigation and commutation of sentences under s 57 (2) of the Army Act are exercisable by the Air Council in lieu of the Army Council by virtue of s 179A (2) (*d*) of the Army Act The converse applies in the case of military personnel attached to the Air Force

If a sentence is invalid it may, in the case of a general court martial held on a member of the Air Force attached to the Army, be quashed by a competent air force authority or by the Air Council and in the case of a field general or district court martial by a competent military authority (see *K R* 665), or by the Army Council The converse applies in the case of military personnel attached to the Air Force

If a member of the Air Force attached to the military forces commits an offence for which he is not amenable under the Army Act, but for which he can be punished under the Air Force Act, he may be tried and punished under the last mentioned Act, he will be handed over to an air force authority for investigation of the case and disposal

If attachment of a member of the Air Force to the military forces has ceased, and subject to military law consequently terminated, such member will still remain amenable to military law in respect of any offence against the Army Act committed whilst so subject, see s 158 (1) proviso In such case the offender will be handed back to the military authorities for investigation of the case and disposal

Provision as to naval officers subject to military law

179B. In the application of this Act to officers of His Majesty's naval forces who are subject to military law, the power of a court-martial to inflict the punishment of forfeiture of seniority of rank shall include power to inflict the punishment of forfeiture of seniority of rank in the navy

Modification of Act with respect to His Majesty's Indian forces

180 —(1) In the application of this Act to His Majesty's forces when serving in India the following modification shall be made —

A court-martial may take the same proceedings for the punishment of a person not subject to military law, who in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt[1] of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly

(2) In the application of this Act to His Majesty's Indian forces the following modifications shall be made —

(*a*) Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers or followers in His Majesty's Indian forces, being natives of India[2], and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act

(*b*) For the purposes of this Act the expression " Indian military law " means 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, and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving

(*c*) The Governor-General in India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to His Majesty's Indian forces — Part V s 180

(*d*) An officer belonging to His Majesty's Indian forces who thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain[3] to the Governor General of India, who shall cause his complaint to be inquired into, and if so desired by the officer, make a report through a Secretary of State to His Majesty in order to receive the directions of His Majesty thereon

(*e*) A court-martial, or, where the case is dealt with summarily under the provisions of this Act, the authority having power so to deal with the case, may sentence an officer of the Indian Forces to forfeit all or any part of his service for the purposes of promotion, and in addition, if the court or authority thinks fit, to be severely reprimanded or reprimanded

(*f*) The Governor-General of India may reduce any warrant officer to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer

(*g*) The provisions of this Act relating to warrant officers shall apply to hospital apprentices in India although not appointed by warrant

(*h*) Part Two of this Act shall not apply to His Majesty's Indian forces, but persons may be enlisted and attested in India[4] for medical service or for other special service in His Majesty's Indian forces for such periods, by such persons, and in such manner, as may be from time to time authorised by the Governor-General of India

(3) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment

NOTE

1 For the power of an Indian court to institute proceedings in respect of offences committed in or in relation to proceedings in the court, see the Indian Code of Criminal Procedure, 1908, Ch XXXV

2 *Natives of India* See definition in s 190 (22)

A court-martial on a person subject to the Indian Army Act must accord with the provisions of that Act, but under this subsection may be convened by an officer authorised to convene a court-martial under the Army Act It will be observed that the Indian Army Act is by this subsection made applicable to persons subject to that Act wherever they are serving

3 See s 42 and note European officers of the Indian Army upon attaining substantive rank higher than that of lieutenant-colonel cease to belong to the Indian Army, and their right of complaint then lies under s 42

4 Europeans cannot be enlisted for service in India only, except under the provisions of this subsection which permits Europeans to be enlisted for medical or other special service in manner from time to time provided by the Governor General

It will be noted that under s 190 (21), "India" includes the territories in India under the dominion of any native prince or princes as well as the territories the government of which is vested in His Majesty

Part V

s. 181

Modification of Act with respect to auxiliary forces

181.—(1) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of His Majesty's auxiliary forces, except so far as such person enlists[1] or enrols himself, or attempts to enlist or enrol himself in the regular forces or in a force raised in India or a colony, and except so far as the said provisions[2] may be applied by any other Act

(2) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces

(3) The provisions of this Act with respect to billeting and impressment of carriages[3] shall apply to His Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification

(4) An order issued and signed as a route or an order signed by the officer commanding the unit of the territorial army, or the battalion or corps of volunteers, shall be substituted for a route,—

(*a*) In the case of any man of the territorial army attending for his preliminary training, and

(*b*) In the case of any officer, non-commissioned officer, or man of the territorial army assembled for training and exercise at the place in the United Kingdom appointed by His Majesty in that behalf, or when called out for actual military service for purposes of defence in the United Kingdom, and

(*c*) In the case of any officer, non-commissioned officer, or man of the territorial army embodied under an order of His Majesty, who has joined his corps at the place appointed for his assembling, and

(*d*) In the case of any officer, non-commissioned officer, or man of the volunteers attending at the place at which his corps is required to assemble,

and an order to billet such officer, non-commissioned officer, or man purporting to be signed in manner required by this Act in the case of a route, or by the officer commanding a unit of the territorial army, or a battalion or corps of volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man of the territorial army or volunteers shall be a sufficient authority to such officer, non-commissioned officer, or man to demand billets, and when produced by an officer, non-commissioned officer, or man to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man producing the same to demand billets in accordance with the order

(5) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold, the office of sheriff,[4] mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which

he belongs being assembled for annual training at the time of such nomination or election, or during the time of his tenure of office [5]

Part V — ss 181, 182.

(6) When a member of the volunteers or the territorial army, being a non-commissioned officer or private, is subject to military law, a dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act

NOTE

1 *Except so far as such person enlists* For the offence of fraudulent enlistment, see s 13, for that of unauthorised enlistment, see ss 32, 33, and 99

2 *Except so far as the said provisions* This refers, *e g*, to the application of the procedure for enlistment to enlistment into the Territorial Army, T R F Act, s 10

3 *Billeting and impressment of carriages* See Part III of the Act

4 If a sheriff is an officer of the Territorial Army at the time when his corps is embodied, he is discharged from performing personally the office of sheriff, and the under sheriff is to perform the duty (T R F Act, s 23 (3))

5 The seat of a member of Parliament is not vacated by the acceptance of a commission in the Territorial Army, and a person in the Territorial Army is not liable to any punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time he is returning from such election A person in the Territorial Army cannot be compelled to serve as a peace officer, or as a parish officer (T R F Act, s 25 (4)) As to an officer or man of the Territorial Army being exempt from serving on any jury, see Ch XII, para 9, and J A Regs 480–488

Special provisions as to warrant officers

182 The provisions of this Act shall apply to a warrant officer[1] in like manner as if he were a non-commissioned officer,[2] subject nevertheless (in addition to the modifications for a non-commissioned officer) to the following modifications —

(1) He shall not be punished[3] by his commanding officer[4] nor sentenced by a district court-martial to any punishment not in this section mentioned and

(2) He may be sentenced—

(*a*) by a district court-martial[5] to be reprimanded or severely reprimanded, or to such forfeitures, fines and stoppages as are allowed by this Act, and, either in addition to or in substitution for any such punishment, to be dismissed from the service, or to be reduced to the bottom or any other place in the list of the rank which he holds, or to be reduced to an inferior class of warrant officer (if any), or to be reduced to a lower grade, or if he was originally enlisted as a soldier, but not otherwise, to the ranks, or

(*b*) by any court-martial having power to try him, other than a district court-martial, to any punishment which under this section a district court-martial has power to award, either in addition to or in substitution for any other punishment, or

(*c*) to the punishments prescribed in that behalf under section forty-seven of this Act by the authorities referred to in that section

(3) A warrant officer reduced to the ranks or remanded to regimental duty in the rank of private shall not be required to serve in the ranks as a soldier

Part V. — ss. 182, 183

(4) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

NOTE

1 This section makes the Act apply, subject to certain modifications, to warrant officers as if they were N C Os Warrant officers cannot be summarily punished by a C O See, however, s 47, with regard to summary disposal of offences committed by warrant officers

2 The Army Council and certain other specified authorities can reduce a warrant officer under s 183 (2) as applied by this section If, however, 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

3 A private soldier or N C O who holds the "acting" rank of warrant officer, class I or class II, may be reverted to his permanent rank by his C O for an offence or otherwise

A warrant officer, class II, who holds the acting rank of warrant officer, class I, may, with the sanction of an officer not below the rank of brigadier, be reverted to his permanent rank by his C O, but not by way of punishment for an offence See K R 273

4 In this and the next section, the commanding officer is the commanding officer as defined by R P 129 See K R 526

5 A district court martial can only sentence a warrant officer to the punishments mentioned in para (*a*), but a general or field general court martial can award any of the punishments so mentioned, either in addition to, or in substitution for, any punishment which they can award under their ordinary powers See note 9 to s 44

Special provisions as to non commissioned officer

183 In the application of this Act to a non-commissioned officer[1] the following modifications shall apply —

(1) The obligation[2] on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness

(2) The Army Council, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, and on active service the officer commanding-in-chief in the field, and any general officer or brigadier he or the Army Council may appoint, may reduce[3] any non-commissioned officer to any lower grade or to the ranks [4]

(3) A non-commissioned officer may, by the sentence of a court-martial, be ordered to forfeit seniority of rank[5] or be reduced[3] to any lower grade or to the ranks,[6] either in addition to or without any other punishment, in respect of an offence

(4) A non-commissioned officer sentenced by court-martial to penal servitude, field punishment, imprisonment or detention shall be deemed[7] to be reduced to the ranks

Provided that—

(*a*) An instructor, Army Educational Corps shall not be liable to be reduced to the ranks (unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer), but may nevertheless be sentenced by a court-martial to penal servitude, imprisonment or detention[8] or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment shall be deemed to be dismissed, but

(*b*) The Army Council, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, may dismiss an instructor, Army Educational Corps, Part V — ss 183, 184

(*c*) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert[3] to his permanent grade as a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks [9]

NOTE

1 *Non-commissioned officer* See definition in s 190 (5)

2 *Obligation* See s 46 (3)

3 Paras (2), (3), and proviso (*c*) Except in India or on active service a N C O can only be reduced by the Army Council or by sentence of a court-martial, but inasmuch as the term 'non-commissioned officer" includes acting N C O (see s 190 (5)), it is provided by proviso (*c*) that a soldier having acting rank only may be ordered by his C O , for an offence or for any other cause , to revert to his permanent grade, or, if he has no permanent grade as N C O , to the ranks As to reduction of N C Os convicted by the civil power, see K R , 573 As to reduction of a N C O removed from an appointment, see K R , 274

4 A warrant officer or N C O reduced under para (2) cannot claim a trial by court martial

When a N C O is reduced to the ranks under para (2), the date from which the reduction is to take effect should be specified in the order See K R 276

5 *Ordered to forfeit seniority of rank* See note 12 to s 44

6 Para (3) must be read in conjunction with K R 255, defining what are ranks Lance and acting rank is a matter to be dealt with entirely by the C O , and not being legally a rank under the K R is not cognisable in the sentence of a court martial Therefore a sentence of reduction from or to lance rank, *e g* , from or to the rank of lance sergeant or lance corporal, is inoperative But a lance corporal, being a N C O , loses his lance rank under para (4) upon being sentenced to any of the punishments therein mentioned

Though a sentence of reduction from or to acting or lance rank is inoperative, nevertheless certain other punishments peculiar to a N C O may be awarded to a soldier holding such appointments, *i e* , reprimand or severe reprimand See s 44 (*mm*)

7 Although under this paragraph a N C O holding substantive rank, when sentenced to penal servitude, imprisonment, detention, or field punishment, is, *ipso facto*, reduced to the ranks, it is desirable to specify the reduction in the sentence See R P , App II, p 758

8 This proviso allows an instructor, Army Educational Corps, to be sentenced to penal servitude, imprisonment, or detention, although he cannot be reduced to the ranks unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer It does not of course prevent the infliction of any less punishment than detention

9 When an acting N C O has been punished by court martial for an offence, and such punishment does not involve reduction or reversion, his C O can nevertheless revert him to his permanent grade, not as a further punishment, but because the proceedings show him to be unfit to hold his appointment

184. In the application of this Act to persons who do not belong to His Majesty's forces,[1] the following modifications shall be made — **Special provisions as to application of Act to persons not belonging to His Majesty's forces**

(1) Where an offence has been committed by any person subject to military law who does not belong to His Majesty's forces, such persons may be tried by any

Part V

ss 184, 184A

description of court-martial convened by an officer authorised to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried, and on conviction dealt with and punished accordingly

(2) Any person subject to military law who does not belong to His Majesty's forces shall, for the purposes of this Act relating to offences,[2] be deemed to be under the command of the commanding officer of the corps or portion of a corps (if any) to which he is attached, and if he is not attached to any corps or a portion of a corps under the command of any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said general or other officer commanding but such person shall not be liable to be punished by a commanding officer

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank 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

NOTE

1 This section provides for the trial by court martial of a person who does not belong to either the regular or the auxiliary forces, but who is subject to military law under either s 175 (7) and (8) or s 176 (9) and (10)

2 This paragraph has reference to certain offences, see ss 7 (4), 14 (2), 15 (3), and also to the investigation by the commanding officer, see ss 45 and 46, see also s 49 (field general court martial), and R P 129

Relations between military and naval and air forces acting together

184A[1]—(1) Where an officer or petty officer in the navy is a member of a body of His Majesty's naval forces acting with or is attached to any body of His Majesty's military forces under such conditions as may be prescribed[2] by regulations made by the Admiralty and Army Council, then, for the purposes of command and discipline, and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's military forces as aforesaid, be treated and have all such powers (other than powers of punishment) as if he were a military officer or non-commissioned officer as the case may be

(1A) Where an officer or non-commissioned officer of the air force is a member of a body of His Majesty's air force acting with any body of His Majesty's military forces under such conditions as may be prescribed[2] by regulations made by the Army Council and the Air Council, then, for the purposes of command and discipline, and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's military forces as aforesaid, be treated, and have all such powers (other than powers of punishment), as if he were a military officer or non-commissioned officer, as the case may be

Provided[3] that under regulations made by the Army Council and Air Council the officers and airmen of a body of the air force

acting with any body of His Majesty's military forces on active service, or any such officers or airmen, may, in such manner and in such circumstances, and subject to such conditions as may be provided by or under those regulations, be made subject to military law, and in such case they shall be subject thereto in like manner as if they were officers and airmen attached to the Army

(2) Where any officer or soldier is a member of a body of His Majesty's military forces acting with or is attached to any body of His Majesty's naval forces under such conditions as may be prescribed by regulations made by the Army Council and the Admiralty, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and petty officers of such naval body shall, in relation to him, be treated and have all such powers (other than powers of punishment) as if they were military officers or non-commissioned officers

(2A) Where any officer or soldier is a member of His Majesty's military forces acting with any body of His Majesty's air force under such conditions as may be prescribed by regulations made by the Army Council and the Air Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and non-commissioned officers of such body of the air force shall, in relation to him, be treated, and have all such powers (other than powers of punishment), as if they were military officers or non-commissioned officers

(3) The relative rank[4] of naval and military and air force officers, petty officers, and non-commissioned officers shall, for the purposes of this section, be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force

NOTE

1 This section was introduced by the Army (Amendment) Act, 1915, and additions have since been made

The section, and those below mentioned provide for the powers of command and discipline mutually exercisable by and over officers and other ranks of the various services where bodies of the Army and Navy or of the Army and Air Force are acting together

The section must be read in conjunction with s 90A of the Naval Discipline Act or s 184A of the Air Force Act, as the case may be, which will be found on pp 809, 813-4 The effect of the combined sections is that where personnel of the Army and of the Navy, or Air Force, are acting together and the "prescribed conditions" are fulfilled, then (in brief) —

(*a*) The officers and petty officers of the naval contingent, or the officers and N C Os of the Air Force, as the case may be, have the same powers of command and discipline (but not of punishment) over military officers and men as they would have if they were themselves military officers and N C Os of ranks corresponding to their own, conversely—

(*b*) Military officers and N C Os have similar powers over air force personnel, and military officers and N C Os not below the rank of serjeant have similar powers over naval personnel

2 The "prescribed conditions" at present in force are set out on pp 809–810 and 813–817.

3 The proviso to subs (1A) applies only as between the military and air forces Under the proviso, personnel of a body of the Air Force serving with a body of the military forces on active service may be made subject to military law as if they were officers and airmen *attached* to the Army, and conversely under the Air Force Act

4 A table of relative ranks will be found in K R 878

Part V

Saving Provisions.

ss 185–187

Special provisions as to prisoners and prisons in Ireland

185 All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that Board in the manner and subject to the regulations in and under which the jurisdiction and powers of that board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such Board

NOTE

The Government of Ireland (Adaptation of Enactments) (No 3) Order, 1922, provides that this Section shall not apply to Northern Ireland, and that in lieu thereof the following provision shall have effect —

"The jurisdiction and powers of the Secretary of State under the Army Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall extend to Northern Ireland, but shall be exercised only subject to the approval of the Ministry of Home Affairs for Northern Ireland"

As regards the Irish Free State, see note 10 to s 190

Saving of Naval Discipline Act as to forces when on board His Majesty's ships

186 Nothing in this Act shall affect the application of the Naval Discipline Act or any Order in Council made thereunder, to any of His Majesty's forces when embarked on board any ship commissioned by His Majesty, and the auxiliary forces shall be deemed to be part of His Majesty's forces within the meaning of that Act

NOTE

By s 88 of the Naval Discipline Act, His Majesty's land and air forces when embarked on board any of His Majesty's ships shall be subject to the provisions of that Act to such extent and under such regulations as His Majesty shall by Order in Council direct The Order in Council now in force will be found at p 818 *et seq*

See also notes to s 188

Definitions

Application of Act to Channel Islands and Isle of Man

187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom,[1] subject to the following modifications —

(1) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man

(2) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude, imprisonment or detention, and to prisons and detention barracks, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude, imprisonment or detention, passed in any of those islands shall be deemed to have been passed in a colony[2]

(3) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies.

(4) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony

Part V
—
ss
187–189

NOTE

1 Ordinarily, the term "United Kingdom" does not include either the Channel Islands or the Isle of Man
The effect of para (1) is to exclude those islands from the operation of Part III of the Act (ss 102–121)
2 The effect of this is to require persons sentenced to penal servitude, imprisonment, or detention in the Channel Islands or Isle of Man to be brought to the United Kingdom under the same circumstances as when they are sentenced in a colony See ss 59 and 64

Application of Act in relation to mandated territories

187A. This Act shall apply in relation to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty in like manner as it applies in relation to a British Protectorate

Application of Act to ships

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any 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

Army courts martial are not held on board His Majesty's ships (s 186), but by virtue of this section, when soldiers are embarked on a ship not commissioned by His Majesty, an officer holding a warrant to convene courts-martial at the place of such embarkation will be able to convene a court-martial on board the ship, and for this purpose a district court martial warrant is given before sailing to the officer in command (K R 1091) If a soldier is tried on board the ship for an offence committed either before embarkation or on board, the sentence, if not confirmed on board, can be confirmed at the place of disembarkation by the officer who would have had authority to confirm it if the court martial had been convened and the trial held at that place, and it can be executed there
As to troops on board a ship being "on active service" even before actual departure for the area of operations, see note 1 to s 189
Where troops on board are on active service, their C O can also (without any warrant) convene a field general court-martial (s 49)

Interpretation of term "on active service"

189.—(1) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of[1] a force which is engaged in operations against the enemy or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country

(2) Where the governor of a colony[2] in which any of His Majesty's forces are serving, or if the forces are serving out of His Majesty's dominions, the general officer or brigadier commanding such forces, declares[3] at any time or times that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the

Part V — s 189

forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration do not exceed three months from the date thereof

(3) If at any time during the said period the governor or general officer or brigadier for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service

(4) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer or brigadier making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State

(5) The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect

(6) Where any such forces so serving out of His Majesty's Dominions are under the command of an air officer the powers exercisable under this section by a general officer or brigadier shall be exercisable by such air officer, and this section shall apply accordingly

NOTE

1 Even before embarkation troops under orders to proceed to the seat of war are attached to, or form part of, a force which is engaged in operations against the enemy, and therefore, under s 188, can, when on board a transport *en route* for the seat of war, be considered as on active service

2 For definition of *colony*, see s 190 (23)

3 It will be observed that the power given by this section to anticipate, or prolong, as it were, the period of active service is given to the governor in a colony, and to the general officer or brigadier when out of the King's dominions (or to an air officer when in command of the forces) The declaration of the governor must be by proclamation in the official gazette, but it does not take effect as regards the forces until the declaration has been published in general orders On such publication the troops will be deemed to be on active service, although active service, as defined by the Act, has not actually begun or has ended

190. In this Act, if not inconsistent with the context, the following expressions have the meanings[1] hereinafter respectively assigned to them, that is to say,

Interpretation of terms,

(1) The expression "Secretary of State" means one of His Majesty's Principal Secretaries of State

(2) The expression "Lord Lieutenant of Ireland" includes the lords justices or other chief governor or governors of Ireland

(3) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief His Majesty's forces for the time being

(4) The expression "officer"[2] means an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof, it also includes a person who, by virtue of his commission, is appointed to any department, or corps of His Majesty's forces, or of any arm, branch, or part thereof, it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's said forces, or of any arm, branch, or part thereof, it also includes any officer of His Majesty's naval or air forces who is for the time being subject to military law

Officers holding honorary commissions are officers within the meaning of this Act, subject to the exceptions in this Act mentioned

(5) The expression "non-commissioned officer" includes an acting non-commissioned officer, but save as is in this Act mentioned does not include a warrant officer

(6) The expression "soldier"[3] does not include an officer as defined by this Act, but, with the modifications[4] in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer and a non-commissioned officer, and every person subject to military law during the time that he is so subject

(7) The expression "superior officer," when used in relation to a soldier, includes a warrant officer, and also includes a non-commissioned officer as above defined

(8) The expressions "regular forces"[5] and "His Majesty's regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to His Majesty in every part of the world, or in any specified part of the world, including soldiers of the reserve forces when called out on permanent service, and including, subject to the modifications in this Act mentioned, the Royal Marines and His Majesty's Indian forces, and the Royal Malta Artillery

(9) The expression "reserve forces" means the army reserve force including the militia

(Paragraphs (10) and (11) were repealed by the Reserve Forces Act, 1882 (45 & 46 Vict c 48), and that Act enacted (s 28) that in the Army Act the expression "army reserve force" should mean the army reserve under the Reserve Forces Act, 1882.)

Part V — s. 190

(12) The expression "auxiliary forces" means the territorial army and the volunteers

(Paragraph (13) repealed by T A & M Act, 1921)

(Paragraph (14) repealed by A & A F (A) Act, 1927)

(15) The expression "corps"[6] means any such body of His Majesty's military forces as may from time to time be declared by Royal Warrant to be a corps for the purposes of this Act, so, however, that the Royal Marine forces (in this Act referred to as the Royal Marines) shall be formed into a separate corps, and where a corps comprises units of the territorial army belonging to two or more counties, the corps shall, for the purposes of section nine of the Territorial and Reserve Forces Act, 1907, be deemed to be a corps for each such county

(16) The expression "battalion" in the application of this Act to cavalry, artillery, or engineers shall be construed to mean regiment, brigade, or other body into which His Majesty may have been pleased to divide such cavalry, artillery, or engineers

(17) The expression "regimental" means connected with a corps, or with any battalion or other subdivision of a corps

(18) The expression "decoration" means any medal, clasp, good-conduct badge, or decoration

(19) The expression "military reward" means any gratuity[7] or annuity for long service or good conduct, it also includes any good-conduct pay or pension and any other military pecuniary reward

(20) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates

(21) The expression "India"[8] means British India, together with any territories of any native prince or chief under the suzerainty of His Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India, and the expression "British India" means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India

(22) The expression "native of India" means a person triable and punishable under Indian military law as defined by this Act

(23) The expression "colony"[9] means any part of His Majesty's dominions exclusive of the British Islands[10] and of British India, and includes Cyprus, and any British protectorate and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony

(24) The expression " foreign country "[11] means any place which is not situate in the United Kingdom, a colony, or India, as above defined, and is not on the high seas

(25) The expression " beyond the seas "[12] means out of the United Kingdom, the Channel Islands, and Isle of Man, and the expression " station beyond the seas " includes any place where any of His Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man

(26) The expression " governor-general " in its application to India means the Governor-General of India in Council

(27) The expression " governor " in its application to a colony means the Governor-General, Governor, High Commissioner, or Commissioner, and includes the lieutenant-governor or other officer administering the government of the colony

(28) The expressions " oath " and " swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath

(29) The expression " superior court," in the United Kingdom means His Majesty's High Court of Justice in England, the Court of Session in Scotland, and His Majesty's High Court of Justice at Dublin

(30) The expression " supreme court " means, as regards India, any high court or any chief court, and the expression " court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England

(31) The expression " civil court " means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction

(32) The expression " prescribed " means prescribed by any rules of procedure made in pursuance of this Act

(33) The expression " misdemeanor " as far as regards Scotland, means a crime or offence, and so far as regards India, means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court

(34) The expression " Summary Jurisdiction Acts "[13]— "Summary Jurisdiction Acts "

(*a*) As regards England, has the same meaning as in the Summary Jurisdiction Act, 1879,

(*b*) As regards Scotland, means the Summary Procedure Act, 1864,[13] and any Acts amending the same, and

(*c*) As regards Ireland, means within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same

Part V.

s 190.

"Court of summary jurisdiction

(35) The expression "court of summary jurisdiction "[13]—

(*a*) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879, and

(*b*) As regards Ireland means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to, and

(*c*) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court, or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1864,[13] and

(*d*) As regards India, a colony, the Channel Islands and Isle of Man, means the court, justices or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable

(36) The expression "court of law" includes a court of summary jurisdiction

(37) The expression "county court judge" includes—

(*a*) In the case of Scotland, the sheriff or sheriff substitute, and

(*b*) In the case of Ireland, the judge of the Civil Bill Court

(38) The expression "constable" includes a high constable and a commissioner, inspector or other officer of police

(39) The expression "police authority" means the commissioner, commissioners, justices, watch committee or other authority having the control of a police force

(40) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description, used for burden or draught or for carrying persons in like manner as if such beast were included in the expression "horse"

(40A) The expression "carriage" means a vehicle for carriage or haulage other than one specially constructed for use on rails

(41) "Airman" has the same meaning as in the Air Force Act

NOTE

1 It may be observed that under the Interpretation Act, 1889, in the construction of every Act of Parliament, unless the contrary intention appears, masculine words include the feminine, the plural includes the singular, and the singular includes the plural, the word "month" means a calendar month, and "oath," "affidavit," and "swear," include affirmation, declaration, and affirm or declare This enactment, however, does not apply to documents not Acts of Parliament, and therefore in any such document, *e g*, a warrant, "oath" will not include affirmation, &c, but under R P 134 (C) "month" in a sentence of imprisonment, detention, or field punishment, means, unless the contrary is expressed, a calendar month Throughout the Act a year means twelve calendar months and may be held to commence on any day in any month

2 *Officer* This includes half-pay and every other description of officer, though not subject to military law under s 175.

A woman cannot be an "officer" within the meaning of the Act Any honorary rank conferred even though accompanied by a commission, is a mere matter of honour and dignity She might be "liable as" an officer

3 *Soldier* This expression practically includes all persons subject to military law other than officers

A warrant officer is in general a "soldier" (para (6)), but is not a "non-commissioned officer" (para (5))

4 *Modifications* See ss 182, 183

5 *Regular Forces* This definition includes the Marines The distinction between the regular and other forces is that the regular forces are liable to serve *continuously* in every part of the world, or in any specified part of the world Officers of the Regular Army Reserve of Officers do not, therefore, fall within this definition, whether called to army service or not Reservists become soldiers of the regular forces when called out on permanent service When called out for training and exercise, or for duty in aid of the civil power, they remain reservists but are subject to military law

6 *Corps* As the corps is the unit for the purposes of enlistment and some other purposes under the Act, a power is given to His Majesty by warrant to declare any portion of the forces to be a corps for the purposes of the Act See the Warrant now in force (Army Order 49 of 1926 as amended by subsequent Army Orders), and Ch XI, paras 3–5

7 A war gratuity is thus a "military reward"

8 *India* It will be observed that "India," for the purposes of the Act, includes the dominions of Indian native princes as well as "British India"—that is to say, all territories and places in H M 's dominions governed through the Governor-General of India

9 *Colony* India is not treated as a colony for the purposes of the Act As regards the Irish Free State, see note 10 below

The reference to a central legislature refers to such a case as Canada, where the Dominion Parliament assembled at Ottawa is the central legislature, and the provincial Parliaments for the provinces of Quebec, Ontario, &c , are local legislatures Under the definition, the whole of Canada being under one central legislature will be one colony, and the provinces of Quebec, Ontario, &c , will be parts of that colony, and not separate colonies, for the purposes of the Act Similarly the whole of the Commonwealth of Australia (see 63 & 64 Vict c 12) will be one colony, and Victoria, New South Wales, &c , will not be separate colonies for the purposes of the Act

10 The term "British Islands" means the United Kingdom, the Channel Islands and the Isle of Man (Interpretation Act, 1889, s 18 (1))

The term "United Kingdom" means ordinarily England, Wales, Scotland and Northern Ireland, and neighbouring islands other than the Channel Islands and the Isle of Man , but for the purposes of this Act it includes the Channel Islands and the Isle of Man, with the exception that (*a*) Part III (billeting and impressment of carriages) has no application to them , and (*b*) they are treated as "colonies" for the purposes of provisions as to prisons and detention barracks, and execution of sentences of penal servitude, imprisonment or detention (s 187)

Irish Free State—By the provisions of the Irish Free State (Constitution) Act, 1922, the Irish Free State was granted the same constitutional status in the British Empire as Canada, Australia, New Zealand and the Union of South Africa, and subject to certain provisions (which do not affect the Army Act), the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise is that of the Dominion of Canada

An Order in Council of 27th March, 1923 (entitled The Irish Free State (Consequential Adaptation of Enactments) Order, 1923), enacted that, subject to certain provisions (which do not affect the Army Act), references in any enactment passed *before* the establishment of the Irish Free State to the "United Kingdom," "United Kingdom of Great Britain and Ireland," "Great Britain and Ireland," "Great Britain or Ireland" "British Islands," or "Ireland," shall, in the application of the enactment to any part of Great Britain and Ireland other than the Irish Free State, be construed as exclusive of the Irish Free State

The position of the Irish Free State in relation to the Army Act is therefore as follows —

> The Army Act applies to the Irish Free State in exactly the same manner as it applies to the Dominion of Canada That is, for the purposes of the Act the Irish Free State is a "colony" and is "beyond the seas" It is not part of the "United Kingdom," or "Ireland," and

Part V

references in the Act to "Ireland" and the "United Kingdom must be construed as *exclusive* of the Irish Free State

s 190.

11 *Foreign country* This includes the whole world, with the exception of the United Kingdom, India, and the colonies as defined in s 190 (23) See also s 187A as to mandated territories

12 *Beyond the seas* It will be observed that the Channel Islands and the Isle of Man, though for certain purposes treated as colonies (see s 187), are treated as not being beyond the seas As regards the Irish Free State, see note 10 above

13 Paras (34) and (35) See also the definitions in the Interpretation Act, 1889, s 13 (6) and following The Summary Procedure (Scotland) Act, 1864, was repealed and replaced by the Summary Jurisdiction (Scotland) Act, 1908

Part VI

PART VI

COMMENCEMENT AND APPLICATION OF ACT AND REPEAL

[*Part VI* (*ss* 191–193) *and the Fifth Schedule are repealed*]

SCHEDULES.

Section 96

FIRST SCHEDULE

Form of Oath to be taken by a Master whose Apprentice has absconded, and of Justice's Certificate annexed

I *A B*, of do make oath, that I am by trade a and that was bound to serve as an apprentice to me in the said trade, by indenture dated the day of for the term of years, and that the said did on or about the day of abscond and quit my service without my consent, and that to the best of my knowledge and belief the said is aged about years Witness my hand at the day of one thousand nine hundred and

(Signed) *A B*

I hereby certify that the foregoing affidavit was sworn before me at this day of one thousand nine hundred and

(Signed) *C D*, Justice of the Peace for

Form of Oath to be taken by a Master whose indentured Labourer in India or a Colony has absconded, and of Justice's Certificate annexed

I of do make oath, that was bound to me to serve as an indentured labourer by indenture dated the day of for the term of years, and that the said did on or about the day of abscond and quit my service without my consent Witness my hand at the day of one thousand nine hundred and

(Signed) *A B*

I hereby certify, *&c* [*as for apprentice*]

SECOND SCHEDULE

Sections 106, 108

BILLETING

PART I

Accommodation to be Furnished by Keeper of Victualling House

A keeper of a victualling house on whom any officer, soldier, or horse is billeted—

(1) Shall furnish the officer and soldier with lodging and attendance, and

(2) Shall, if required by the soldier, furnish him for every day of the march, and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with breakfast, hot dinner, and supper on each day, such meals to consist of such quantities of food and drink as may from time to time be fixed by His Majesty's Regulations, not exceeding—

(*a*) For breakfast, five ounces of bread, one pint of tea with milk and sugar, four ounces of bacon,

(*b*) For hot dinner, twelve ounces of meat previous to being dressed, six ounces of bread, eight ounces of potatoes or other vegetables,

(*c*) For supper, five ounces of bread, one pint of tea with milk and sugar, two ounces of cheese, and

(3) When a soldier is not so entitled to be furnished with "a meal," shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing and eating his meat, and

(4) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse

For the purposes of this part of this Schedule the expression "furnished with lodging" shall include the provision of a separate bed for each officer and soldier

PART II

Regulations as to Billets

(1) When the troops are on the march the billets given shall, except in case of necessity or of an order of a justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route

(2) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for the more distant victualling houses

(3) Except in case of necessity, where horses are billeted, each man and his horse shall be billeted on the same victualling house

(4) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number

(5) Except in case of necessity, a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards

(6) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved

(7) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment

(8) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house

[*Third Schedule repealed by A & 4 F (A) Act*, 1925]

FOURTH SCHEDULE

Section 154

FORM OF DESCRIPTIVE RETURN

DESCRIPTIVE RETURN of who* at on the day of , and was committed to confinement at on the day of as a deserter [*or* absentee without leave] from the Bn of the Regiment of

* After the word "who," to be inserted either the words "was apprehended" or "surrendered himself" as the case may be

Age

Height Feet Inches

Complexion

Hair

Eyes

Marks

In uniform or plain clothes

Probable date and place of attestation - - -

Probable date of desertion or beginning of absence, and from what place - - - - - - - -

Name, occupation, and address of the person by whom or through whose means the deserter [or absentee without leave] was apprehended and secured †

Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner and upon what grounds The fullest possible details to be given

I do hereby certify, that the prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he‡ the before mentioned corps, and I recommended§ for a reward of *s*

-Signature
-Residence } *of committing*
-Post Town } *magistrate*
-Signature of prisoner
-Signature of informant

Or, where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming

I hereby certify that the above named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence from a Secretary of State

———————*Signature*
———————*-Residence*
——————— *Post Town*

---

† It is important for the public service and for the interest of the deserter or absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the justice in his own handwriting, or, under his direction, by his clerk

‡ Insert *as* or *as not a deserter* or *absentee without leave*, from or belongs or does not belong to as the case may be

§ The justice will insert the name of the person to whom the reward is due, and the amount [5*s*, 10*s*, 15*s*, or 20*s*] which, in his opinion, should be granted in this particular case

[*Fifth Schedule repealed by* 56 & 57 *Vict c* 54]

SIXTH SCHEDULE

Provisions as to determining amount to be paid for Articles requisitioned

1 Subject to the provisions of this schedule an application to a county court judge for a certificate shall be made in manner provided by rules of court, and shall be heard by the judge, without a jury, and his decision shall not be subject to appeal

2 Subject to the provisions of this schedule, and to rules of court, the judge shall on such application act in accordance with the law regulating, and shall have the powers attaching to, the exercise of his ordinary jurisdiction

3 In the case of impressment for hire, the amount fixed by the certificate shall be such amount as appears to the county court judge to be a fair rate of hire for the class of article in the district in which it is impressed or over which it is required to work In the case of a requisition for purchase the amount fixed by the certificate shall be such amount as appears to the county court judge to be the fair market value of the article requisitioned on the day on which it was required to be furnished as between a willing buyer and a willing seller Where the owner of a carriage or horse has been required to deliver it at a distance from his premises the amount shall include such sum as the judge may consider reasonable to cover the cost of such delivery

4 No court fees shall be payable on the application, but the judge may, if he thinks fit, order either party to pay such sum as he may consider proper by way of costs to the other party, which sum shall be added to or deducted from the amount fixed by the county court judge as the value of the article requisitioned, and the amount to be included in the certificate shall be adjusted accordingly

5 If the amount already paid by the Army Council exceeds the amount specified in the certificate, the county court judge shall certify the amount of the excess and shall order the amount so certified to be paid to the Army Council, which order shall be enforceable in like manner as a judgment of a county court

RULES OF PROCEDURE, 1926

(Including amendments published up to 31st December, 1928)

[The Rules of Procedure, 1926, were issued as S R O 989/1926, and the subsequent amendments as S R O 558/1927 and S R O 505/1928, these, however, do not contain the notes to the Rules which are shown herein, or the Specimen Charges (pp 715–735), and Memoranda (pp 763–770)]

PART I —ARREST AND TRIAL

Arrest

1 Report of delay of trial under Army Act, s 45

Power of Commanding Officer

2 Duty of commanding officer as to investigation of charge for offence
3 Hearing of charge
4 Disposal of the charge or adjournment for taking down the summary of evidence
5 Remand of accused
6 Summary award of punishment by commanding officer
7 Right of trial by court-martial in lieu of summary award
8 Procedure on charge against officer

Disposal of Charge under Army Act, s 47

9 Summary disposal of charge against officer or warrant officer

Revision of Summary Punishments

10 Revision of summary punishments

Framing Charges

11 Charge-sheet and charge
12 Commencement and validity of charge-sheet
13 Contents of charge

Preparation for Defence by Accused Person

14 Rights of accused to prepare defence
15 Information of charge and delivery of list of officers to accused
16 Joint trial of several accused persons

Convening of Court-Martial

17 Procedure of officer on convening court-martial
18 Adjournment for insufficient number of officers
19 Ineligibility and disqualification of officers for court-martial
20 Corps of members of court-martial
21 Rank of members of court-martial in certain cases

Procedure at Trial —Constitution of Court

22 Inquiry by court as to legal constitution
23 Inquiry by court as to amenability of accused and validity of charge

Procedure at Trial —Challenge and Swearing

24 Appearance of accused and prosecutor
25 Proceedings for challenge of members of court
26 Swearing of members
27 Swearing of judge-advocate and other persons
28 Substitution of solemn declaration for oath
29 Form of oath in case of trial of several accused persons
30 Swearing of person according to the form of his religion

Prosecution, Defence, and Summing-up

31 Arraignment of accused
32 Objection by accused to charge
33 Amendment of charge
34 Special plea to the jurisdiction
35 General plea of " Guilty " or " Not Guilty "
36 Plea in bar
37 Procedure after plea of " Guilty "
38 Withdrawal of plea of " Not Guilty "
39 Plea of " Not Guilty," application for adjournment, and case for the prosecution
40 Procedure where no witnesses to facts (except accused) called for defence
41 Procedure where witnesses called for defence
42 Summing-up by judge-advocate

Finding and Sentence

43 Consideration of finding
44 Form and record of finding
45 Procedure on acquittal on every or any charge
46 Procedure on conviction
47 Mode of forfeiting seniority of rank
48 Sentence
49 Recommendation to mercy
50. Signing and transmission of proceedings

Confirmation and Revision

51 Procedure of confirming officer
52 Procedure on revision
53 Promulgation
54 Mitigation of sentence on partial confirmation
55 Confirmation notwithstanding informality in or excess of punishment
56 Confirmation notwithstanding technical or other deviation

Insanity

57 Provisions as to finding of insanity and custody of insane person

General Provisions as to Proceedings of Court

58 Seating of members
59 Responsibility of president
60 Power of court over address of prosecutor and accused
61 Procedure on trial of accused persons together

62 Separate charge-sheets
63 Sitting in closed court
64 Time for trial
65 Continuity of trial and adjournment of court
66 Suspension of trial
67 Proceeding on death or illness of accused
68 Presence throughout of all members of court
69 Taking of opinions of members of court
70 Procedure on incidental question
71 Swearing of court to try several accused persons
72 Swearing of interpreter and shorthand writer

General Provisions as to Witnesses and Evidence

73 Evidence to be according to rules in English courts
74 Judicial notice
75 Calling of all prosecutor's witnesses
76 Calling of witness whose evidence is not contained in summary or abstract
77 List of witnesses of accused
78 Procuring attendance of witnesses
79 Adjournment of court for non-attendance of witnesses
80 Evidence of accused and his wife
81 Withdrawal of witnesses from court
82 Swearing of witnesses
83 Mode of questioning witnesses
84 Examination and cross-examination
85 Questions to witness by members of court or judge-advocate
86 Recalling of witnesses, and calling of witnesses in reply

Defending Officer, Friend of Accused, and Counsel

87 Defending officer and friend of accused
88 Counsel allowed in certain courts-martial
89 Requirements for appearance of counsel
90 Counsel for prosecutor
91 Counsel for accused
92 General rules as to counsel
93 Qualification of counsel

Proceedings

94 Record in proceedings of transactions of court-martial.
95 Taking down of evidence and addresses
96 Custody and inspection of proceedings
97 Transmission of proceedings after finding
98 Preservation of proceedings
99 Rate of payment for copies of proceedings
100 Loss of proceedings

Judge-Advocate

101 Appointment of judge-advocate and disqualification.
102 Death, illness, or absence of judge-advocate
103 Powers and duties of judge-advocate

Exception from Rules

104 Suspension of rules on the ground of military exigencies or the necessities of discipline

Field General Court-Martial

105 Convening of field general court-martial
106 Composition of field general court-martial
107 As to field general court-martial where military exigencies occur
108 Charge
109 Trial of several accused persons
110 Challenge
111 Swearing of members, witnesses, &c.
112 Arraignment
113 Plea to jurisdiction
114 Witnesses and evidence
115 Defence
116 Procedure at trial
117 Acquittal
118 Sentence
119 General provisions as to votes and powers of court
120 Confirmation
121 Application of rules
122 Definitions
123 Evidence of opinion of convening and confirming officer

PART II.—MISCELLANEOUS

Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act

124 Courts of Inquiry

Regulations for Courts of Inquiry under Section 72 of the Army Act for the purpose of determining the Illegal Absence of Soldiers

125 Courts of inquiry as to illegal absence under Army Act, s 72

Explanation of "Prescribed" and "Commanding Officer"

126 Prescribed officers for the purposes of Army Act, ss 43, 57 and 73, and competent military authorities for the purposes of Army Act, ss 58, 60, 61, 64, 65 and 66
127 Prescribed procedure of court of inquest (India) under Army Act, s 134
128 Prescribed officer for competent military authority (Army Act, s 101)
129 Definition of "commanding officer"

Prisons and Detention Barracks Abroad

130 Committal and removal of soldiers under sentence abroad.

PART III —SUPPLEMENTAL

131 Exercise of powers vested in holder of military office
132 Cases unprovided for
133 Forms in appendices
134 Definitions
135 Construction of rules
136 Application of rules to Channel Islands and Isle of Man
137 Extent of application of rules
138 Short title
139. Commencement of rules.

FIRST APPENDIX.

Forms of Charges.

SECOND APPENDIX

Forms as to Courts-Martial

Forms of Summons to Witnesses

Forms of Oaths and Declarations

THIRD APPENDIX

Forms of Commitment

RULES OF PROCEDURE, 1926

(Including amendments published up to 31st December, 1928)

PART I.—ARREST AND TRIAL

Arrest

Report of delay of trial under Army Act s 45

1 The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under Section 45 of the Army Act, shall be made by means of a letter from the commanding officer of that officer or soldier reporting the necessity to the general or other officer to whom application would be made to convene a court-martial for the trial of that officer or soldier [1]

1 See generally as to rr 1–8, Ch IV, and K R , 533, *et seq*
This rule prescribes the manner in which the special report required by A A 45 is to be made A similar report must be furnished weekly until the accused is released or a court martial assembled, and on the receipt of every such report, the general or other officer to whom it is sent must satisfy himself as to the necessity for the continued retention of the accused in custody, K R , 537(*a*) As to mode of reporting, see r 135 (B) This special report is not required on active service

Power of Commanding Officer

Duty of commanding officer as to investigation of charge for offence

2. Every commanding officer[1] will take care that a person[2] under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of that person into custody is reported to him, without the charge being investigated,[3] 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 a period of forty-eight hours, and the reason thereof, shall be reported[4] by the commanding officer to the general or other officer to whom application would be made to convene a court-martial for the trial of the person charged

1 See r 129 and note A C O who unnecessarily detains a person in arrest or confinement, renders himself liable to a charge under A A 21 (1)
2 This rule applies to officers as well as soldiers
3 See A A 45 (5) This rule means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time As to exclusion of Sunday, Good Friday, and Christmas Day see r 135 (A)
4 The report should be made by letter (see r 135 (B)) 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, K R , 551

Hearing of charge

3 —(A) Every charge against a soldier will be heard[1] in the presence of the accused The accused will have full liberty to cross-examine any witness against him, and to call any witnesses[2] and make any statement in his defence On the application of the accused, he and his wife may be called as witnesses, subject to the provisions of Rule 80 [3]

(B) If the accused demands that the evidence against him be taken on oath, an oath will be administered by the investigating officer and taken by each witness in the same form and manner[4] as provided for a court-martial, or, in the case of a witness allowed before a court-martial to make a solemn declaration,[5] the like solemn declaration will be made before the investigating officer

1 As to the mode of conducting the investigation see Ch IV, paras 19–29, K R , 542–554 The Army Act and Rules do not require the investigation to be by the C O but make him responsible for the decision, A A 46 (1) The evidence is not taken in writing, and, therefore, in the case of a remand, must be taken in writing afterwards as directed by r 4 (C)

2 Police and other civilian witnesses cannot be compelled to attend before a C O but they can be compelled to attend at the taking of a summary of evidence (see A A 125 (3) and r 4 (H))

3 The last sentence of (A) was added after the passing of the Criminal Evidence Act, 1898 The accused had already the right under this rule to make a "statement," *i e* , to give unsworn evidence If (under (B)) he requires the witnesses "against" him to be sworn, any witnesses (including his wife) called by him should also be sworn, he himself may make an unsworn statement, or (either in addition to, or in lieu of, such a statement) may give evidence on oath In the latter case r 80 will apply to him

4 See r 82 and form on p 763

5 See A A 52 (4), r 82 (C), and form on p 763

Disposal of the charge or adjournment for taking down the summary of evidence

4 —(A) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act[1] has been committed, or if, in his discretion, he thinks that the charge ought not to be proceeded with [2]

(B) 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—

(i) dispose of the case summarily[3], or

(ii) refer the case to the proper superior military authority[4], or

(iii) adjourn the case for the purpose of having the evidence reduced to writing [5]

Provided that the commanding officer shall not dispose of a case summarily unless the accused is a soldier, or if the accused, being a soldier, has elected (under Section 46 of the Army Act) to be tried by a district court-martial

(C)[6] Where the case is so adjourned, 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[7] in the presence of the accused before the commanding officer or such officer as he directs

(D)[6] 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

(E)[6] The evidence of each witness when taken down, as provided in (C) and (D), 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 or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down

in writing, and may be given in evidence" Any statement or evidence of the accused will be taken down, but he will not be cross-examined upon it [8]

If the accused is remanded for trial by court-martial, no evidence will be admitted at his trial of any statement which he may have made, or evidence which he may have given, at the taking of the summary of evidence before such caution was addressed to him

(F)[6] If the commanding officer so directs, or if the accused so demands, the evidence of every such witness, whether for or against the accused, shall be taken on oath,[9] and the oath will be administered by the commanding officer, or by the officer before whom he directs the summary to be taken, in the same form and manner as provided for a court-martial,[10] or in the case of a witness allowed before a court-martial to make a solemn declaration,[11] the like declaration may be made

(G)[6] If a person cannot be compelled to attend as a witness, or if owing to the exigencies of the 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)[12] 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 provided that, if such person can be compelled to attend, the accused may demand that he shall attend for cross-examination

(H) 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 [13] The summons shall be in the form provided in the Second Appendix to these rules

1 Every offence which a person subject to military law can commit is an offence under the Army 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 A A 40 shall be proceeded with, the C O must consider whether the alleged offence is, or is not, to the prejudice of 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 A A 158 (1), and 161, the accused is liable to be proceeded against, see K R , 548 As to the limitations of time in respect of certain civil offences see r 36 (A) (iii) and note 4

2 The C O must dismiss the charge if there is no evidence of any offence under the Army Act, he must also dismiss it if the accused has been previously acquitted or convicted of the alleged offence (see A A 46 (7), 47 (5), 157, and 162 (6)) He may dismiss it if he considers, for example, 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

A C O , unless further evidence is required or the case is one of difficulty, should never delay for more than one day in deciding as to the disposal of a case

As to cases where sufficient evidence is not forthcoming at the investigation or a further offence is disclosed during the investigation, see K R , 551, 553

To make an entry against a man without punishment is a summary disposal and not a dismissal of the case

3 This course will be adopted by the C O (subject in the case of N C Os to K R , 558, 559) unless (*a*) he thinks that the case ought to be tried by court-martial, or (*b*) the accused elects to be tried by district court martial, or (*c*) the case is one which under K R 547 he is bound to refer to superior authority

In certain circumstances the C O is bound to deal summarily with an offence of drunkenness unless the accused elects trial by district court-martial (See A A. 46 (3))

4 This course will be adopted when the C O considers that the case should be disposed of summarily but he cannot, under K R , 547, so dispose of it

without reference to superior authority (See rr 134 (A), 135 (B), and K R , 616, 617)

5 This course will be adopted in any case other than those mentioned in notes 3 and 4 above

The final decision of the C O as to whether the case should be tried by court martial will only be made after he has considered the evidence which has been reduced into writing, *i e* , the summary of evidence (See r 5 (A) and note)

6 For power to dispense with paras (C), (D), (E), (F) and (G) see r 104

7 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 C O may direct another officer to take down the summary of evidence, but an officer who has given material evidence at the investigation must not be appointed for the purpose

The summary will be taken on oath if the C O so directs or if the accused so demands (see (F) and note 9 below)

The evidence (so far as it is relevant and admissible) of every witness at the investigation must be taken down unless the witness is absent on foreign service or some good reason renders it not reasonably practicable to call him The evidence of witnesses who did not give evidence at the investigation may also be taken for either prosecution or defence, so long as it appears to be relevant As provided in (D) the accused must be given full liberty to cross-examine the witnesses against him

8 The formal caution provided for in this paragraph must be given as soon as the evidence for the prosecution is closed

No statement or evidence by the accused can be admitted in evidence against him at his subsequent trial unless made or given after the formal caution

If it is necessary to take an additional summary, the accused must again be formally cautioned before he makes any further statement or gives any further evidence

The fact that the accused was duly cautioned should be recorded in the summary

The accused may make a statement not upon oath or, if he wishes, give evidence on oath, he may call witnesses on his behalf (including his wife) The statement or evidence of the accused and the evidence of his witnesses must be taken down, all hearsay and irrelevant matter being excluded The accused must not be cross-examined

9 The C O cannot direct the evidence of the accused to be taken on oath It rests entirely with the accused whether he will give sworn evidence or not and he may do so even if the witnesses against him are not sworn

10 See r 82 and form on p 763

11 See A A 52 (4), r 82 (C), and form on p 763

12 The certificate can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence

The accused has a right to demand the presence of the witness (unless he is not compellable) for purposes of cross examination, but in many cases the provisions of this paragraph will effect a saving of time and expense, *e g* , where a civilian witness is only required to give formal proof of a matter not really in dispute Such witness must, however, be in attendance at the trial As to calling at the trial of a witness whose evidence is not contained in the summary or abstract of evidence, see r 76

13 See A A 125 (3) and form of summons, p 761 See also r 78, note 5

Remand of accused

5 [1]—(A) The evidence and statement (if any) taken down in writing in pursuance of Rule 4 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer, who thereupon shall either—

(I) remand the accused for trial by court-martial, or

(II) refer the case to the proper superior military authority, or

(III) if he thinks it desirable, and the accused is a soldier and has not himself elected to be tried by a district court-martial, rehear the case and dispose of it summarily [2]

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay apply[3] to

the proper military authority to convene a court-martial Any delay in the reference to superior military authority should not ordinarily exceed thirty-six hours [4]

1 For power to dispense with this rule see r 104

2 The evidence in the summary may not correspond with that given upon the original investigation and the case may appear in a new aspect The C O may, therefore, if he has jurisdiction to do so, and the accused has not elected (under A A 46 (8)) to be tried by district court-martial decide to re hear the case and, if he thinks fit, dispose of it summarily He can dismiss the case on re-hearing it

3 For form of application for court martial, which must be signed by the officer in actual command of the unit to which the accused belongs, see p 794

See also memoranda for guidance of courts martial, p 763, *et seq*

If the accused is on detached duty, the C O detachment is for this purpose the O C unit, unless his powers are restricted under K R , 563 (*c*)

4 As to exclusion of Sunday, &c , in reckoning time, see r 135 (A)

Summary award of punishment by commanding officer

6.—(A) The term of detention when awarded by a commanding officer in days shall begin on the day of the award The term of detention when awarded by a commanding officer in hours shall begin at the hour when the soldier sentenced is received at the detention barrack or branch detention barrack to which he is committed, or if he has not been sooner received into the detention barrack or branch detention barrack, shall begin on the day after the day of the award at the hour fixed for the commitment and release of soldiers under sentence [1]

(B) When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase the punishment for that offence [2]

1 C Os must bear in mind the regulations as to summary award of punishments, K R 558–568, and as to drunkenness, K R , 574–580 See also Ch IV, paras 31–38

A C O will award his sentence, up to seven days, in hours, but if exceeding seven days, in days, K R , 561(*b*)(ii) In law (in the absence of special provision) there is no division of a day, and, therefore, however late in the day a soldier under sentence is committed, his term of detention will be reckoned to begin on the first minute of the day of the award But when the sentence is awarded in hours, the detention by virtue of this rule will not commence until the hour at which the soldier is received into the detention or branch detention barrack, or if he is not received into such barrack on the day following the date of the award, then it will commence at the hour fixed for the commitment of soldiers under sentence on the day after the day of the award This rule will, therefore, allow a C O where there is no accommodation in the detention barrack, to postpone the commitment of the soldier for one day, and to keep him in the guard detention room without his term of detention beginning to run, till the usual hour of commitment on the next day after the detention is awarded, whether Sunday or not (see r 135 (A)) If, however, he is kept longer in the guard detention room and is ultimately committed to a detention barrack, his term of detention will begin so to run, and if not committed to a detention barrack at all, the detention begins to run from the usual hour of commitment on the day of the award It must be recollected that a soldier's pay cannot be stopped after his having been awarded detention for any day on which he is in custody, before his detention begins to run under this rule

2 The award is considered final when the accused has been removed from the presence of the C O The C O can at any time diminish the punishment before its completion, though he cannot add to it

As to entry of C O's award see K R , 544, 545, 1630–1 As to revision of summary punishments see r 10

Right of trial by court martial in lieu of summary award

7.—(A) If a soldier is dealt with summarily by his commanding officer and the award or finding involves a forfeiture of pay, or (though such forfeiture is not involved) the award is not an award of a minor punishment,[1] and his commanding officer has omitted to ask him whether he desires to be dealt with summarily or to be tried by a district court-martial,[2] the soldier may, at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence, claim his right to be tried by a district court-martial [3]

(B) Except as mentioned in sub-section (8) of Section 46 of the Army Act and in this rule, a soldier has no right to claim a trial by court-martial

1 See K R , 558 (*b*), 560 (*b*)

2 A C O should never omit to ask this question which he is directed to put by A A 46 (8), but this paragraph provides for a possible omission to do so

3 See Ch V, para 79, and K R 652 (*c*) as to punishment in such a case

Procedure on charge against officer

8 [1]—(A) Where an officer is charged with an offence under the Army 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 Rules 3 and 4 in the case of a soldier [2]

(B) When an 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 14 (B) [3]

1 For power to dispense with observance of this rule owing to military exigencies, &c , see r 104

2 In the case of an officer, as in that of a soldier, the charge must come before his C O in order that he may determine whether the charge shall be dismissed, or the case referred to superior military authority for summary disposal under A A 47 or trial by court martial By this provision the C O can dispense with a formal and detailed investigation unless the accused officer demands one It does not preclude the C O 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 C O, he has no right under this rule to demand a court of inquiry

3 The convening officer will be responsible for the furnishing of this abstract which should not be too much in detail It should always be delivered to the accused even though the subject matter of the charge may previously have been investigated by a court of inquiry, and if a court of inquiry has been held, the officer may have a copy of its proceedings (See r 124 (M))

Disposal of charge under Army Act, Section 47

Summary disposal of charge against officer or warrant officer

9.—(A) Where an officer or warrant officer is remanded for the disposal of a charge against him by an authority empowered under Section 47 of the Army Act 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, *gratis*, with a copy of the charge as soon as practicable after its preparation, and in any case not less than twenty-four hours before his trial [1]

(B) Where the authority empowered under Section 47 of the Army Act decides to deal summarily with a charge against an officer or warrant officer, he shall, unless he dismisses the charge or unless the accused has consented[2] in writing to dispense with

the attendance of the witnesses, hear the evidence in presence of the accused The accused will have full liberty to cross-examine any witness against him and to call any witnesses and make a statement in his defence The accused may give evidence himself and his wife may be called as a witness subject to the provisions of Rule 80

(c) If the accused gives evidence himself or demands that the evidence against him be taken on oath, the provisions of Rule 82 shall apply save that the oath shall be administered by the authority dealing summarily with the case

1 As to entries of awards in the regimental conduct sheets of officers and warrant officers, see K R , 1629

2 A certified true copy of the written consent of the officer should be attached to each copy of the regimental conduct sheet forwarded to the War Office (K R , 1629 (*b*))

Revision of Summary Punishments

Revision of summary punishments

10. If any punishment awarded by a commanding officer, or by an authority dealing summarily with a charge under Section 47 of the Army Act, appears to the Army Council, or to a superior officer as hereinafter defined, to be wholly illegal, the Army Council or such superior officer shall direct that the award be cancelled and the entry in the records of the accused be expunged

If such punishment appears to the Army Council, or to a superior officer as hereinafter defined, to be in excess of the punishment authorized by law for the offence, the Army Council or such superior officer may vary the punishment awarded so that it shall not be in excess of the punishment authorized by law, and the entry in the records of the accused shall be varied accordingly

If such punishment appears to the Army Council, or to a superior officer as hereinafter defined, to be too severe having regard to all the circumstances of the case, the Army Council or such superior officer may remit the whole or a part of the punishment awarded, and such remission shall be entered in the records of the accused , provided that such power of remission shall be exercised by a superior officer within a period of two years only from the date of the award [1]

In this rule the expression "superior officer" means, with respect to punishments awarded by a commanding officer, an officer not below the rank of brigadier who is also of superior rank to the commanding officer who awarded the punishment, and with respect to punishments awarded by an authority dealing summarily with a charge under Section 47 of the Army Act, in India the Commander-in-Chief of the Forces in India, and on active service the general or air officer commanding-in-chief in the field if of superior rank or superior relative rank to the officer who awarded the punishment

1 Any cancellation, variation or remission by a superior officer of a punishment inflicted upon an officer under A A 47 will be notified to the War Office See K R , 1629 (*b*)

Framing Charges

Charge-sheet and charge

11.—(A) A charge-sheet[1] contains the whole issue or issues to be tried by a court-martial at one time

(B) A charge[2] 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[3]

1 The charge sheet is usually prepared by the adjutant of the accused's unit, but r 17 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 Judge Advocate General, see K R , 630

There may be several charge-sheets—see r 62, 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 714

2 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 A A 46 (1) and rr 3, 4 and 8) which gave rise to the preliminary investigation

3 All charges (including alternative charges) must be consecutively numbered As to insertion of charges in separate charge sheets, see r 62 and notes

Commencement and validity of charge sheet

12 —(A) Every charge-sheet will begin with the name and description of the person charged, and should state, in the case of an officer, his rank, and name, and corps (if any), and in the case of a soldier, his number, rank, and name, and corps (if any), and where he does not at the time of the trial belong to the regular forces, should show by the description of him, or directly by an express averment, that he is amenable to military law[1] in respect of the offence charged

(B) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged,[2] 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

(C) 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[3]

1 See illustration of charge sheet, p 714 As an officer or soldier of the regular forces is always subject to military law, a statement in the charge sheet that the accused belongs to a battalion of the regular forces will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, that he is subject to military law, without expressly adding the words But if the accused belongs to the reserves or to the Territorial Army, or to the Royal Air Force lent or attached to the Army, the charge sheet must state, and the court must, either by evidence or from their military knowledge, be satisfied, that he was at the time of the offence subject to military law (See, however, Reserve Forces Act, 1882, ss 6 and 15)

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 military law, although it will be sufficient if the description of the accused is such as to imply that he was so subject Evidence must be given of the fact that he was, for example, a sutler, or a holder of a pass from the officer in command See specimen charge sheet No 14, p 717

For persons subject to military law, see A A 175, 176

2 For powers of the court to amend such a mistake, see r 33 (A)

An accused person may be described by an assumed name if he is commonly known by that name

3 This paragraph must not be regarded as excusing any carelessness in preparing charge-sheets It enables a court to presume matters which, though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it

Contents of charge

13.—(A) Each charge[1] should state one offence only,[2] and in no case should an offence be described in the alternative[3] in the same charge

(B) Each charge should be divided into two parts—

(i) The statement of the *offence*, and,

(ii) The statement of the *particulars* of the act, neglect, or omission constituting the offence [4]

(C) The offence should be stated, if not a civil offence, in the words of the Army Act,[5] and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words [6]

(D) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know every act, neglect, or omission which it 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 [7]

(F) Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts [8]

1 For forms of charges and preliminary note as to their use, see p 699 *et seq* See also memoranda for guidance of courts-martial, p 763 *et seq*

2 *E g*, a single charge under A A 8 (2) of using threatening *and* insubordinate language to his superior officer would be a bad charge as it discloses two separate offences, similarly a single charge under A A 18 (4) or 41 of stealing *and* receiving would be a bad charge An accused, however, may legally be charged under A A 41 with burglary and larceny or housebreaking and larceny, a under the Larceny Act, 1916, burglary and larceny is made a single offence, as is also housebreaking and larceny

3 *E g*, a single charge under A A 8 (2) of striking *or* offering violence to his superior officer would be a bad charge, as it discloses two separate offences But the use of the word "or" in a charge, *i e*, in the statement of the offence, is permissible where the charge discloses only one offence, *e g*, a charge under A A 15 of "when in garrison being found beyond the limits fixed by general orders without a pass *or* written leave from his commanding officer" would be a good charge, because the accused is not charged with one of two offences, but with a single offence, which is constituted by his having neither a pass nor written leave If in the charge the words "beyond the limits fixed by general *or* garrison orders" were used, the charge would be a bad charge because it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by garrison orders

A single transaction, although 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 arrest and absence without leave (following such escape)

Larceny of goods the property of several different owners should not be included in one charge

4 The statement of the particulars must support the statement of the offence If the statement of an offence laid under A A 8 (2) alleged that the accused struck his superior officer, particulars stating that the accused offered violence to the said superior officer 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

In all cases involving an intent to defraud, such intent must be stated in the particulars

5 Under r 134 (B) this will include the words of any other Act creating the offence, such as the Acts relating to the reserve or auxiliary forces See notes as to use of forms of charges (25) p 702

6 But the essence of the offence charged under A A 41 must be expressed, *e g* , a charge of damaging property must contain the averment that the act was done "maliciously "

7 See, *e g* , specimen charge-sheet No 68, p 727 If in such a case there were an acquittal upon the first charge and a conviction upon the second charge, the conviction when recorded should specify the place and date mentioned in the first charge

8 Unless these facts are stated in the particulars and proved in evidence, the court cannot award the punishment of stoppages under A A 44 (*gg*) and (*n*)

As to evidence of value, see note 16 to A A 138 (4)

As to deductions from ordinary pay, see A A 137, 138

Preparation for Defence by Accused Person

14 [1]—(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,[2] and with any friend, defending officer or legal adviser[3] with whom he may wish to consult

Rights of accused to prepare defence

(B) As soon as practicable after an accused has been remanded for trial by court-martial, and in any case not less than twenty-four hours before his trial, an officer[4] shall give to him *gratis* 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[5] and being assisted or represented at the trial,[6] 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 [7] The convening officer shall be informed whether or not the accused so elects If any other or additional summary or abstract of evidence be taken subsequently, a copy thereof shall be given *gratis* to the accused as soon as may be

1 For power to dispense with this rule, see r 104

2 The freest communication which is consistent with the necessities of discipline and the safe custody of the accused should be permitted, otherwise the subsequent proceedings may be invalidated See r 39 (A)

The accused is not bound to call as a witness at his trial any or every person with whom he communicates as a possible witness on his behalf

3 As to defending officer and friend of accused, see r 87, and as to counsel, see rr 88–93 As to the right of the accused to consult the judge-advocate on any question of law or procedure, see r 103 (*a*)

4 This duty must be properly performed by a responsible officer

5 See rr 14 (A), 15, 16

6 See r 87, *et seq*

7 See r 87 (B)

15 [1]—(A) The accused, before he is arraigned,[2] shall be informed by an officer[3] of every charge on which he is to be tried , and also that, on his giving the names of any 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[4] , the interval between his being so informed and his arraignment should not be less than twenty-four hours

Information of charge and delivery of list of officers to accused

(B) The officer,[5] at the time of so informing the accused, shall give the accused a copy of the charge-sheet, and where the accused

is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him [5]

(c) A list of the ranks, names, and corps (if any) of the president and officers who are to form the court, and where officers in waiting are named, also of those officers, should, as soon as the president and officers are named, be delivered to the accused if he desires it[6]

1 For power to dispense with this rule, see r 104

2 As to arraignment, see Ch V, para 42, r 31 and notes

3 This duty will usually devolve upon the prosecutor, 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 104, the accused must have information of the charge and opportunity of calling his witnesses

4 The duty of procuring the attendance of witnesses who are subject to military law devolves, under r 78 (A) upon the C O or convening officer or, after the assembly of the court, the president If witnesses required by the accused are not subject to military law, the C O should at once communicate with the convening officer or, after the assembly of the court with the president or judge-advocate (if any,) (see r 78 (B))

For form of summons to witnesses, see p 761

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 the reasons for it should be communicated to the court, who will deal with the matter under r 39 (A) or 79

The court should always adjourn if an essential witness is absent (See r 79)

5 Even if the observance of this rule is dispensed with under r 104, the charges must be clearly explained to the accused

6 If there is any reason to suppose that the accused may reasonably object to any member, the list should be delivered, even if not demanded

Joint trial of several accused persons

16. Any number of accused persons may be charged jointly and tried together for an offence alleged to have been committed by them collectively,[1] but in such a case notice of the intention to try the accused persons together should be given to each of the accused at the time of his being informed of the charge,[2] 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, to be tried separately, 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[3], the convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge admits of it,[4] shall allow the claim, and the person making the claim shall be tried separately

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

As to swearing the court to try several accused persons, see r 71 and note, and as to form of proceedings in the case of a joint trial, see para 22 of memoranda on p 769

2 Each of the accused should also be told that, if he gives evidence himself, and, in doing so, incriminates any other person charged jointly with him, he is liable to be cross-examined as to character (see r 80 (D) (III)) But this liability will not, of itself, entitle the accused to be tried separately

3 It must be remembered that though each of the accused is a competent witness, none of the other persons charged jointly with him can compel him to give evidence See Ch VI, para 85

4 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

Convening of Court-Martial

Procedure of officer on convening court martial

17.—(A) An officer before convening a court-martial[1] should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the accused, or refer the case to superior authority [2]

(B) He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene [3]

(C) If more than fifteen days in the British Islands, or more than thirty days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial, or to deal summarily with a case receives an application for a court-martial or to deal summarily with a case, and the time when the case is disposed of, either by the assembly of a general or district court-martial or otherwise the officer shall report the case and the reasons for the delay, if in the British Islands to the General Officer Commanding-in-Chief the Command or the General Officer Commanding the district, and if in a colony to the General or other officer in chief command of the colony, and if in a foreign country to the General or other officer in chief command of the force But if the officer receiving the application be the General Officer Commanding-in-Chief the command, or the General Officer Commanding the district, or the General or other officer in chief command of the colony or force, the report shall be made to the Army Council In India the report shall, in all cases, be made to the Commander-in-Chief of the Forces in India

(D) The officer convening a court-martial shall appoint or detail the officers to form the court,[4] and may also appoint or detail such waiting officers[5] as he thinks expedient

(E) The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the accused is to be tried, and the summary or abstract of evidence [6]

1 With respect to the duties of the convening officer, see further Ch V, paras 20–23, and K R , 615–644 See also form of application for a court-martial (p 794)

Except on board ship and in such special cases as may be determined by the Army Council, the C O of an accused person or an officer who has investigated the charge or remanded the accused for trial cannot afterwards act as convening officer in the same case, but must refer it to a superior authority (K R , 617 (*b*))

2 In the United Kingdom, in the case of a general court martial and in all cases of fraud and indecency, the proposed charge-sheet and summary of evidence will be submitted by the convening officer to the Judge Advocate-General before the court is convened This does not apply to simple cases of theft (K R 630)

For the convening officer's duties in relation to the appointment of a judge-advocate, see r 101 (A) and notes

3 See K R , 634

4 The convening officer must be careful to insert in the convening order the required expression of his "opinion" when he finds it impossible to comply with—

(*a*) A A 48 (9), as to rank of the president, or
(*b*) A A 48 (10), as to composition of the court, or
(*c*) r 20 (1), as to appointment of members from different units, or

(*d*) r 20 (B), as to appointment of members belonging to he auxiliary forces, or

(*e*) r 21 (B), as to the rank of members (see also K R 642)

The declaration as to military exigencies, &c , dispensing with certain rules (see r 104) should be in a separate order I or form of declaration, see p 741

See generally as to general or district courts martial, the number of members, their qualification and rank and the rank of the president, A A 48, 50, 182 (4), rr 19–21, K R , 642, 643

If a general officer or colonel is available to sit as president of a general court-martial, an officer of inferior rank is not to be appointed (K R , 642 (*a*))

Under A A 53 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 in doubtful or complicated cases (See K R , 643)

Where several persons are to be tried separately before the same court, a separate copy of the convening order should be prepared for each case

5 As to detailing of waiting members to meet reduction by challenge or absence, see K R , 643, r 25 (G) and note

6 The convening order should also be sent

The object of this paragraph is to enable the president 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

The summary of evidence must be read at the trial when the accused pleads guilty (r 37 (B)) It may be used at the trial for the purpose of showing that a witness has on a prior occasion made a particular statement or is giving evidence which differs from that given by him when the summary of evidence was taken Any statement by the accused contained in the summary may be read to the court as evidence at the close of the prosecutor's case upon formal proof that it was made voluntarily after due caution (see r 4 (E) and notes) Except in the above instances the summary cannot be used as evidence

During the trial the president should carefully compare the oral evidence given by a witness with that given by him at the summary of evidence and, if any material variations occur, should question him thereon

Great care must be taken by the members of the court not to be biassed by the statements appearing in the summary of evidence, except so far as they affect the credibility of any witness by showing that he has contradicted his previous evidence, indeed it is usually expedient that the president alone should refer to the summary

Where the accused pleads guilty, the summary of evidence must be annexed to the proceedings (r 37 (B) and form of proceedings, p 746) Where the accused pleads not guilty, the summary should be forwarded with the proceedings, but should only be annexed thereto if it or any part of it has actually been used in evidence in the circumstances shown above

For abstract of evidence, see r 8 (B)

Adjournment for insufficient number of officers

18.—(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 sufficient officers in waiting to take the place of those unable to serve, the court should ordinarily adjourn for the purpose of fresh members being appointed[1], 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,[2] proceed, recording their reasons for so doing

(B) If the court adjourns for the purpose of the appointment of a new president,[3] or of fresh members,[4] whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court

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 arbitrament of a larger tribunal But the court *may* proceed under this rule if not reduced below the legal minimum (See notes to r 17)

No court can be formed if the number of officers is, from whatever cause, below the legal minimum or the president is absent (r 65 (B)), nor can the proceedings, even if properly commenced, be continued In either case the president or, if he is absent, the senior officer present must report the circumstances to the convening officer

2 See A A 48 (3), (4), (5)

3 This will apply if the president is found to be ineligible or disqualified (rr 19–22), or is not of the required rank (r 22 (A) (iv)), or if an objection to him is allowed (A A 51 (3) and r 25), or if he cannot attend (A A 53 (2))

4 After the trial has once begun fresh members cannot, in any circumstances, be appointed (A A 53 (1))

Ineligibility and disqualification of officers for court-martial

19.—(A) An officer is not eligible[1] for serving on a court-martial if he is not subject to military law or otherwise qualified to serve under the provisions of the Army Act

(B) An officer is disqualified[2] for serving on a 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 company, &c, 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 or battalion to which the accused belongs, or

(v) Has a personal interest[3] 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 [4]

1 "Eligible" is used with reference to an officer being subject to military law or "otherwise qualified" (*i e*, under A A 48 (10)) and of the necessary standing, that is to say, it refers to the status of the officer, and involves no personal considerations

2 "Disqualified" is used with reference to personal disqualification on the part of an officer

belongs is immaterial as regards his eligibility or qualification to serve on a court-martial, (A A 50 (1))

3 This will extend to even a remote or very small interest, *e g*, where a soldier is charged with stealing a silver fork belonging to a regimental mess, an officer of that mess has a personal interest and is disqualified from serving 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 or interest himself, has, nevertheless, a personal interest in any charge relating to that money

4 Paragraph (C) is taken from A A 48 (3), (4) In addition, an officer is not to be detailed to sit on a court-martial unless and until his C O deems him, after repeated attendances at courts-martial for instructional purposes, competent to perform so important a duty (K R , 638)

Corps of members of court-martial

20.—(A) A general or district court-martial shall, as far as seems to the convening officer practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service) available, and also, if he belongs to the same regiment of cavalry, or the same brigade of artillery, or battalion of infantry as the accused, that an order to convene a court composed partly of other officers cannot be obtained from superior authority within a reasonable time [1]

(B) In the case of a court-martial for the trial of an accused person belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, one member at least of the court should belong to that branch of the auxiliary forces to which the accused belongs [2]

1 The general rule as to courts martial is that—
(1) they should not be composed exclusively of officers of the same corps, and
(2) they must not be composed exclusively of officers belonging to the same regiment of cavalry, brigade of artillery or battalion of infantry

This general rule is however subject to the exceptions mentioned in this paragraph and care must be taken by the convening officer that the expression of his "opinion" is duly inserted in the convening order when required

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court martial duties, the following procedure should be adopted —the convening officer should apply to the command concerned asking for the names of officers to compose the court, and these should be inserted in the convening order (A F A 47) The command which furnishes the officers should then insert in the command orders an order to the effect that "the undermentioned officers have been placed at the disposal of the Commander, Brigade (or as the case may be) for duty at a court-martial to assemble at on " The command order need not be attached to the proceedings of the court-martial

2 Although there is no express provision as to the Militia (Supplementary Reserve), if the accused belongs thereto one member of the court should, if practicable, be an officer belonging to the Supplementary Reserve of Officers and serving with the Supplementary Reserve If the accused belongs to the Territorial Army, then by this rule one member of the court must, if practicable, belong to that force

The convening officer must be careful to see that the expression of his "opinion" is inserted in the convening order where required by this paragraph

An officer of the regular forces who is an adjutant of a unit of the Supplementary Reserve or Territorial Army is not considered for the above purposes to be an officer of the Supplementary Reserve of Officers or Territorial Army, as the case may be

Rank of members of court-martial in certain cases

21.—(A) In the case of a general court-martial, four at least of the members must not be below the rank of captain [1]

(B) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of that rank are not (having due regard to the public service) available, and 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 [2]

1 This is, in effect, a statutory requirement (See A A 48 (3))
When a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court martial, and on the trial of the C O of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused (K R 642)

2 The first portion of para (B) does not reproduce any statutory provision As to the second portion, see A A 48 (7)
For the trial of a subaltern officer, two members of his own rank (if r 21 (A) permits so many) will suffice
The convening officer must be careful to see that the expression of his "opinion" is inserted in the convening order where required by this rule

Procedure at Trial—Constitution of Court

Inquiry by court as to legal constitution

22 —(A) On the court assembling,[1] the order convening the court shall be laid before them together with the charge-sheet and the summary or abstract of evidence or a true copy thereof,[2] and also the ranks, names, and corps of the officers appointed to serve on the court[3], and it shall be the first duty of the court to satisfy themselves that the court is legally constituted[4], that is to say—

(i) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, and these rules [5],

(ii) That the court consists of a number of officers not less than the legal minimum,[6] and, save as mentioned in Rule 18, 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[7],

(iv) That the president is of the required rank and duly appointed,[8] and

(v) In the case of a general court-martial, that the officers are of the required rank [9]

(B) The court should further, if a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial [10]

(C) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose

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 president (See r 17 (E))

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 jurisdiction For form of convening order, see p 736 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 (See r 107 as to convening order in the case of a field general court-martial) 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 *I e*, in accordance with A A 48, 50, 122–3, 179 (Royal Marines), 180 (Indian forces), 182 (warrant officers), 184 (persons not belonging to H M forces), and rr 17–21
The court can only look at the convening order, they cannot enquire whether the convening officer holds a warrant to convene But they must have regard

to rr 20 and 21, and should see that the order states all that it is required to state, *e g*, the expression of the convening officer's "opinion" where necessary (see note 4 to r 17)

6 See A A 48 and notes In counting the number of officers, the president is included

7 For eligibility and disqualification see A A 50 (2) (3), r 19 and notes, see also Ch V, paras 16–19, and 31
When a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the president must insert and sign the certificate shown in the note on p 742

8 For rank of president see A A 48 (9) and 182 (4) The president must be named in the convening order (K R 644 (*a*)) If the president of a general or district court martial is not a field officer, care must be taken to see that the opinion of the convening officer as to non availability (see A A 48 (9)) is duly expressed in the convening order

9 See A A 48 (3) (7), and r 21 and note See also K R 642–4

10 As to appointment and disqualification of judge advocate see r 101 and notes In the United Kingdom a judge advocate is appointed by the Judge-Advocate-General, and the court should ascertain that he has been so appointed Out of the United Kingdom a judge advocate is appointed by the convening officer, and the court must assume that the convening officer is authorised by warrant to make the appointment

(Form of proceedings, pp 741–2)

Inquiry by court as to amenability of accused and validity of charge

23.—(A) The court, when satisfied on the above matters,[1] should 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,[2] and to the jurisdiction of the court[3], and

(ii) That each charge discloses an offence under the Army Act,[4] and is framed in accordance with these rules,[5] and is so explicit as to enable the accused readily to understand what he has to answer [6]

(B) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose

1 The inquiry by the court under this and the preceding rule should be in closed court

2 See A A 158, 175, 176 and 184, and introductory observations to A A Part V, pp 577–9

3 The following are examples of cases where a court-martial would have no jurisdiction —
(*a*) Trial of an officer by district court-martial (A A 48 (6))
(*b*) Trial of a warrant officer with a subaltern as president (A A 182 (4))
(*c*) Trial of a field officer with a subaltern as a member of the court (A A 48 (7))
Amenability may depend upon the question whether the person to be tried, although not in fact an officer or soldier, is subject to military law as an officer (A A 175 (7), (8)) or as a soldier (A A 176 (9), (10))
When the person to be tried is an officer or man of the Royal Marines, the court may presume that he is amenable to the jurisdiction (see A A 179 (1)), unless a special plea to the jurisdiction under r 34 (A) is raised
Questions of amenability may also arise with reference to natives of India (see A A 175 (7), 176 (10), and 180 (2) (*a*)).

4. See r 13 (c)

5. See rr 11–13.

6. See also r 15 (B).

(Form of proceedings, p 742)

Procedure at Trial—Challenge and Swearing

24. 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,[1] who must be a person subject to military law, will take his place

Appearance of accused and prosecutor

1 The selection of the prosecutor is subject to the approval of the convening officer The convening officer must not appoint himself as prosecutor, and the prosecutor must not confirm the finding and sentence of the court

A prosecutor with experience and knowledge of military law should be selected, particularly in cases of difficulty or complexity, and he should, as far as possible, be relieved from ordinary military duties, so that he may be enabled fully to master the case

In cases where the production of documents only is necessary, a N C O might be permitted to act as prosecutor

As to the duties of the prosecutor see rr 39–41, 60 and notes thereto, see also Ch V, para 52, K R 645

As to the employment of counsel on behalf of the prosecutor see rr 89–90, K R 640–1

(Form of proceedings, p 742)

25.[1]—(A) The order convening the court shall be read in the hearing of the accused and the court shall ascertain that it is constituted of officers to whom the accused makes no reasonable objection [2]

Proceedings for challenge of members of court:

(B) The accused has no right to object to the prosecutor or judge-advocate

(C) The accused shall state the names of all the officers to whom he objects before any objection is disposed of

(D) The accused may call any person to make a statement[3] in support of his objection Such person may be questioned by the accused and by the court

(E) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first, except that, if the president is objected to, the objection to him will be disposed of before the objection to any other officer On an objection to an officer, all the other[4] officers present[5] shall declare their opinions on the disposal of the objection, notwithstanding that objections have been made to any of those officers

(F) When an objection to an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings

(G) When an officer objected to (other than the president) 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 [6] If there is no officer in waiting available, the court will proceed as directed by Rule 18 [7]

(H) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court, as in the case of other officers appointed to serve on the court [8]

1 This rule must be read in conjunction with A A 51

2 The accused must make each objection separately, he cannot object to the court collectively except upon a plea to the jurisdiction under r 34 If he persists in objecting to the court collectively, the objection should be dealt with as if made to all the members individually and the procedure provided by this rule strictly followed In practice an objection to a member may be

equivalent to a plea to the jurisdiction In such a case it should be dealt with under this rule although it might more properly have been raised under r 34

An officer objected to on the ground of prejudice or for having formed or expressed an opinion upon the case should always be permitted to retire unless the objection is obviously groundless An officer successfully objected to on the ground of personal interest is disqualified from serving as a member (see r 19 (B) (v) and notes)

The court may be closed to consider each objection

For form to be followed upon an objection, see Variation, pp 742-3

As to objections to the president see A A 51 (3), (4)

3 Witnesses to an objection under this rule cannot be examined on oath

4 This excludes an officer from voting on his own case

5 *I e* , members who have not retired by reason of objections to them having been allowed

6 *I e* , a vacancy created either by a successful objection or through non-attendance of a member detailed

The president should ordinarily appoint a waiting officer of corresponding rank to that held by the retiring or absent officer

7 If the court are reduced below the legal minimum, they must adjourn, even if not so reduced, they should ordinarily adjourn unless they consider that, in the interests of justice or for the good of the service, it is inexpedient to do so

The president can only appoint to a vacancy an officer who has been detailed as a waiting officer

8 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 upon 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 742–3)

Swearing of members

26.—(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 over-ruled, an oath shall be administered to and taken in presence of the accused by each member of the court in the form and manner provided in the Second Appendix to these rules [1]

(B) If there is a judge-advocate, the oath shall be administered by him to the president first, and afterwards to the other members of the court, if there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn [2]

1 See pp 762–3

It is not necessary to kiss the Book The oath must be administered and taken with distinctness and solemnity

As to swearing the court to try several persons, see rr 29 and 71 (A)

For solemn declaration in lieu of oath, see A.A 52 (4), r 28 and notes

For taking of oath in Scottish or other fashion, see r 30

2 This provision prescribes, in accordance with A A 52 (1), the persons who are to administer the oath to the president and other members of the court

The president must be sworn separately, the other members may be sworn collectively

(Form of proceedings, p 744.)

Swearing of judge-advocate and other persons

27. After the members of the court are all sworn, an oath shall be taken in the presence of the accused by the judge-advocate, by an officer attending for the purpose of instruction, by a short-hand writer and by an interpreter or by such of them as are attendant upon a court-martial, in the form and manner provided in the Second Appendix to these rules The oath shall be administered by the president or by some member of the court or, except in the case of the judge-advocate, by the judge-advocate (if any) [1]

1 See A A 52 (2) For form and manner of taking the oath, see pp 762–3. For solemn declaration in lieu of oath, see A A 52 (4), r 28 and notes See also, generally, notes to r 26

This rule prescribes, in accordance with A A 52 (2), the persons who are to administer the oath to the judge advocate, officers under instruction, short-hand writer and interpreter The accused has a right of objection to the short-hand writer or interpreter (r 72 (c)), who may be sworn at any time during the trial (r 72 (A) (B)), he has no right to object to the judge-advocate (r 25 (B)) or to the officers under instruction

(Form of proceedings, p 744)

Substitution of solemn declaration for oath.

28—(A) Where a person is permitted[1] to make a solemn declaration instead of taking the oath in the prescribed form and manner, the declaration shall be in the form or forms provided in the Second Appendix to these rules [2]

(B) The declaration shall be made before some person authorised by these rules to administer the oath

1 *I e* , under A A 52 (4)

2 See p 763

When a solemn declaration is made in lieu of an oath, a note to that effect should be made in the proceedings

Form of oath in case of trial of several accused persons

29 When the oath is administered to or the declaration made by the members of a court who are about to try several persons, the plural shall be substituted for the singular wherever required

Swearing of person according to the form of his religion

30.—(A) If any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so [1]

(B) In any case an oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience [2]

1 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 a Bible while being sworn He will be sworn standing and holding up his right hand The forms of oath will be the same as those set out on pp 762–3, except that after the words "Almighty God" will be inserted "as I shall answer to God at the Great Day of Judgment."

2 Where a person to be sworn objects to take the oath in the form prescribed (see pp 762–3) or in the Scottish fashion (see (A) of this rule), or to make the prescribed form of declaration (see r 28), and the court are satisfied of the sincerity of his objection, an oath will be administered in accordance with this provision

A Mahommedan is sworn on the Koran, sometimes kissing it or placing it on his head In the case of natives of India, the form varies according to race, caste, and locality, and it will be well to follow the practice of the civil courts of the district and if they receive an affirmation in lieu of an oath, to receive such affirmation

Prosecution, Defence, and Summing-up

Arraignment of accused

31.—(A) After the members of the court and other persons are sworn as above mentioned, the accused shall be arraigned[1] on the charges against him

(B) The charges upon which the accused is arraigned will be read to him, and he will be required to plead separately to each charge as soon as it has been read to him [2]

1 See Ch V, paras 42–50 The accused should be arraigned by the president or judge-advocate (if any)

Arraignment consists of (1) calling upon the accused by his number (if any), rank, name and description, (2) reading the charge to him, and (3) asking him whether he is guilty or not guilty When the accused is called upon by his number, rank, name, &c , as stated in the charge-sheet, he should be asked "Is that your number, rank, name and unit?"

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 before arraignment upon the second or subsequent charge-sheets (see r 62)

2 The plea of the accused must be taken upon all the charges in a charge-sheet This applies to alternative charges if the accused has been arraigned upon them (see, however, r 35 (c))

The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president (r 17 (E)), who will lay the charge-sheet before the court before arraignment, and the charge-sheet will then be annexed to the proceedings

(Form of proceedings, p 744)

Objection by accused to charge

32. 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 Army Act,[1] or is not in accordance with these rules [2] The court, after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, will consider the objection in closed court and will 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 [3]

1 *E g* , a charge laid under A A 24 (2) of losing by neglect the greatcoat of a comrade would not disclose an offence under that section of the Act

2 See rr 11–13

3 For form to be followed upon the objection to a charge, see Variation, p 744

For procedure where it appears that the accused is, by reason of insanity, unfit to take his trial, see r 57 and notes thereto

(Form of proceedings, p 744)

Amendment of charge

33.—(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 [1]

(B) If on the trial of any charge[2] it appears to the court, at any time before they have begun to examine the witnesses,[3] that in the interests of justice any addition to, omission from, or alteration in,[4] 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 the amended charge after due notice to the accused

1 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 For form to be followed, see Variation, p 745

2 The court may act under this paragraph whether an objection to the charge is taken by the accused, or the judge-advocate, or by a member of the court, and either before or after the arraignment (see rr 23, 32)

3 *I e* , the witnesses on the substance of the charge, not those who are called as to objections to members or when a special plea to the jurisdiction is raised under r 34

4 If the addition, omission or alteration can be met by a special finding under r 44 (*e g* , by omitting from the finding some articles alleged to have been 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 an addition requires to be made in 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 Army Act, the court must adjourn (see r 32) For form to be followed, see Variation, p 745

(Form of proceedings, p 745)

Special plea to the jurisdiction

34.—(A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court[1], and, if he does so, and the court consider that anything stated in the plea shows that the court have not jurisdiction, they shall receive any evidence[2] 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 any reply by the prosecutor in reference thereto

(B) If the court overrule the special plea they shall proceed with the trial [3]

(C) If the court allow the special plea,[4] they shall record their decision and the reasons for it, and report it to the convening authority and adjourn , such a 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[5] with respect to the plea, and proceed with the trial

1 *I e* , a plea to the right of the court to try the accused on any charge, as distinct from a plea which relates to a particular charge, *e g* , a plea that the court is improperly constituted, either in respect of the rank or number of the members, or that the accused is not amenable to the jurisdiction (See note 3 to r 23) A plea relating to a particular charge will be raised either under r 32 or in bar of trial under r 36

2 *I e* , on oath

3 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 overruling the plea If, however, the confirming officer is of opinion that the plea was valid and should have been allowed, he must refuse to confirm the finding of the court and another court may legally be convened

4. If the court allow the plea, the decision of the court cannot be overruled, but another court may legally be convened

5 If a special plea to the jurisdiction were raised, *e g* , on the ground that the accused was not subject to military law as a soldier, under A A 176 (9), (10), 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

For form to be followed on a special plea to the jurisdiction, see Variation, p. 745.

Form of proceedings, p. 745.

General plea of "Guilty" or "Not guilty"

35.—(A) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is over-ruled, or is dealt with by a special decision under Rule 34 (D), the accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly,[1] either one or the other, a plea of "Not guilty")—shall be recorded on each charge on which he is arraigned

(B) If an accused person pleads "Guilty," that plea shall be recorded as the finding of the court[2], but, before it is recorded, the president, on behalf of the court, shall ascertain that the accused understands the nature of the charge[3] 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[4] 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 [5]

(C) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the prosecutor may, after 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 [6]

(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 [7]

1 *I e*, in some language not understood by the court or inarticulately For form to be followed, see Variation, p 745

2 See, however, para (D) of this rule

3 This procedure must be adopted to prevent the accused pleading guilty under a misapprehension, *e g*, a man charged with wilfully damaging his arms may, under a misapprehension, plead guilty because his arms have been in fact damaged though not wilfully, or a man charged with knowingly making a false statement in a document may, under a misapprehension, plead guilty because the statement made by him was in fact false, though it was not false to his knowledge So, again, when arraigned on a charge of desertion, the accused may plead "guilty but I intended to return" This amounts to a plea of "not guilty" as (except as mentioned in Ch III, para 20) the intention not to return is an essential element in the offence of desertion In each case the president must explain to the accused that he must plead "not guilty"

4 This is shown by r 37 See also Ch V, para 47

5 A plea of "guilty" is only to be taken to the extent to which it is pleaded Thus a man arraigned on 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 as no procedure is prescribed in the rules whereby a special finding may be recorded on a plea of guilty, it would be the duty of the court to try the accused upon the actual charge on which he was arraigned, and, if necessary, make a special finding under r 44 (D)

If the accused pleads guilty, a statement that the requirements of r 35 (B) have been complied with must be recorded

It must be recollected that there is nothing untrue in an accused person pleading not guilty, even though he committed the offence his plea merely amounts to a claim, which he is entitled to make, that the charge against him shall be formally proved And, indeed, where the accused, while admitting the offence, wishes to show that it was committed in circumstances of great provocation, he must plead "not guilty" if he desires to prove the existence of such provocation out of the mouth of the witnesses for the prosecution

who would not be called to give evidence if he pleaded guilty (See, however, r 37 (F) as to the power of the court)

As to procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see r 37 (D)

6 If the prosecutor adopts the procedure provided by this paragraph the accused will not be entitled to a verdict upon 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 37 (A)

7 This is in accordance with the practice of the civil courts and is intended to ensure that an accused person charged with an offence for which a death penalty can be awarded shall not be convicted without a full trial

(Form of proceedings, pp 744–6)

Plea in bar

36.—(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—

(i) he has been previously convicted or acquitted of the offence by a competent civil court or by a court-martial, or has been dealt with summarily for the offence by his commanding officer or by an officer having power to deal summarily with the case, or a charge in respect of the offence has been dismissed[1], or

(ii) the offence has been pardoned or condoned[2] by competent military authority, or

(iii) the time which elapsed between the commission of the offence and the beginning of the trial was more than three years,[3] or in the case of a civil offence proceedings in respect of which must be commenced within a shorter period than three years,[4] more than that shorter period

(B) If he offers a 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[5] 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 either shall 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 thereon

(D) If the finding that a plea in bar is proved is not confirmed,[6] 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 a plea in bar is not proved, they shall proceed with the trial, but such a finding shall be subject to confirmation like any other finding of the court

1 The Army Act provides that a person subject to military law is not liable to be tried for an offence of which he has been acquitted or convicted by a court-martial (s 157), or by a civil court (s 162 (6)), or for which he has been dealt with summarily, or a charge in respect of the offence has been dismissed (ss 46 (7), 47 (5)) Further, a person is not liable to be tried for an offence which (except in the cases of mutiny, desertion and fraudulent enlistment), was committed more than three years before the date of the trial (A A 161) In all these cases a plea in bar of trial under this rule can properly be offered

An accused person cannot be retried for desertion where, on the first trial for desertion, he was found guilty under A A 56 (3) of absence without leave and the proceedings were not confirmed In such circumstances, a plea in bar of trial that he had previously been acquitted of the same offence must be allowed

2 It has long been recognised that a military offence can be "condoned," *cf* Clode, Mil Forces, 1, p 173, Simmons (6th Edition), p 235 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 The Duke of Wellington is quoted by Clode as having written in a Dispatch that the performance of a duty of honour or of trust after the knowledge of a military offence committed ought to convey a pardon If, with full knowledge of the facts, competent authority removes an officer under P W 527, 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

3 See note 1 above

4 In general there is in civil courts (other than courts of summary jurisdiction) no limitation of time within which criminal proceedings may be commenced, but in a few cases, *e g* , carnal knowledge of a girl between 13 and 16,—proceedings must be commenced within a shorter period than nine months from the commission of the offence In such cases, proceedings must be commenced in the military courts within the shorter period

5 *I e* , evidence on oath

6 If it 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

For form to be followed on a plea in bar of trial, see Variation, pp 745–6
(Form of proceedings, pp 745–6)

Procedure after plea of "Guilty"

37.—(A) Upon the record of the plea of "Guilty," if there is any other charge in the same charge-sheet to which the plea is "Not guilty," the trial will first proceed with respect to every such other charge, and, after the finding on those charges, will proceed with the charges on which a plea of "Guilty" has been entered[1], 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 [2]

(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[3] 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 [4]

(D) If from the statement[5] 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]

(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) will 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 [7]

1 In the illustration of charge on p 714, the charges are entirely distinct and not alternative, and therefore if the accused pleads "guilty" to the first charge and "not guilty" to the second charge, the court must first proceed to try him upon the second charge

2 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 r 35 (c), the most serious of two or more alternative charges should always be placed first in a charge sheet

3 For procedure where the statement of the accused is inconsistent with his plea, see para (D) of this rule and note 6 below

4 The accused will always be asked, in the case of a plea of "guilty," whether he desires to call witnesses to character

5 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 Variation, p 747

6 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*) Private A, charged with desertion (not being desertion to avoid a particular service), states "I always meant to come back "

(*b*) Private B, charged with stealing a tunic, states "I only borrowed it for the evening "

(*c*) Private C, charged with striking his superior officer, states "I only did it to defend myself after he had struck me "

(*d*) Private D is charged with sleeping on his post when a sentinel and makes no statement with reference to the charge On the reading of the summary of evidence, it is found that all the witnesses depose that Private D was beyond the confines of his post when found asleep

(*e*) Corporal E is charged with disobeying a lawful command given by Corporal F his superior officer, and makes no statement with reference to the charge He calls a witness as to character, who states incidentally that Corporal 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

If the court failed to act upon the provisions of this paragraph, the confirming officer should refuse confirmation and can order a new trial (See A A 54 (6), 157 and notes) If he confirms, the finding will be set aside

Where the accused alleges provocation for the offence, it may be desirable to record a plea of "not guilty " (See note 5 to r 35)

A court cannot record a special finding under A A 56 on a plea of guilty, if an accused after pleading guilty to a charge of desertion states "I admit I was absent all the time but I intended to return," a finding of "not guilty of desertion but guilty of absence without leave" cannot be made, but the accused must be tried on a plea of "not guilty "

7 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 For form to be followed, see Variation, p 747

(Form of proceedings, pp 746–7.)

Withdrawal of plea of "Not guilty"

38. 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 35 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 37 [1]

1 The court must take care that the accused understands the effect of his action in withdrawing his plea

Plea of "Not guilty," application for adjournment, and case for the prosecution

39 After the plea of "Not guilty" to any charge is recorded, the trial will proceed as follows:—

(A) The court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these 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

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 such rule of procedure,[1] or that he has not had sufficient opportunity of preparing his defence, they may grant such adjournment as may appear to them in the circumstances to be proper

(B) The prosecutor[2] may, if he desires, and shall if required by the court, make an opening address,[3] 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 any unnecessary detail

(C) The evidence for the prosecution shall then be taken [4]

(D) If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address (if any), and he must be sworn, and give his evidence in detail [5]

(E) He may be cross-examined[6] by or on behalf of the accused, and afterwards may make any statement which might be made by a witness on re-examination

1 Non compliance with rules relative to procedure before trial would not provide a valid reason for adjournment, unless the accused has, in the opinion of the court, been prejudiced thereby, but if the court have any doubt in the matter, the proceedings should be adjourned

2 As to the duties of the prosecutor, see r 60 and note 1, Ch V, para 52, K R 645

3 In cases of complexity (*e g*, cases of fraudulent misapplication) 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 95 (c).

4 For general provisions as to evidence, see Ch VI, and rr 73–86 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 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 A A 27 (1) of knowingly making a false accusation against Private A, it must be proved—

(1) that the accused made the accusation in question against Private 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

For the duty of the president, see r 59 and note

If the same person gives evidence in more than one case tried by the same court, he must be sworn as a witness in each case, even if all such cases are tried on a single day

5 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* , on 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

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

6 Any witness may be cross-examined by the opposite party and re-examined by the person calling him on matters raised by the cross examination. (r 84 (A))

As to the general principles to be observed in cross-examination and re-examination, see Ch VI, paras 114–120

As to questions by or on behalf of the court, see rr 85 and 86

(Form of proceedings, pp 747–9)

Procedure where no witnesses to facts (except accused) called for defence

40 —(A) At the close of the evidence for the prosecution[1] the accused shall be told by the court that he may, if he wishes, give evidence as a witness, but that if he gives evidence he will subject himself to cross-examination [2]

(B) The accused will then be asked[3] whether he wishes to give evidence as a witness himself, and whether he intends to call any witnesses to the facts of the case[4] other than himself

(C) If the accused states that he wishes to give evidence as a witness himself but does not intend to call any other witness to the facts of the case, the procedure, whether or not he is represented by counsel or by an officer subject to military law, will be as follows —

(i) The accused will give evidence immediately after the close of the evidence for the prosecution [5]

(ii) The accused may, if he wishes, call witnesses as to his character [6]

(iii) The prosecutor may then make a final address[7] for the purpose of summing up the evidence for the prosecution and commenting on the evidence of the accused

(iv) The accused or counsel or the defending officer (as the case may be) may then make a closing address in his defence [8]

(D) If the accused states that he does not wish to give evidence as a witness himself and does not intend to call any witnesses to the facts of the case the procedure will 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 charge against him [9] The address may be made orally or in writing [10]

(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 must not be sworn and no question may be put to him by the court or by any other person [11]

(*b*) The accused may, if he wishes, call witnesses as to his character

(*c*) Counsel or the defending officer (as the case may be) may then make a closing address

(*d*) If the accused has made the statement referred to in (*a*) the prosecutor may reply, but if the accused has made no such statement, the address of the prosecutor will precede the closing address of counsel or the defending officer [12]

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 This submission may be made in respect of any one or more charges in a charge-sheet (See also note to r 70)

2 The judge-advocate or, if there is none, the president must explain in simple language to the accused, especially if he is not represented by counsel or defending officer, that he need not give evidence on oath unless he wishes to do so He must also be told that if he gives sworn evidence he is liable to be cross-examined by the prosecutor and questioned by the court and judge-advocate He should also be informed that evidence upon oath will naturally carry more weight with the court than a mere statement not upon oath

3 *I e*, by the judge-advocate or, if there is none, by the president

4 As will be noted from the succeeding paragraphs of this rule, the whole course of procedure in connection with the case for the defence will depend upon the answer of the accused to this question

Witnesses to extenuating circumstances are witnesses to the facts of the case

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, or the prosecutor, in cross-examination of the accused, challenges him to support a statement made by him in evidence by the testimony of another witness

As to the evidence of the wife of the accused, see r 80, and notes

5 See r 80 (F) It is the duty of counsel for the defence or defending officer (if any) to conduct the examination of the accused (if he gives evidence) and of the witnesses for the defence For cross-examination, &c, see note 6 to r 39

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 60 (c)), and the court should, if necessary, adjourn to allow him time for its preparation

6 The calling of witnesses to character does not affect the order of proceedings prescribed under this and the following rule

7 The 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 95 (c)

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 It is the duty of the court, as far as possible, to prevent the prosecutor from transgressing in any of these respects

If the prosecutor, contrary to r 80 (B), comments on the failure of the accused or his wife to give evidence, the proceedings may be invalidated (and see r 60 (B) and note)

As to the duties of the prosecutor, see r 60 and notes, also Ch V, para 52

8 The accused has the privilege, whether he has given evidence or not, of making statements in his address which are unsupported by evidence As to statements made by the accused not on oath, see note 9 below As to the rights and duties of counsel and defending officer, see rr 87–92

9 The address here referred to is, in effect, a statement of the facts upon which the accused, when he does not give sworn evidence, relies for his defence, and the court will treat it as his defence to the charge though the accused has not by giving evidence on oath submitted it to the test of cross-examination A statement which could have been made on oath will not carry with the court the same weight as sworn testimony

10 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 should be read and attached to the proceedings The accused cannot be questioned by the court or any other person upon an unsworn statement or address

11 See note 10 above

12 Counsel for the defence may not state as a fact any matter which has not been proved in evidence (r 92 (c)), and the same restriction is placed upon a defending officer (r 87 (c))

For procedure when two or more persons are tried together, see r 61 and note

(Form of proceedings, pp 749–752)

Procedure where witnesses called for defence

41.[1]—(A) If the accused states that he wishes to give evidence himself and to call witnesses to the facts of the case, the procedure, whether or not he is represented by counsel or by an officer subject to military law, will be as follows —

(i) The accused or, if he is represented by counsel or by a defending officer, then such counsel or defending officer may make an opening address[2] for the defence

(ii) The accused will give evidence as a witness,[3] and call his other witnesses, including, if he so desires, witnesses as to character

(iii) After the evidence of all the witnesses has been taken, the accused or counsel or the defending officer (as the case may be) may make a closing address

(iv) The prosecutor may reply

(B) If the accused states that he does not intend to give evidence himself but intends to call witnesses to the facts of the case, the procedure will 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 will 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 This statement may be made orally or in writing but the accused must 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 will 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

It will be noted that, in all cases falling under this rule, the prosecutor has a right of reply

2 Counsel (r 92 (c)) and defending officer (r 87 (c)) are not permitted in an opening address to state as facts matters which they do not intend to prove in evidence

3 The accused is entitled to give his evidence at any time during the hearing of the evidence for the defence, although he has previously stated that he does not apply to give evidence himself He should, however, usually give his evidence before any other witness for the defence, and should be warned that if he gives his evidence after hearing that of the other witnesses for the defence, the value of it may be considerably discounted

(Form of proceedings, pp 749-752)

Summing up by judge advocate

42 —(A) The judge-advocate (if any) will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court [1]

(B) After the summing-up of the judge-advocate, no other address shall be allowed

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 103 (*e*)) 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 Ch VI, paras 72–83), to corroboration and to the evidence of accomplices (see Ch VI, paras 45 and 86)

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 He may, in his discretion, comment upon the fact that the accused has not given evidence upon oath or called his wife as a witness (See also r 103 (*h*))

The summing-up may, but need not, be in writing if not in writing, see r 95 (c)

If a summing up is considered unnecessary, a record to that effect must be made in the proceedings

For the powers and duties of a judge-advocate, see r 103

(Form of proceedings, p 752)

Finding and Sentence

Consideration of finding

43 —(A) The court will deliberate on their finding in closed court [1]

(B) The opinion of every member of the court as to the finding will be given by word of mouth[2] on each charge separately

1 See r 63

2 The opinions of members must be given orally As to taking opinions, see r 69 and note

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 A A 9 (1), 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*) personally ? (*e*) in the execution of his office ? (*f*) was the command disobeyed ? (*g*) in such a manner as to show a wilful defiance of authority ? (*h*) did the accused know that the person giving the order was his superior officer ?

Similarly, where the charge laid is under A A 16 or 40, the questions 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 scandalous conduct or conduct to the prejudice of good order and military discipline ? (as the case may be)

If the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been entirely established in evidence, they must consider their powers of making a special finding, either under A A 56 (see note to that section) or under r 44 (see note 6 to that rule)

The members of courts-martial must remember (1) that it is a fundamental maxim of English 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

Any statement made by the accused not upon oath must be carefully considered, and although the court will naturally attach less weight to such a statement than to sworn evidence subjected to the test of cross-examination, it will sometimes be of value, particularly if it is in any respect corroborated by evidence from other sources

At any time before the finding has been arrived at, the court may be re-opened to enable a witness to be called or recalled and examined by them through the president or judge-advocate (See r 86 (D)) It is also permissible, where a shorthand writer has been employed, to re-open the court to enable any portion of the evidence already given to be read out by him

As to form and record of finding, see r 44 and notes

(Form of proceedings, pp 752–3)

Form and record of finding

44.—(A) The finding on every charge upon which the accused is arraigned[1] will be recorded and, except as mentioned in these rules, will be recorded simply as a finding of " Guilty," or of " Not guilty," or of " Not guilty and honourably acquit him of the same "[2]

(B) Where the court are of opinion as regards any charge that the facts proved do not disclose the offence charged[3] or any offence of which he might under the Army Act legally be found guilty on the charge as laid,[4] the court will 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 any offence of which he might under the Army 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 [5] Upon receiving the opinion of the confirming officer the court will reassemble in closed

court to record their finding and shall not receive any further evidence

(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 [6]

(E) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein [7]

(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 another of the charges and may, if necessary, adjourn for that purpose Upon receiving the opinion of the confirming officer the court will reassemble in closed court to record their finding and shall not receive any further evidence [8]

1 This includes alternative charges, except in the cases which come within r 35 (c)

2 In the case of an acquittal on every charge, the president must date and sign the proceedings (r 45 (A)) The judge advocate (if any) must also sign (r 45 (B)) See generally r 45

A finding of "honourable acquittal," which may be recorded in the case of N C Os and privates as well as officers, is incorrect unless the charge affects the honour of the person charged The Duke of Wellington (Well Desp , Vol 5, 221–2) expressed the following views upon the matter —

"It is difficult and needless at present to define in what cases honourable 'acquittal is peculiarly applicable, but it must appear to all persons to be "objectionable in a case in which any part of the transaction which has been the subject of investigation before the court-martial is disgraceful to the "character of the party under trial A sentence of honourable acquittal by 'a court martial should be considered by the officers and soldiers of the army 'as a subject of exultation, but no man can exult in the termination of any 'transaction, a part of which has been disgraceful to him, and although such 'a transaction may be terminated by an honourable acquittal by a court-'martial, it cannot be mentioned to the party without offence, or without 'exciting feelings of disgust in others, these are not the feelings which ought 'to be excited by the recollection and mention of a sentence of honourable 'acquittal "

It may be said that an "honourable acquittal" is generally inappropriate unless the conduct of the accused throughout the transactions investigated by the court has been irreproachable

3 *E g* , where a man is charged with receiving property knowing it has been 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

4 *I e* , under A A 56

5 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 p 753)

The opinion of the confirming officer should be read upon re assembly of the court and attached to the proceedings

6 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 A A 56 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 greatcoat 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 striking his superior officer—Serjeant A—with his fist in the face, the court could properly except the words "in the face," but it could not make a special finding substituting Serjeant B for Serjeant A

On a charge of fraudulently misapplying £100, a special finding that the sum misapplied was £50 would be permissible, but a special finding omitting from the particulars of the charge the words "with intent to defraud" would be tantamount to an acquittal

7 See note 6 above

8 For general procedure, see note 5 above, and Variation, p 753 When the court have decided to convict upon 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) of this rule and note 1)

(Form of proceedings, pp 752–3)

45 —(A) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court,[1] and if there are no other charges upon which the trial proceeds, the accused will be released **Procedure on acquittal on every or any charge**

(B) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted as soon as possible in like manner as is directed by these rules[2] in the case where the findings require confirmation

(C) If the finding on one or more, but not all, of the charges in a charge-sheet is "Not guilty," such finding or findings of "Not guilty" will be announced at once in open court [3]

1 This is required by A A 54 (3)

2 Rr 50 and 97 Confirmation is not required in the case of an acquittal

3 See A A 54 (3)

Where a special finding is made under A A 56, *e g* , that the accused is not guilty of desertion but guilty of absence without leave, this is not an acquittal for the purposes of this paragraph and this finding will not be announced in open court

(Form of proceedings, p 752)

46.—(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, wherever possible, take evidence of and record[1] the character, age, service, rank, and any recognised acts of gallantry or distinguished conduct, of the accused, and the length of time he has been in arrest or in con- **Procedure on conviction**

finement on any previous sentence,[2] and any deferred pay, naval, military, or air force decoration, or military reward,[3] 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[4] respecting the accused person, and identifying the accused as the person referred to in that summary

(C) Evidence on the part of the prosecutor upon the above matters should not be given by a member of the court

(D) The accused may cross-examine any such witness, and may call witnesses to rebut any such evidence[5], and if the accused so requests, the regimental books, or a duly certified copy[6] 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 accordingly

When all the evidence on the above matters has been given, the accused may address the court thereon

(E) If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the court renders him liable to any exceptional punishment[7] in addition to that to be awarded by the sentence of the court, it will be the duty of the prosecutor to call the attention of the court to the fact, and it will be the duty of the court to enquire into the nature and amount of such additional punishment

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

The court cannot take oral evidence that the accused is of bad character, this should be proved in the manner shown in (B) of this rule But oral evidence of good character is always permissible, if given on oath by the accused himself he may be cross-examined as to character (see r 80 and notes), if he 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

2 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

3 For definition of *decoration* and *military reward*, see A A 190 (18) and (19)

4 Previous convictions, &c , of the accused will be proved by the production of a verbatim extract from the regimental books (A F B 296) duly completed by the officer in charge of these books, (A A 163 (1) (*g*) and (*h*), K R 1629–1632) As to regimental books, see K R 1598 and App XXV If the accused challenges the correctness of the extract from the regimental books, see (D) 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 a certificate in accordance with A A 164 As to civil convictions, see also K R 648, 1630

The witness producing the extract from the regimental books and the statement as to age, service, rank, &c , of the accused should be the adjutant or some other officer He must be sworn as any other witness and may be cross-examined by the accused and questioned by the court

5 The accused may give evidence himself to rebut the evidence given on the part of the prosecutor as to his character, age, service, &c But if he puts his character in issue, see r 80

6 *I e* , certified by the officer having custody of the original book (A A 163 (1) (*h*))

7 This means such punishment as is contemplated by the first sentence of K R 652 (*a*)

(Form of proceedings, pp 753–6)

Mode of forfeiting seniority of rank

47 Where a court-martial or an officer dealing summarily with a charge under Section 47 of the Army Act desires to sentence an officer to forfeit seniority of rank,[1] the form of punishment may be that he take rank and precedence in his corps, or in the Army, or in both, as if his appointment to the rank or ranks held by him, and specified in the sentence, bore the date of some day or days specified in the sentence, and later than the actual date of his said appointment, or that he take precedence in the rank held by him in his corps, or in the Army, or in both, as if his name had appeared a specified number of places lower[2] in the list of his corps, or of the Army, or in both

Where a court-martial for the trial of a warrant or non-commissioned officer,[3] or an officer dealing summarily with a charge against a warrant officer under Section 47 of the Army Act desires to award the sentence of forfeiture of seniority of rank, the form of punishment will be that he take rank and precedence as if his appointment to the rank held by him, and specified in the sentence, bore the date of some day specified in the sentence, and later than the actual date of his said appointment

1 See A A 44 (*f*), K R 555–7

2 This form of forfeiture of seniority of rank is intended to apply to cases where the dates of appointment of a large number of officers are identical, such as in the R A , R E , R A S C , &c , and where forfeiture of even one day's seniority might, in its effect, constitute too severe a punishment for the offence, which nevertheless would not be adequately met by a severe reprimand The court or the officer dealing summarily with the case will be able to gauge the effect of such a sentence by a reference to the current Army List

3 As to the effect of such a sentence in the case of a N C O , see A A 44, note 12

(Form of proceedings, pp 757–8)

Sentence

48. The court shall award one sentence in respect of all the offences of which the offender is found guilty,[1] and that 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 [2]

1 This rule applies whether the charges on which the offender has been tried are contained in one or several charge-sheets

For procedure upon a death sentence, see note (*b*) on p 762

As to postponement of sentence where several persons are tried separately for offences arising out of the same transaction, see r 71 (D)

The sentence must be a sentence authorised by the Army Act (see s 44), *e g* , a court martial cannot award a sentence of confinement to barracks, or sentence an offender to restore stolen property though an order of restitution may subsequently be made under A A 75

For observations on the duty of the court in awarding sentence, see Ch V, paras 76–85, and K R 652

For procedure in voting upon the sentence, see r 69

2 The object of this portion of the 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, after a previous conviction for that offence, and also upon a charge of drunkenness when not on duty, a sentence of penal servitude awardable in respect of the first charge will be valid, although a sentence of detention with or without a fine is the maximum sentence which could have been awarded upon the second charge

(Form of proceedings, pp 756–9)

Recommendation to mercy

49.—(A) If the court make a recommendation to mercy they shall give their reasons for their recommendation [1]

(B) If the court recommend any restoration of service under Section 79 of the Army Act, the recommendation, with the reasons for it, shall be entered in the proceedings

(C) The number of opinions[2] by which a recommendation mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings

1 A recommendation to mercy will be appended to the sentence, it forms part of the proceedings of the court (see A A 53 (9))
As to the circumstances in which a recommendation to mercy should be made, see Ch V, para 84
2 A recommendation to mercy is a matter which the court has to decide under para (A) of r 69

(Form of proceedings, p 759)

Signing and transmission of proceedings

50 Upon the court awarding the sentence, the president shall date and sign the sentence,[1] and such signature shall authenticate the whole of the proceedings,[2] and the proceedings, upon being signed by the judge-advocate (if any) shall as soon as possible be transmitted for confirmation in the manner provided by Rule 97 of these rules

1 It is essential that the date of the sentence should be inserted, as under A A 68 a term of penal servitude, imprisonment or detention is reckoned to commence on the day on which the sentence and proceedings were signed by the president (See note 3 to A A 68)
The proceedings must not be signed by the members of the court other than the president
2 Including the documentary evidence produced at the trial As a rule certified copies of original documents and not the originals themselves should be attached to the proceedings (K R 650)

(Form of proceedings, p 759)

Confirmation and Revision

Procedure of confirming officer

51.[1]—(A) In the case of a finding which does not require confirmation,[2] the confirming officer shall not make any remarks in the proceedings, but if he thinks that anything in the case requires further attention he shall report it to superior authority as directed by His Majesty's Regulations [3]

(B) In the case of findings and sentences which require confirmation the confirming authority—

(i) May direct the re-assembly of the court for the revision of the finding and sentence, or either of them, stating the reasons for revision[4], and

(ii) Upon receiving the proceedings, whether original[5] or revised, may confirm[6] 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 [7]

1 This rule must be read in conjunction with A A 54 and r 52
As to the action which may be taken by a confirming officer upon receipt of the proceedings, see K R 659
2. *I.e.*, an acquittal
3 See K R. 664
4. See r. 52 for procedure on revision Not more than one revision can be made, nor can evidence be given on revision (A A 54 (2)). Proceedings on revision must be in closed court, (r. 52 (A))

A finding of insanity (see A A 130 and r 57) requires confirmation and may be sent back for revision

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

The object of revision will generally be to cure defects in the finding or sentence, or both, or to give the court an opportunity, upon reconsideration, of acquitting or passing a more lenient sentence upon the offender The confirming authority cannot recommend the increase of a sentence, nor can the court upon revision increase the sentence previously awarded (A A 54 (2))

If the sentence originally awarded by the court is wholly illegal, *e g* , a sentence of dismissal where the officer is convicted under A A 16 of scandalous conduct, or a sentence of reduction to the ranks awarded to a lance-corporal, or a sentence of confinement to barracks awarded to a soldier, it is null (see note to r 55), and the court, on revision, may award any legal sentence, even if such sentence is, in effect, more severe than the original award This procedure is not, strictly speaking, a revision of the sentence at all

If the sentence originally awarded is illegal in the sense that it is in excess of the sentence authorised by law, the court, on revision, may award any legal sentence, *e g* , if a soldier, not on active service, is charged with drunkenness and a sentence of nine months' detention is awarded, the court upon revision may pass a new sentence not exceeding six months' detention In such a case, however, revision is not essential, as a confirming officer under r 55 may vary the sentence so that it shall not be in excess of the punishment authorised by law

For duties of the confirming officer where a sentence is illegal or irregular, see K R 665

5 *I e* , where either no revision has taken place because no order for revision has been made, or, if an order has been made, it cannot be carried out owing to dissolution of the court (see note 1 to r 52)

Under A A 68 (1) the term of penal servitude, imprisonment or detention commences on the date of the *original* sentence

6 Where a C O has investigated a case in his capacity as C O , he cannot, except where he has authority to convene a court-martial under K R 617(*b*), subsequently confirm the proceedings of a court-martial arising out of the same matter If he purports so to act in a case outside the exception, the proceedings are not void but must be confirmed by a properly qualified authority (K R 660)

7 For forms of confirmation, &c , see pp 760–1

As to comments by confirming officer upon proceedings of courts-martial, see K R 662, 664

(Form of proceedings, pp 759–761)

52 —(A) Where the finding or sentence is sent back for revision, the court shall re-assemble in closed court[1], and shall not receive any further evidence [2] Procedure on revision

(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,[3] and, if the new finding involves a sentence,[4] 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 as soon as possible be transmitted for confirmation in the manner provided in Rule 97 of these rules [5]

1 See r 63

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 note 4 to r 17 and note to r 18), 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 If the president dies or is unable to attend within a reasonable time, the convening officer may

appoint the senior member (if of sufficient rank) as president, provided that the court is not thereby reduced below the legal minimum (See A A 53 (2))

2 See A A 54 (2)

3 Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence (See A A 54 (2) and notes to preceding rule)

4 If the revised finding is an acquittal or a finding of insanity (see A A 130 and r 57), no sentence is involved If a court, on revision, revoke their original finding upon any charge, the original sentence automatically falls to the ground, and, if the revised finding entails a sentence, the court must pass sentence afresh (see note 3 to A A 54), 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 A A 54 (2)

5 See also K R 667, 669-673

(Form of proceedings, pp 759-760)

Promulgation

53. 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 [1] 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

1 See K R 668 For form of minute of promulgation, see p 761

A sentence of cashiering or dismissal takes effect from the date of promulgation

A finding of acquittal upon all of the charges preferred must be pronounced at once in open court (A A 54 (3)), and this, when taken in conjunction with the discharge from custody of the accused, operates as sufficient promulgation of the acquittal But where the court acquits the accused upon one or more but not upon all the charges preferred against him, the findings of acquittal, though pronounced in open court in accordance with A A 54 (3), should also be promulgated under this rule together with the findings of guilty

All special findings must be promulgated in the forms in which they are made

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, &c , will be sufficient promulgation under this rule

If a sentence of penal servitude, imprisonment or detention is confirmed and not suspended in accordance with A A 57A, the C O of the offender as soon as may be after promulgation of the sentence will sign the order for his committal (see App III) to some prison or detention barrack in accordance with any general or special instructions received from superior authority See K R 676, 681 As to commitment abroad, see K R 677, 682-685

(Form of proceedings, p 761)

Mitigation of sentence on partial confirmation.

54.—(A) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of those charges, that authority shall take into consideration the fact of such non-confirmation, and shall mitigate, remit, or commute the punishment awarded as may seem just, having regard to the offences in the charges the findings on which are confirmed [1]

(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 those 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 mitigate, remit, or commute the punishment awarded according as may seem 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 [2]

(c) Where a sentence passed by a court-martial has been confirmed, and is found from any reason to be invalid, the authority who would have had power to commute[3] the punishment awarded by the sentence if it had been valid may pass a valid sentence, and the sentence so passed shall have the same effect as if passed by the court-martial, but the punishment awarded by that sentence shall not be higher in the scale of punishments than the punishment awarded by the invalid sentence, nor, in the opinion of the said authority, be in excess of the last-mentioned punishment

1 As to meaning of mitigation, remission and commutation, see notes 3–5 to A A 57

Where a soldier has been convicted of (1) desertion, after a previous conviction for that offence, and (2) escaping from confinement, and has been sentenced to penal servitude, and the confirming officer confirms the finding on the second charge but not that on the first charge, which alone justified the sentence of penal servitude, he is bound under this rule to commute the sentence at least to imprisonment, the maximum sentence under A A 22 If, however, the confirming officer confirms the finding on the first charge but not that on the second charge, he may mitigate or commute it to some less punishment if he considers that a sentence of penal servitude on the charge of desertion alone is, in the circumstances, too severe

See generally as to mitigation and commutation, K R 661

2 This paragraph gives to the authority prescribed under A A 57 (2) and r 126 (B) similar powers to do after confirmation that which, under para (A) of this rule, the confirming authority may do before confirmation But it will be noted that the prescribed authority can only 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, &c , from A A 57 (2)

As to setting aside convictions by the confirming officer, see K R 665

3 As to the commuting authority, see A A 57 (2) and r 126 (B)

Confirmation notwithstanding informality in, or excess of, punishment

55. 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 authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law , and the confirming authority may confirm the finding and the sentence as so varied of the court-martial [1]

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 Confirming officers should, if practicable, order a revision of sentence, but if revision is impracticable and they decide to act under this rule, they should call the attention of the members of the court to the informality or irregularity of the sentence

The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore null, *e g* , a sentence of discharge with ignominy from His Majesty's service awarded by a district court-martial to a

warrant officer (see also examples of illegal sentences in note 4 to r 51) In such cases the court must be re-assembled for the purpose of passing a valid sentence This proceeding is not, strictly speaking, a revision of the sentence, and therefore the provisions of A A 54 (2) as to increase of sentence on revision would not apply

The following are examples of cases where the confirming officer may properly act under this rule —

(*a*) a sentence of 12 months' detention should be varied to a sentence of detention for one year (see K R 654)

(*b*) a sentence of three years' imprisonment with hard labour, which is in excess of the punishment authorised by law, must be varied to a sentence of two years' imprisonment with hard labour or some less punishment (See A A 44 (*c*) and (*k*))

(*c*) a sentence of eight months' detention for an offence of drunkenness committed by a soldier not on active service or on duty, must be varied to a sentence of six months' detention or less (See A A 19)

(Form of proceedings, p 760)

Confirmation notwithstanding technical or other deviation

56. Whenever it appears that a court-martial had jurisdiction to try any person, and that that person was charged with some offence or offences under the Army Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall 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, but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules [1]

1 This rule is intended to prevent a miscarriage of justice in consequence of defects, usually of a technical nature, in matters of procedure which do not affect the real merits of the case 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, &c , is of a substantial kind will often depend upon the circumstances

The following examples may be given of cases where the confirming officer might properly act under this rule, if satisfied that the accused has suffered no injustice —

(*a*) Failure by the court to comply with r 39 (A) (application for adjournment)

(*b*) Failure by the court to comply with r 83 (B) (reading over evidence)

The court should not allow any technicality to interfere with the accused in the making of his defence

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

It may be convenient to note here that if, after confirmation, the charges or findings thereon are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all the consequences of his trial and the record of the conviction erased (See K R 665)

If the sentence alone is declared invalid, the finding will stand good and therefore the soldier convicted will suffer the forfeitures or penalties which are consequential on conviction

Where punishment is remitted, the remission, unless otherwise expressed, will not extend to any forfeiture incurred automatically by reason of the conviction (K R 665.)

Insanity

Provisions as to finding of insanity and custody of insane person

57.—(A) Where the court find either that the accused is unfit, by reason of insanity, to take his trial, or that he was guilty of the act or omission charged, but was insane at the time when he did the said act or made the said omission,[1] the president shall date and sign the finding, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation [2]

(B) If the finding is not confirmed, the accused may be tried by the same or another court-martial for the offence with which he was originally charged

(C) Where the finding is confirmed, then, until the directions of His Majesty as to the disposal of the accused are known, or in the case of an accused person unfit to take his trial, until any earlier time at which the accused is fit to take his trial, 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

1 See generally A A 130

For forms of findings of insanity, see Variations on pp 745 and 753

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 take his trial, 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 former case, if he recovers before His Majesty's directions as to his disposal are known, he should be ordered for trial

2 In both cases mentioned confirmation is required

An application that the accused is, by reason of insanity, unfit to take his trial 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

(Form of proceedings, pp 745 and 753)

General Provisions as to Proceedings of Court

Seating of members

58. The members of a court-martial will take their seats according to their army rank

Responsibility of president.

59.—(A) The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, and in a manner befitting a court of justice [1]

(B) It is the duty of the president to see that justice is administered, and that the accused has a fair trial,[2] 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 to make his own evidence clear or intelligible, or otherwise

1 The court should always have at its disposal the Army Act, Rules of Procedure, and King's Regulations, and any other official books or orders relating to courts-martial

The president should be careful to safeguard the dignity of the court and the solemnity of its proceedings

2 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 103 (*g*)) 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 (including the accused if he gives evidence) any questions which appear to him necessary or desirable for the purpose of eliciting the truth (See r 86 and notes)

Power of court over address of prosecutor and accused

60 —(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 [1]

(B) The prosecutor may not refer to any matter not relevant[2] 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, and to prevent the prosecutor from commenting[3] at any time on the failure of the accused or his wife to give evidence

(C) The court should allow great latitude to the accused in making his defence[4], 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 [5] The court may caution the accused as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of irrelevance

1 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 (See Ch V, para 52) 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 accused or ex tenuate his offence, *e g* , he should himself produce any available evidence 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 r 44 (D)

The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him (See Ch III, para 48, and K R 645)

The prosecutor should always inform the court if the accused has elected trial by court-martial instead of being dealt with summarily by his commanding officer (See Variation, p 744)

2 As to relevancy, see Ch VI, paras 15-30 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

3 See r 80 (B) The court should at once check a prosecutor if he infringes this rule, and should record upon the proceedings that they have done so

4 *I e* , whether he gives evidence on oath or not

5 *I e* , a liability to be cross-examined as to his previous character (r 80 (D)) or to be charged subsequently with knowingly making a false accusation (A A 27 (1)) The court should always caution the accused as to the possible effect which will result from making imputations upon the character of witnesses for the prosecution.

Procedure on trial of accused persons together.

61. Where two or more accused persons are tried together and any evidence as to the facts of the case, other than his own, is tendered by any one of them, the evidence and addresses on the part of or on behalf of all the accused persons will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the accused persons [1]

1 The effect of this rule is that, if no evidence as to the facts of the case, other than their own, is called for the defence of two or more persons jointly charged and tried, the prosecutor's final address will precede that of the accused or their counsel or defending officer If, however, any one of the accused calls witnesses as to the facts, the prosecutor will have a right of reply on the whole case See also rr 40 and 41, and note 3 to r 16

Separate charge sheets

62.—(A) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and where 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 31 to 44, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused [1]

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs [2]

(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 45 (A) and (B), and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 37 and 45 (C) to 50, 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 [3]

(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 an event may, without trying the accused upon any of the subsequent charge-sheets, proceed as directed by (C) [4]

(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 will be embarrassed in his defence if he is not so tried separately, and in such a 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 [5]

(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 Rules 37 (B) and (C) shall not be complied with until after the court have arrived at their findings on all the charge-sheets [6]

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 different 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 wilful damage to a cell 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, *e g* , where a soldier is charged with desertion and with striking the serjeant of the guard, his superior officer, after he has been handed over by the escort, the charges should normally be inserted in separate charge-sheets 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 Again, if an officer is charged with fraudulent misapplication of regimental money of which he is in charge, and, in order to enable him to perpetrate the fraud, has knowingly made fraudulent entries in a book signed by him, charges under A A 17 and 25 should be inserted in the same charge-sheet

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

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 23 of memoranda on p 769

Where any evidence given upon the trial of a 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

2 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 may 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

3 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 A finding of "not guilty" on any one or more charges in a charge-sheet (whether alternative or not) will be announced in open court (see r 45)

4 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 to justify the award of a more severe sentence

The powers given to the convening officer under this paragraph cannot be exercised by the prosecutor on his own initiative or by the court

5. 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

6 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

Sitting in closed court

63 —(A) When a court-martial sit 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[1] of all other persons not entitled to be present

(B) Except as above-mentioned, all the proceedings, including the view[2] of any place, shall be in open court[3] and in the presence of the accused

1 See A A 53 (5)
The proceedings will be invalidated if the prosecutor happens to be present when the court is closed, *c f R* v *Kettridge* L R , (1915) 1 K B 467
2 See A A 53 (7)
All the members of the court must be present at the "view" as must also the accused, even if he is represented at his trial by counsel or defending officer
3 This 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 (*R* v *Lewes Prison* (*Governor*), L R , (1917) 2 K B 254)

Time for trial

64 —(A) 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 determine [1]

(B) If the court consider it necessary to continue a trial after six in the afternoon they may do so, but if they do so should record in the proceedings their reason for so doing

(C) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies[2] under his hand that it is expedient for the public service, trials may be held at any hour

(D) If the court or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly,[3] but otherwise the court should not sit on any of those days

1 See K R 646 and r 65 and note
2 This certificate should be attached to the proceedings
3 A statement of the reason for sitting on these days should be attached to, or entered in, the proceedings

Continuity of trial and adjournment of court.

65.—(A) When a court is assembled and the accused has been arraigned, the court should (but subject to the provisions of the Army Act,[1] and of these rules[2] as to adjournment) continue the trial from day to day and sit for a reasonable period[3] on every day[4] 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-martial in the absence either of the president or judge-advocate[5] (if any) shall not proceed and if necessary shall adjourn

(C) The senior officer on the spot may also, for military exigencies[6], adjourn or prolong the adjournment of the court

(D) Any adjournment may be made from place to place[7] as well as from time to time If the time to which the adjournment is made is not specified, the adjournment will be until further orders from the proper military authority, if the place to which the adjournment is made is not specified, the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority

1 A A 53 (6) authorises an adjournment of the court without any restriction It is, however, 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 Judge-Advocate General 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, pp 749, 750 752), and either announced in court in presence of the accused, or communicated to the prosecutor and accused

3 See K R 646 and r 64 (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

Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning If a shorthand writer is in attendance, the exacting nature of his work should be taken into consideration by the court in their decision as to an adjournment

4 But see r 64 (D) as to Sunday, &c

5 As to procedure on death of president or his inability to attend, see A A 53 (2) As to procedure on death of judge advocate or his inability to attend, see r 102 Where the absence of either the president or judge advocate is due to temporary causes, the court should adjourn until he is able to attend

As to the duties of the senior member of the court where the president is absent, see r 66 (A)

6 These can seldom occur except on active service

7 *E g*, where a view under A A 53 (7) and r 63 (B) 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

Suspension of trial

66 —(A) Where, in consequence of anything arising while the court is sitting,[1] the court is unable by reason of dissolution[2] (as specified in Section 53 of the Army Act, or otherwise), or of the absence of the president, to continue the trial, the president, or in his absence, the senior[3] member present, will immediately report the facts to the convening authority

(B) 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

1 If the court is not sitting, a report will usually be made in some other way to the convening authority

2 A court is dissolved if it is reduced below the legal *minimum* (see note 4 to r 17 and note to r 18), if, on the death, &c , of the president, the senior member of the court is not of sufficient rank, if continuance of trial is impossible through illness of the accused before the finding (See A A 53 (1), (2), (3))

3 *I e* , senior according to the rank in which they take their seats (See r 58)

67. In case of the death of the accused or of such illness of the accused as renders it impossible to continue[1] the trial, the court will ascertain the fact of the death or illness by evidence,[2] and record the same, and adjourn, and transmit the proceedings to the convening authority

Proceeding on death or illness of accused

1 *I e* , within a reasonable time See A A 53 (3)

2 This will be taken on oath or solemn declaration

68 [1]—(A) A member of a court-martial who has been absent while any part of the evidence on the trial of an accused person is taken can take no further part in the trial by that court of that person, but the court will not be affected except as provided by Section 53 of the Army Act [2]

Presence throughout of all members of court.

(B) An officer cannot be added to a court-martial after the accused has been arraigned

1 The principles of this rule must be applied in the case of a field general court martial though the rule is not specifically applied by r 121

2 *I e* , through dissolution under A A 53

69 —(A) Every member of a court-martial must give his opinion by word of mouth[1] on every matter which the court has to decide, including the sentence, notwithstanding that he may have given his opinion in favour of acquittal

Taking of opinions of members of court

(B) Subject to the provisions of the Army Act,[2] every question shall be determined by an absolute majority[3] of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority

(C) The opinions of the members of the court shall be taken in succession, beginning with the junior in rank [4]

1 Opinions must be given orally (See also r 43 (B))

2 The president has no second or casting vote (I) in the case of a sentence of death (A A 48 (8)), and (II) where there is an equality of votes on the finding of the court (A A 53 (8)), (see also A A 49 (2))

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 give their votes in favour of a sentence of penal servitude, two in favour of imprisonment and two in favour of detention 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 detention will naturally give their votes for imprisonment rather than penal servitude 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

4 The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned (see r 43 (B))

"Junior in rank" means junior in the rank in which they take their seats

Procedure on incidental question

70 If any objection[1] 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

1 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 1 to r 40)

Swearing of court to try several accused persons

71.—(A) A court may be sworn 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 [1]

(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 the members of the court for the trial of the others alone [2]

(C) In the case of several accused persons to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession [3]

(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 [4]

1 This course of procedure will not affect the position of the court which 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

2 When, in consequence of an objection raised by one of 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

3 *I e*, 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 12 of memoranda on p 768

4 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 penal servitude, imprisonment or detention will under A A 68 (1) 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

Swearing of interpreter and shorthand writer

72.—(A) At any time during the trial[1] an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn[2] to act as interpreter

(B) An impartial person may at any time during the trial, if the court think it desirable, be sworn[2] to act as a shorthand writer

(C) Before a person is sworn as interpreter or shorthand writer the accused should be informed of the person who is proposed to be sworn, and may object[3] to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear that person as interpreter or shorthand writer

1 An interpreter or shorthand writer is usually sworn at the commencement of the trial

2 For form of oath or solemn declaration, see pp 762 3
For remarks on employment of interpreter, see Ch V, para 55

3 The same procedure will be followed as in the case of an objection to a member of the court

General Provisions as to Witnesses and Evidence

Evidence to be according to rules in English courts

73.—(A) A court-martial shall not receive evidence for the prosecution which is not relevant[1] to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act,[2] or under any other Act of the Parliament of the United Kingdom

(B) The rules of evidence adopted in civil courts in England, including those contained in the Criminal Evidence Act, 1898, will be followed by courts-martial,[3] and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before a civil court in England

(C) By "civil court" in this rule is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction

1 As to relevancy and admissibility of evidence, see generally Ch VI

2 See A A 163–165

3 See A A 128 Under A A 127, it is provided that as respects the conduct of its proceedings or the reception or rejection of evidence or as respects any other matter or thing whatsoever, a court martial shall not be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law or ordinance of any legislature whatsoever other than the Parliament of the United Kingdom
The Criminal Evidence Act, 1898, which first gave an accused person the right to give evidence on his own behalf in all criminal proceedings is, in accordance with s 6 (2) (*b*) of that Act, applied to courts martial by this rule The main provisions of the Criminal Evidence Act, 1898, are reproduced in r. 80. (See notes to that rule)

Judicial notice

74. The court may take judicial notice[1] of all matters of notoriety, including all matters within their general military knowledge

1 As to meaning of judicial notice, see Ch. VI, paras 10 and 11

Calling of all prosecutor's witnesses.

75. The prosecutor is not bound to call all the witnesses whose evidence is in the summary or abstract of evidence given to the accused,[1] but he should ordinarily call such of them who were

called for the prosecution as the accused desires to be called, in order that the accused may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses [2]

1 As to giving to the accused the summary or abstract of evidence, see r 14 (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

Calling of witness whose evidence is not contained in summary or abstract

76. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract of evidence given to the accused, notice of such 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 the 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 the witness to be postponed, and the court shall inform the accused of his right to demand such an adjournment or postponement [1]

1 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 86 (D)

List of witnesses of accused

77. The accused shall not be required to give to the prosecutor 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 for by Rule 15 (A) [1]

1 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 to 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 A A 50 (3))

Procuring attendance of witnesses

78 — (A) The commanding officer of the accused, the convening officer, or, after the assembly of the court, the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured,[1] but the person requiring the attendance of a witness may be required to undertake to defray the cost[2] (if any) of his attendance [3]

(B) Any such witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, or, after the assembly of the court, the president or judge-advocate (if any) [4] The summons shall be in the form provided in the Second Appendix to these rules, and shall be served on the witness either personally or by leaving it with some person at his last or most usual place of abode [5]

(C) Any such witness who is subject to military law shall be ordered to attend by the proper military authority [6]

1 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 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 r 79 makes provision for the adjournment of the court if the attendance of such witness is essential

2 This power 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 generally Allowance Regulations

3 As to the mode of applying for the attendance of military and naval witnesses from distant stations, see K R 637

4 See A A 125

5 For form of summons, see p 761

A civilian witness who, after being duly summoned to attend a court martial or summary of evidence and after payment or tender of the reasonable expenses of his attendance, makes default in attending, may be punished by a civil court (See A A 126, 180 (1)) It is essential that the summons be served by a person of sufficient standing to give satisfactory evidence of service having been effected, and a warrant officer or N C O not below the rank of serjeant should as a rule, be detailed for this duty Where any difficulty is experienced in serving a summons upon a civilian witness, the assistance of the civil police should be invoked

If a civilian witness who has been duly summoned and whose expenses have been tendered does not attend, the court should take evidence on oath as to the service of the summons and the tender of expenses The president should then forward a certificate through the convening officer to the Army Council reciting the facts and attaching a certified copy of the evidence relating to the service of the summons and the tender of expenses

A civilian witness, if abroad, cannot be compelled to attend a court martial in the United Kingdom, nor, if in the United Kingdom, can he be compelled to attend a court martial abroad

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 verbal request

A witness summoned or ordered to attend before a court martial has the same privilege from arrest as a witness before one of the superior civil courts (See A A 125 (2))

6 Disobedience to any such order is punishable under A A 28 (1)

Adjournment of court for non-attendance of witnesses

79. If such proper steps as are mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not reasonably be procured before the assembly of the court is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer

Evidence of accused and his wife

80.[1]—(A) An accused person or his wife is a competent witness for the defence at any stage of the proceedings at which under these rules[2] evidence for the defence may be given whether the accused is charged solely or jointly with any other person, but neither the accused nor his wife shall, save as provided in section 4 of the Criminal Evidence Act, 1898, be called as a witness, except on the application of the accused [3]

(B) The failure of the accused or his wife to give evidence shall not be made the subject of any comment by the prosecutor.[4]

(c) The accused when giving evidence shall, unless otherwise ordered by the court,[5] give his evidence from the witness box or other place from which the other witnesses give their evidence [6]

(d) The accused when giving evidence may be asked any question in cross-examination,[7] notwithstanding that it would tend to criminate him as to the offence charged, but shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged[8], or

(ii) he has personally or by his counsel or defending officer asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution[9], or

(iii) he has given evidence against any other person charged with the same offence [10]

(e) The wife of an accused person shall not be compelled to disclose any communication made to her by her husband during the marriage, nor shall an accused person be compelled to disclose any communication made to him by his wife during the marriage

(f) Where the only witness to the facts of the case called by the defence is the accused, he shall give evidence immediately after the close of the evidence for the prosecution [11]

1 This rule sets out all the relevant provisions of the Criminal Evidence Act, 1898, which is applied to the proceedings of courts martial by r 73 (b)

2 See rr 40 and 41

3 As to the duty of the president or judge advocate to explain to the accused the effect of giving evidence on oath, see note 2 to r 40

The wife of an accused person cannot be called as a witness for the prosecution except in certain cases mentioned in s 4 of the Criminal Evidence Act, 1898, *e g* , where the accused is charged with a civil offence under the Criminal Law Amendment Act, 1885, or where the charge is one involving personal injury to the wife The wife of an accused person can only be called as a witness for the defence upon the application of the accused (See Ch VI, para 87)

4 As to the duty of the court, see r 60 (b) and note 3 thereto

5 *E g* , if the accused is violent

6 The accused will remain under escort while giving evidence, but should otherwise be treated like any other witness

7 If the accused refuses to answer a question which another witness would be required to answer, and the question is not one which an accused person is under this rule specially exempted from answering, he may be charged, like any other witness, under A A 28 (4)

8 See generally Ch VI, para 20, *et seq*

If, in answer to a charge of breaking out of barracks at 11 p m , the accused stated in evidence that he was in barracks from 10 p m until after reveille the following morning, he could properly be asked in cross examination whether he had not in fact been convicted of an assault upon the police outside barracks at midnight

9 It will be for the court to decide whether or not the accused has done anything to render himself liable to be cross examined as to character under this provision If there is any doubt on the matter, the decision of the court should be in favour of the accused

If the accused suggests in cross examination of a witness for the prosecution or in his own evidence upon oath that such witness himself committed the offence charged against him (the accused), the nature of the defence involves imputations upon the character of the witness, and the accused is liable if he gives evidence to be cross examined as to his own character If the matters suggested as involving imputations on the character of the witness for the prosecution are isolated and do not form a substantial part of the defence, cross examination as to character should not be permitted unless it is suggested by the defence that the witness ought not to be believed on the ground that his conduct (not his evidence in the case but his conduct outside the evidence given by him) makes him an unreliable witness

Evidence by the accused that his superior officer whose command he was charged with disobeying had a hasty temper would not be an imputation upon the character of such superior officer within the meaning of this rule

If an accused person is conducting his case in a manner which renders him liable to be cross examined as to his character, the court should warn him of the possible consequences

The prosecutor in his cross examination of the accused must not put questions designed to draw from the accused imputations upon the character of a witness for the prosecution

10 If two accused persons are tried jointly, and one of them in giving evidence on his own behalf incriminates the other, the latter may, under this provision, cross examine the former

11 See also r 40 (c) (1)

81 During the trial a witness other than the prosecutor or accused ought not, except by special leave of the court, to be in court while not under examination,[1] 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 [2] **Withdrawal of witnesses from court**

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 arraignment 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 Otherwise his answer might be influenced by the discussion

82 —(A) An oath shall be administered by the judge-advocate (if any) or by the president or by a member of the court and taken in presence of the accused by every witness in the form and manner provided in the Second Appendix to these rules [1] **Swearing of witnesses**

(B) Rule 30 shall apply to every witness

(C) Where a witness is permitted to make a solemn declaration[2] instead of taking the oath in the prescribed form and manner, the declaration shall be in the form provided in the Second Appendix to these rules

1 See A A 52 (3)

For form of oath and manner of taking same, see pp 762–3

As to power of dealing with recalcitrant witnesses, see A A 28 (in the case of persons subject to military law) and s 126 (in other cases)

2 See A A 52 (4) For form of declaration, see p 763.

83.—(A) Every question will be put to a witness orally by the prosecutor, by or on behalf of accused, or by the judge-advocate, without the intervention of the court, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or by or on behalf of the accused, in which case he will not reply until the objection is disposed of [1] **Mode of questioning witnesses**

(B) The evidence of a witness as taken down should be read to him[2] after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may respectively examine him respecting the same

(C) In the case of a court martial at which a shorthand writer is employed, it shall not be necessary to comply with Rule 83 (B), if in the opinion of the court and the judge-advocate (if any) (such opinion to be recorded in the proceedings) it is unnecessary to do so, but nevertheless, if any witness so desires, Rule 83 (B) shall be complied with [3]

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" (See Ch VI, para 106, *et seq*) 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 This should always be done where it is proposed to cross examine the accused as to his character

2 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

3 Any particular portions of the evidence may be read over at any time before the sentence is awarded, if the court, judge advocate, prosecutor or accused so desires The court, if closed at the time, must be re-opened for this purpose

(Form of proceedings, pp 748–751)

Examination and cross examination

84.—(A) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re examined by the person calling him on matters raised by the cross-examination [1]

(B) The court may, if they think fit, allow the cross-examination of a witness to be postponed [2]

1 See Ch VI, paras 106–118

As to re examination, see Ch VI, para 119 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 r 75

2 The court should, if the accused so requests, allow the cross-examination of a witness to be postponed, especially if his evidence comes as "a surprise", see also r 76 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

Questions to witness by members of court or judge advocate

85.—(A) The president, the judge-advocate (if any) and, with 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 [1]

(B) Upon any such question being answered, the president or judge-advocate (if any) 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 [2]

1 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 86)

It is desirable that any questions put by the president, judge-advocate, or members of the court 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

2 The president or judge-advocate 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

Recalling of witnesses and calling of witnesses in reply

86.—(A) At the request of the prosecutor or of the accused a witness may, by leave of the court, be re-called at any time before the closing address[1] of or on behalf of the accused for the purpose of having any question put to him through the president, or judge-advocate (if any) [2]

(B) The court may, if they consider it expedient, in the interests of justice, so to do, allow a witness to be called or re-called 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[3] 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 as 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 conduct 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 in the interests of justice [4]

1 See rr 40 and 41

2 The president or judge advocate 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

3 Including a material statement by the accused himself if he has given evidence

As stated in Ch VI, para 20, *et seq* , evidence of the accused having committed other offences is not usually admissible, except to rebut certain lines of defence (*e g* , intent, accident, mistake, &c) and should not be given (or mentioned by the prosecutor in his opening address) until a line of defence justifying its admission has been definitely adopted Where the accused in his defence does adopt such a line, evidence of the nature referred to may be admitted under this rule in rebuttal

4 The power given under this provision o 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 elucidated (if any)

Defending Officer, Friend of Accused, and Counsel

Defending officer and friend of accused

87.—(A) If an accused person is not represented at his trial 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"[1]

(B)[2] 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 [3] 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 [4]

(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 cannot examine or cross-examine the witnesses or address the court

1 Under r 14 (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 There is power under r 104 to dispense with this paragraph in the event of military exigencies, &c

3 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

4 *I e*, he must *conduct* the case as representing the accused (See rr 89 (C), 91, 92)

(Form of proceedings, p 742)

Counsel allowed in certain courts-martial

88.—(A) Subject to these rules, counsel[1] shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial

(i) When held in the United Kingdom, and

(ii) When held elsewhere than in the United Kingdom or India, if the Army Council or the convening officer, and when held in India, if the Commander-in-Chief of the forces in India, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such a 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 87, the rules with respect to counsel will apply only to the courts-martial at which counsel are, under this rule, allowed to appear

1 For qualifications of counsel, see r 93

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 60 (c)), but he should exercise more restraint in commenting on the acts of persons not before the court

Requirements for appearance of counsel

89.—(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 it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain counsel on behalf of the prosecutor[1] 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 represent 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 offer 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 a case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rules 40 (D) (II) (*a*) and 41 (B) (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, cross-examined and re-examined as any other witness

1 As to engagement of counsel on behalf of the prosecutor, see K R 640, 641

Counsel for prosecutor.

90.—(A) 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

(B) 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 60 (B)

Counsel for accused

91.—(A) Counsel appearing on behalf of the accused has the like rights and is under the like obligations as are specified in Rule 60 (C) in the case of the accused

(B) 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

General rules as to counsel.

92.—(A) Counsel, whether appearing on behalf of the prosecutor or of the accused, will conform strictly to these rules and to

the rules of civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel

(B) If counsel puts to a witness other than the accused[1] a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it, and

(i) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question, but

(ii) If they are of opinion that the imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question

If the question is disallowed counsel on both sides will refrain from further examining or commenting on the matter

(C) Counsel will not state as a fact any matter which is not proved, or which he does not intend to prove in evidence

(D) Counsel will not state what is his own opinion as to any matter of fact before the court

(E) Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact

(F) Counsel will treat the court and judge-advocate with due respect,[2] and shall, 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

1 If such a question is put to the accused, the court will also have to consider whether, having regard to r 80, he should be compelled to answer it (See also note 1 to r 83)

2 As to conduct of counsel, see A A 129

Qualification of counsel

93.—(A) Neither the prosecutor nor the accused has any right to object to counsel, if properly qualified

(B) Counsel shall be deemed properly qualified to appear at a court-martial wherever held[1]—

(i) If in England or Northern Ireland he is a barrister-at-law or solicitor

(ii) If in Scotland he is an advocate or law agent

(iii) If in India he is a barrister-at-law or is a legal practitioner authorised to practise, with right of audience, in a court of sessions

(iv) If in any other part of His Majesty's dominions he is recognised by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules

1 The effect of this provision is that counsel properly qualified under this rule may appear for the accused person wherever the trial is held, *e g*, a Scottish advocate may appear for the defence at a court martial held at Aldershot, or a solicitor from Northern Ireland at a court martial held at Edinburgh

Proceedings

Record in proceedings of transactions of court martial

94. At a court-martial the judge-advocate, or, if there is none, the president, shall record or cause to be recorded all transactions of that court,[1] 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 will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate

1 The record, where no shorthand writer is employed, must be taken in a clear and legible hand Interlineations or corrections must be avoided as much as possible, if made they should be initialled by the president The pages should be numbered and the various sheets fastened together Sufficient space must be left below the signature of the president for the decision of the confirming officer The place and date of the signing of the sentence by the president must be inserted
(See memoranda for guidance of courts-martial, paras 11–29, pp 768–770)
As to annexure to the proceedings of original documents, see K R 659

Taking down of evidence and addresses.

95.—(A) The evidence shall be taken down in a narrative form[1] in as nearly as possible the words used, but in any case where the prosecutor, the accused, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim* [2]

(B) 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

(C) Where any address by or on behalf of the prosecutor or accused, or the summing up of the judge-advocate, is not in writing it shall not be necessary to record the address or summing up in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge-advocate requires, except that—

(i) 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

(ii) The court should also record any particular matters in the address by or on behalf of the prosecutor or accused which the prosecutor or accused, as the case may be, requires

(D) 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 [3]

1 *I e*, 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 "
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 question and answer interpreted into English will be recorded.

2 This applies to questions and answers given in cross examination and re-examination as well as in examination in chief
3 Cases justifying an expression of censure on individuals who are not present at the trial are rare and exceptional

Custody and inspection of proceedings

96 The proceedings 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

Transmission of proceedings after finding

97.—(A) Where the court is a general court-martial the proceedings shall as soon as possible be sent by the person having the custody thereof[1], to such person as may be from time to time directed by His Majesty, and subject to the provisions of any such direction of His Majesty, as may be directed by the order convening the court [2]

(B) Where the court is a district court-martial, the proceedings shall as soon as possible be sent by the person having the custody thereof[1], to such person as may be directed by the order convening the court, or in default of any such direction to the confirming officer [3]

1 See r 96
2 See K R 667
Where the accused belongs to the Royal Marines, see K R 673
3 For procedure where a member of the court has become confirming officer, see A A 54 (4)

Preservation of proceedings

98 —(A) The proceedings of a court-martial shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in London or India, or to the Admiralty, 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 [1]

(B) In the case of the proceedings of a court-martial held upon an officer or soldier of a force raised in a Dominion, in the custody of the Judge-Advocate-General, such proceedings may be delivered by the Judge-Advocate-General into the custody of such person as may be appointed by the Governor-General or Governor of the Dominion concerned

1 See K R 667, 669–672

Rate of payment for copies of proceedings

99. The rate[1] at which copies of the proceedings of a court-martial shall be supplied shall be the actual cost of the copy required, not exceeding two pence for every folio of seventy-two words, and the officer or person having the custody[2] of those proceedings must, on demand made within the time limited for the preservation of the proceedings, supply a copy accordingly to any person entitled under the Army Act to obtain such copy.

1 Prescribed for the purposes of A A 124 (see note to that section).
2 See r 98

Loss of proceedings

100.—(A) If, before confirmation,[1] the original proceedings[2] of a court-martial, 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[3] 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, if it is a finding which requires confirmation, and the sentence consequent thereon, may be confirmed, and shall be as valid as if the original proceedings or part thereof had not been lost

(D) If the accused refuses his assent as required in (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, 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 of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes

1 Confirmation is not complete until finding and sentence have been promulgated (See r 53)

2 See note 2 to r 50

As to annexure to the proceedings of original documents, see K R 650

3 This 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

Judge-Advocate

Appointment of judge advocate and disqualification

101 —(A) Where the convening officer is authorised[1] to appoint a judge-advocate, he shall, in the case of a general, and may, in the case of a district, court-martial, by order appoint a fit person to act as judge-advocate at the court-martial

(B) An officer who is disqualified[2] for serving on a court-martial shall be disqualified for acting as judge-advocate at that court-martial

(C) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person[3] has been appointed , but this rule shall not relieve from responsibility the person who made the invalid appointment

1 *I e* , by the warrant authorising him to convene a court martial As in the case of a general court martial held in the United Kingdom, the warrant to the convening officer does not give him power to appoint a judge advocate, application must be made to the Judge Advocate General to make the appointment Omission to appoint a judge-advocate at a general court-martial will invalidate the proceedings

As to the appointment of a judge advocate in the case of a field general court-martial, see r 106 (E)

2 See r 19 (B) and notes

A prosecutor or a witness for the prosecution is disqualified from acting as judge-advocate (See A A 50 (3))

3 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

Death, illness, or absence of judge-advocate

102 If the judge-advocate dies, or from illness, or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance 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 again before another court [1]

1 The court will in no circumstances proceed in the absence of a judge-advocate who has been duly appointed

Powers and duties of judge advocate

103 The powers and duties of a judge-advocate are as follows —

(*a*) 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 or procedure 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 will inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and will give his advice on any matter before the court,

(*d*) Any information or advice given to the court on any matter before the court will, if he or the court desire it, be entered in the proceedings,

(*e*) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence and advise the court upon the law relating to the case before the court proceed to deliberate upon their finding,[1]

(*f*) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, 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 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,[2]

(*g*) The judge-advocate has, equally with the president,[3] 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 to make his own evidence clear or intelligible, or otherwise, and may, for that purpose, advise the court[4] that witnesses should be called or re-called for the purpose of being questioned by him on any matters which appear to be necessary or desirable for the purpose of eliciting the truth,

(*h*) In fulfilling his duties the judge-advocate will be careful to maintain an entirely impartial position

1 See r 42 and note

2 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 (see Ch VIII, para 30) Such liability—or at least the quantum 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

3 For duty of president, see r 59 (B) and note

4 This advice should always be acted upon unless the court consider that the judge advocate is acting improperly or in such a manner as to obstruct the proceedings If his advice is disregarded the court should record their reason for disregarding it

Exception from Rules

Suspension of rules on the ground of military exigencies or the necessities of discipline

104. 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 4 (C), (D), (E), (I), and (G), 5, 8, 14, 15, and 87 (B), he may, by order under his hand, make a declaration[1] to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in the 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 [2]

Provided that the accused shall have full opportunity of making his defence,[3] and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities

1 For form of declaration, see p 741

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 4 but not with r 5

If rr 4 (C), (D), (E), (F) and (G) 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 14 (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 15 (C) should always be complied with, and r 15 (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 this opportunity 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

Field General Court-Martial

The foregoing rules shall not, save as hereinafter mentioned,[1] apply to field general courts-martial, which shall be subject to the following rules —

Convening of field general court-martial

105 —(A) A field general court-martial[2] may be convened—

(I) By any officer in command of a detachment or portion of troops in any country beyond the seas when not on active service, where complaint is made to him that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in that country or

(II) By the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a body of forces on active service, where it appears to him, on complaint or otherwise, that a person subject to military law has committed an offence

(B) An officer in command of a detachment or portion of troops not on active service should not convene a field general court-martial in His Majesty's dominions unless he is authorised so to do by the general officer or brigadier commanding the forces to which the officer belongs

(C) An officer, before convening a field general court-martial for the trial of a person, shall be satisfied that it is not practicable[3] to try the person by an ordinary court-martial, and—where the officer is below the rank of field officer and is not a commanding officer—be further satisfied that it is not practicable to delay the trial for reference to a superior officer

1 See rr 108, 110 (B), 111, 116 and 121

2 See generally as to field general courts martial, A A 49 and Ch V, paras 111–113

The order convening a field general court martial must be signed by the convening officer personally and not by a staff officer on his behalf For form of convening order, see pp 737–740

The court should not, as a rule, be convened for the trial of an offence not committed on active service, in any place where ordinary civil justice is administered

Subject to the restrictions imposed by A A 49 and by this rule, a field general court martial can try any offence (See A A 49 (3))

A field general court martial can try an officer

A judge advocate may be appointed at a field general court martial (See r. 106 (E))

3. For meaning of " practicable," see r 122 (A)

Composition of field general court-martial

106 —(A) Subject to the provisions of Rule 107 (A), not less than three officers must be appointed [1]

(B) If the convening officer is of opinion that three other officers are not available[2] to form the court, he may appoint himself president of the court, but if he is of opinion that three other officers are available, or that although three other officers are not available he is himself by reason of his position as confirming officer or otherwise not available, he must appoint as president some other officer.

Provided that the convening officer—

(i) Must not appoint as president any officer below the rank of field officer, unless he is himself below that rank, or unless in his opinion a field officer is not available[3], and

(ii) Where under the foregoing provision he has power to appoint as president an officer below the rank of field officer, must not appoint an officer below the rank of captain, unless in his opinion a captain is not available

(c) The officers should have held commissions for not less than one year,[4] and if in the opinion of the convening officer any officers are available who have held commissions for not less than three years, he should appoint those officers in preference to officers of less service

(d) The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit

(e) The convening officer, although not authorised to appoint a judge-advocate in the case of other courts-martial, may in the case of any field general court-martial by order appoint a fit person to act as judge-advocate thereat

1 This paragraph gives the ordinary rule for the constitution of a field general court martial which may, however, in the circumstances mentioned in A A 49 (1) (*b*) and r 107, consist of two officers

2 For meaning of "available," see r 122 (a)

3 By A A 49 (1) (*c*), the president of a field general court martial may be of any rank, and in some circumstances it may be the duty of the convening officer to follow the statute and disregard this rule For instance, a court consisting of a major as president and two captains heard all the evidence and were agreed upon their findings of fact, but adjourned to obtain advice upon a point of law In the interval the president was killed Another field officer was available, but as the witnesses were no longer available, it was not possible to re try the case before a new court It was ruled that the convening officer ought to act in accordance with A A 49 (1) (*c*) and 53 (2) and appoint the senior captain as president, so that the court might conclude the trial

4 If an officer of less than one year's standing is appointed, the necessity for so doing should be recorded

As to field general court-martial where military exigencies occur

107 —(a) Where the convening officer is satisfied that military exigencies or other circumstances prevent compliance with Rule 106, and that it is not practicable to delay the trial for the purpose of such compliance, then if, in his opinion, three officers are not available,[1] two will be appointed

(b) The court may be convened, and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules[2], but if it appears to the convening officer that military exigencies or other circumstances[3] prevent the use of that form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable must be kept by the provost-marshal or assistant provost-marshal, if present, or if not, by the president and the officer charged with the promulgation, stating as near as may be the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, sentence, and confirmation, and any recommendation to mercy.

(c) The convening officer will report to superior authority for the information of the officer who, if a field general court-martial had not been convened, would have had power to convene a general court-martial to try the accused, the military exigencies or other circumstances which prevented compliance with Rule 106, or the use of the form in the Second Appendix

1 For meaning of "practicable" and "available," see r 122 (A)
2 See pp 737–740
3 Before resorting to the exceptional courses allowed by this rule, the convening officer must satisfy himself of the military exigencies or other circumstances which justify it
The accused must always have full opportunity for making his defence, see r 115

Charge

108. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act No formal charge-sheet shall be necessary, but the convening officer may nevertheless direct the separate trial of two or more charges preferred against an accused , or the accused, before pleading, may apply to be tried separately on any one or more of such charges on the ground that he will be embarrassed in his defence if not so tried separately, and the court shall accede to his application unless they think it to be unreasonable If such charges are separately tried, the provisions of Rule 62 shall apply as if the field general court-martial were a district court-martial

Trial of several accused persons

109. The court may be sworn at one time to try any number of accused persons then present before it, but except so far as accused persons are tried together for an offence committed collectively, the trial of each accused person will be separate

Challenge

110.—(A) The names of the president and members of the court will be read over in the hearing of the accused persons, and they will be asked if any of them objects to be tried by any of those officers

(B) If any accused person objects to an officer, the objection will be dealt with in the manner provided in Rule 25, which shall apply to every field general court-martial

Swearing of members witnesses, &c

111. The provisions of the foregoing Rules 26 to 30 (inclusive) and Rule 82 relating to the administering and taking of oaths and the making of solemn declarations shall apply to every field general court-martial [1]

1 For forms of oaths and declarations, see App II, pp 762–3

Arraignment

112. When the court are sworn, the judge-advocate (if any) or the president will state to the accused then to be tried the offence with which he is charged,[1] with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the accused whether he is guilty or not of the offence [2]

1 As to objection by accused to charge, see r 32 which, by r 121, is applied, so far as practicable, to a field general court-martial As to responsibility of president, see r 59

2 As to general plea of "guilty" or "not guilty," see r 35 and notes as to procedure after plea of "guilty" see r 37 Both of these rules are, by r 121, applied, so far as practicable, to a field 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 35 (D) which in all cases will be applied to a field general court martial

113. 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 [1] Plea to jurisdiction

1 See r 34 (which by r 121 is applied, so far as practicable, to a field general court martial) and notes

114 —(A) The witnesses for the prosecution will be called, and the accused will be allowed to cross-examine them, and to call any available witnesses for his defence [1] Witnesses and evidence

(B) The judge-advocate, if there be one, or if there be none, the president of the court shall take down, or cause to be taken down, a short summary of the evidence of all the witnesses at the trial, and the summary 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, the trial may be carried on without any summary being taken down, but in every such case the convening officer shall report to superior authority in the same manner as he is required to do under the provisions of Rule 107 (c)

1 Although by r 121 only a limited number of the foregoing rules are applied, so far as practicable, to field general courts martial, the procedure to be adopted at a field general court martial should be the same as at a general or district court martial See also r 116

As to evidence, see r 73

115 The accused will be asked what he has to say in his defence and shall be allowed to make his defence [1] Defence

1 See note to r 114

As to the rights of the accused to prepare his defence, see r 14, which by r 121 applies, so far as practicable, to a field general court-martial

116 Where during the course of a trial any doubt arises as to the procedure to be followed in connection with the calling or recalling or questioning of witnesses, or the order in which such witnesses are to be examined and addresses are to be made by the prosecutor or by or on behalf of the accused, the provisions of the foregoing rules[1] relating thereto shall, so far as practicable, apply as if the field general court-martial were a district court martial [2] Procedure at trial

1 See rr 39, 40, 41, 83–86

2 As to the presence throughout of all members of the court, see note 1 to r 68

117.—(A) In the case of an equality of opinions on the finding the accused will be acquitted Acquittal

(B) The finding of acquittal requires no confirmation, and, if it relates to all the offences charged against an accused person, will

be declared at the time of the finding, and the accused will thereupon be released from custody If it relates to one or more, but not all, of the charges, it will be announced at once in open court

Sentence

118.—(A) The court, if consisting of three or more officers, may award any sentence which a general court-martial can award, but if the court pass sentence of death,[1] the whole court must concur

(B) The court, if consisting of two officers, may award any sentence authorised for the offence, not exceeding field punishment,[2] or two years' imprisonment with hard labour

(C) Any recommendation to mercy will be attached to the proceedings, and communicated to the accused, together with the finding and sentence [3]

1 See A A 49 (2) As to communication to accused persons upon whom sentence of death has been passed, see note (*b*) to forms of oath in App II, p 762

2 See Field Punishment Rules, p 787

3 As to promulgation, see r 53

General provisions as to votes and powers of court

119.—(A) Except as provided by Rules 110 (B), 117, and 118, every question will be determined by the majority of opinions, and in case of equality, the president shall have a second or casting vote

(B) If, after the commencement of the trial, the court consider that any accused person named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that person out of the schedule

(C) The proceedings shall be held in open court,[1] in the presence of the accused, except on any deliberation among the members, and the judge-advocate (if any), when the court may be closed

(D) The court may adjourn from time to time, and may, if necessary, view any place

1 As to sitting *in camera*, see note 3 to r 63

Confirmation.

120.—(A) Except in the case of acquittal, the finding and sentence of the court shall be valid only in so far as they are confirmed by proper military authority [1]

(B) The provost-marshal or an assistant provost-marshal cannot confirm the finding or sentence of the court [2]

(C) A prosecutor of an accused person or a member of the court trying an accused person cannot confirm the finding or sentence of the court as regards that person, except that if a member of the court trying an accused person would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable[3] to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence

(D) In any case where a sentence of death, penal servitude, imprisonment, or detention, is passed, the confirming authority shall after confirmation forthwith transmit the proceedings to the officer in chief command of the forces in the field comprising the force with which the accused is present, and a sentence of death or penal servitude shall not be carried into effect pending the decision of that officer on the case.—

Provided that—

(i) The confirming officer shall not be required to refer any case to the officer in chief command in the field if in confirming the sentence he commutes it so as to make it a punishment less than detention, and

(ii) Where the confirming officer is of opinion that, by reason of the nature of the country, the great distance, or the operations of the enemy, it is not practicable[3] to delay the case for the purpose of referring it to the officer in chief command in the field, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of the sentence

(E) Subject to the preceding provisions of this rule, the finding and sentence of a field general court-martial as regards any person may be confirmed—

(i) Where the court was convened by an officer in command of a detachment or portion of any troops not on active service, by an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops form part, and

(ii) Where the court was convened by an officer in command of any troops on active service, by the senior officer,[4] not being an officer below the rank of field officer, present at the place where the trial takes place, or if there is no officer not below that rank present at that place, by the senior officer not below the rank of field officer present at any other place

(F) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority

(G) A confirming authority shall not send back a finding and sentence for revision more than once, nor recommend the increase of a sentence, and on any revision the court shall not take further evidence nor increase the sentence [5]

1 This is the same provision as is enacted in A A 51 (6) for ordinary courts martial (See note to that section and Ch V, para 87)

2 The general effect of paras (B) to (E) is as follows—The finding and sentence of a field general court-martial will, when troops are not on active service, be confirmed by an officer authorised to confirm general courts martial If troops are on active service, the senior officer on the spot, if of field rank, or, if not of that rank, the nearest available senior officer of that rank will confirm

If the sentence is one of detention or upwards, it must, after confirmation, be referred to the general in chief command in the field, and a sentence of death or penal servitude must not be carried out pending his decision But if communication with that officer is impracticable, or so difficult as to cause too great delay, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the accused is present

Paras (B) and (C) give effect to the ordinary rule that a prosecutor or member of the court is not to confirm, and the rule is extended to the provost marshal and his assistant, as if he were the prosecutor

3 See r 122 (A)

4 "Senior" means senior in relation to command It does not include a senior officer who holds no command, but is on the spot performing duties of, for example, a quasi civil character

5 This applies the law enacted for ordinary courts-martial by A A 54 (2)

Application of rules

121. The foregoing rules—3 (Hearing of charge), 4 (Disposal of the charge or adjournment for taking down the summary of evidence), 5 (Remand of accused), 8 (Procedure on charge against officer), 14 (Rights of accused to prepare defence), 15 (Information of charge and delivery of list of officers to accused), 32 (Objection by accused to charge), 34 (Special plea to the jurisdiction), 35 (General plea of "guilty" or "not guilty"), 36 (Plea in bar), 37 (Procedure after plea of "guilty"), 39 (A) (Application for adjournment), 43 (Consideration of finding), 44 (Form and record of finding), 46 (Procedure on conviction), 53 (Promulgation), 54 (Mitigation of sentence on partial confirmation), 55 (Confirmation notwithstanding informality in or excess of punishment), 56 (Confirmation notwithstanding technical or other deviation), 59 (Responsibility of president), 60 (Power of court over address of prosecutor and accused), 73 (Evidence to be according to rules in English Courts), 74 (Judicial notice), 80 (Evidence of accused and his wife), 87 (Defending officer and friend of accused), 97 (Transmission of proceedings after finding), 98 (Preservation of proceedings), 99 (Rate of payment for copies of proceedings) 100 (Loss of proceedings), 101 to 103 (Judge-advocate), and 104 (Suspension of rules on the ground of military exigencies or the necessities of discipline)—shall, so far as practicable, apply as if a field general court-martial were a district court-martial [1]

1 See also r 108, 110 (B), 111 and 116

Definitions

122.—(A) In the rules with respect to field general courts-martial, unless the context otherwise requires, the expressions "practicable" and "available" mean respectively practicable and available, having due regard to the public service

(B) The expression "commanding officer[1] of a corps or portion of a corps" means the officer whose duty it is under the provisions of His Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to the corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority or to refer it to superior authority

1 See note to r 129

Evidence of opinion of convening and confirming officer

123. Any statement in an order convening a field general court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a field general court-martial as to the opinion of the confirming 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

PART II —MISCELLANEOUS

Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act

Courts of inquiry

124 —(A) A court of inquiry is an assembly of officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them [1]

(B) A court of inquiry may be assembled by the Army Council or by the officer in command of any body of troops, whether belonging to one or more corps

(C) The court may be composed of any number[2] of officers of any rank, and of any branch or department of the service, according to the nature of the investigation

(D) The court will be guided by the written instructions of the authority who assembled the court The instructions will be full and specific, and will state the general character of the information required They will 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

(F) Whenever any inquiry affects the character or military reputation of an officer or soldier, full opportunity must be afforded to the officer or soldier 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

(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 recovered prisoners of war, and in any other case in which the authority who assembled the court has so directed, the evidence will be taken on oath, in which case the court will administer the same oath or solemn declaration to witnesses as if the court were a court-martial

The authority who assembled the court will, when the court is held on a returned prisoner of war, direct the court to record their opinion whether the officer or soldier concerned was taken prisoner by reason of the chances of war, or through neglect or misconduct on his part, and the authority who assembled the court will record his own opinion In other cases the court will give no opinion on the conduct of any officer or soldier unless so directed by the authority who assembled the court

(I) The members of the court will not themselves be sworn, but when the court is a court of inquiry on recovered prisoners of war the members will 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 His Majesty's Orders and Regulations on this head, 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 authority 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 will be forwarded by the president to the authority 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 an officer or soldier, nor shall any evidence respecting the proceedings of the court be given against any officer or soldier, except upon the trial of any officer or soldier under Section 29 of the Army Act, for wilfully giving false evidence before that court [3]

(M) An officer or soldier 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 Army Council see reason to order otherwise, an officer or soldier whose character or military reputation is, in the opinion of the Army Council, affected by anything in the evidence before, or in the report of, a court of inquiry, shall be entitled to a copy of the proceedings of the court, including any report made by the court, on payment of the actual cost of the copy required, not exceeding twopence for every folio of 72 words

1 See generally as to courts of inquiry, K R 733-743 For disqualification of members of courts of inquiry for service on subsequent courts-martial, see r 19 (B) (iii) As to privilege of report of court and that of witnesses, see Ch VIII, paras 48-52

A court of inquiry has no power to compel the attendance of civilian witnesses As to expenses of witnesses, see Allowance Regulations, para 322

2 One officer cannot constitute a court The court should normally consist of three members at least (K R 733), but two are legally sufficient

3 This privilege, however, extends only to military tribunals If a person is being tried in an ordinary criminal court, statements made by him voluntarily before a court of inquiry may be given in evidence against him, *R* v *Colpus* L R , (1917) 1 K B 574 A charge can only be laid under A A 29 if the evidence before the court of inquiry was properly given on oath, *i e* , if under para (H) of this rule it was required to be so taken

Regulations for Courts of Inquiry under Section 72 of the Army Act, for the purpose of determining the illegal Absence of Soldiers

Courts of inquiry as to illegal absence under Army Act, s 72

125.—(A) A court of inquiry under Section 72 of the Army Act,[1] will, 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 [2]

(B) They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration[3] 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 soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and will 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, will give due weight to the evidence of all such witnesses

(L) A court of inquiry will administer the same oath[4] or solemn declaration to the witnesses as if the court were a court-martial, but the members of such court will not themselves be sworn

1 See notes to A A 72

2 See note 1 to r 124

The court must not be assembled until the soldier has been absent for a period of 21 *clear* days—excluding the day on which the absence commenced and that on which the court assembles

3 The court, in making their declaration on A F A 2, will follow the wording shown below An exact reproduction of the declaration will be entered in A B 161 (See K R 1620) It should be free from alteration or erasure

Declaration

The court declare that (*number, rank, name, corps*) illegally absented himself without leave (or other sufficient cause) at (*station or place*) on the day of , 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*)

Names of President and Members { President

{ Members

In framing a charge of losing by neglect under A A 24 (2), the date of the inventory should be assigned

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)

When the declaration is given in evidence at a court martial, it will be entered on A F B 115, which is admissible in evidence under A A 163 (1) (*h*), and will be produced instead of A B 161 A F B 115 must be a correct extract from A B 161 and free from alteration or erasure A I A 2 is not admissible in evidence

4 See r 82, and as to form of oath see App II, p 763

Explanation of "Prescribed" and "Commanding Officer"

Prescribed officers for the purpose of Army Act, Section 43, 57 and 73 and competent military authorities for the purposes of Army Act Sections 58, 60, 61 64 65 and 66

126.—(A) The general officer or brigadier to whom a complaint may be made in pursuance of Section 43 of the Army Act shall, as respects a soldier serving elsewhere than in India, be the general or other officer, not below the rank of brigadier, in chief command of a command or district, in or under whose command the soldier may for the time being be

(B) Any of the officers in this paragraph named shall be authorities having power under Section 57 of the Army Act to mitigate, remit or commute punishment[1] awarded by sentence of a court-martial —

The general officer commanding-in-chief the command in which the trial took place , the officer in charge of administration of that

command, the general officer commanding-in-chief the command where the offender may for the time being be, the officer in charge of administration of that command, and the general or other officer commanding the division in or with which the offender may for the time being be

(c) The competent military authority for the purpose of the proviso to Section 58 of the Army Act shall include the general or air officer commanding-in-chief in the field, and the officer who confirmed the sentence

(d) The competent military authority for the purpose of Section 60 (1) (*b*) of the Army Act shall be —

(i) In India—the Commander-in-Chief of the forces in India, the Adjutant-General in India, the general officer commanding-in-chief a command and his deputy adjutant and quartermaster-general, the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be,

(ii) In a colony—the officer commanding the forces and the officer in charge of administration of the forces in that colony, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be,

(e) The competent military authority for the purpose of Section 65 of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the commanding officer of the soldier under sentence, and every officer in or under whose command such soldier was serving when the sentence was passed or may for the time being be, provided that he does not hold a command inferior to that of the commanding officer

(f) The competent military authority for the purpose of Section 61 (1) of the Army Act shall include —

(i) In the United Kingdom—the commanding officer of the military convict, and every officer in or under whose command the military convict may for the time being be, provided that he does not hold a command inferior to that of the commanding officer,

(ii) In India—the Commander-in-Chief of the forces in India, the Adjutant-General in India, the general officer commanding-in-chief a command and his deputy adjutant and quartermaster-general, the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general, and the general or other officer commanding a brigade area that does not form part of a district,

(iii) In a colony—the officer commanding the forces and the officer in charge of administration of the forces in that colony, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be,

(iv) In a foreign country—the officer in charge of administration of the forces in that country, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be

(G) The competent military authority for the purpose of Section 66 (1) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the commanding officer of the soldier under sentence, and every officer in or under whose command such soldier may for the time being be, provided that he does not hold a command inferior to that of the commanding officer

(H) The competent military authority for the purposes of Sections 61 (2), 64 (2) and 66 (2) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the officer who confirmed the sentence, and as respects a person under sentence in any of the following places shall include —

(i) In the United Kingdom—the general officer commanding-in-chief the command in or with which the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be, the officer in charge of administration of that command, the general or other officer commanding the district, division or brigade in or with which the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be, and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be,

(ii) In India—the Commander-in-Chief of the forces in India, the Adjutant-General in India, the general officer commanding-in-chief a command and his deputy adjutant and quartermaster-general, the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general, and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be,

(iii) In a colony—the officer commanding the forces and the officer in charge of administration of the forces in that colony, and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be,

(iv) In a foreign country—the officer in charge of administration of the forces in that country, and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be

The competent military authority for the purposes of Sections 64 (2) and 66 (2) of the Army Act, as respects a soldier under sen-

tence of detention awarded by his commanding officer in whatever place he may for the time being be, shall include the commanding officer

(I) The competent military authority for the purposes of Sections 61 (3) and 66 (3) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the officer who confirmed the sentence, and as respects a person under sentence in any of the following places shall include —

In the United Kingdom—any of the authorities named in sub-paragraph (i) of paragraph (H) of this rule,

In India—any of the authorities named in sub-paragraph (ii) of paragraph (H) of this rule,

In a colony—any of the authorities named in sub-paragraph (iii) of paragraph (H) of this rule,

In a foreign country—any of the authorities named in sub-paragraph (iv) of paragraph (H) of this rule

But any of the authorities above mentioned shall not, by virtue thereof, be a remitting authority

The competent military authority for the purpose of Section 66 (3) of the Army Act, as respects a soldier under sentence of detention awarded by his commanding officer in whatever place he may for the time being be, shall include the commanding officer

(J) The competent military authority for the purpose of Section 73 (3) of the Army Act shall, as respects a soldier serving in the United Kingdom and in any place other than in India or in a colony, include any officer not under the rank of brigadier in or under whose command the soldier may for the time being be

1 When a sentence is completed, including a sentence of reduction in rank, no mitigation, remission or commutation of punishment is to be granted without reference to the court-martial proceedings, and if the proceedings are not immediately available, the case is to be submitted to the War Office (K R 704 (*e*))

Prescribed procedure for court of inquest (India) under Army Act, s 134

127. When a court of inquest is required to be convened by the commanding officer under Section 134 of the Army Act, the court shall be convened and inquest held in manner following —

(*a*) The commanding officer of the station will order the court to assemble

(*b*) The court will consist of three officers and of a medical officer

(*c*) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted

(*d*) The court, after hearing the evidence, shall report to the officer commanding the station the evidence as to the cause of the death, together with the written opinion of the medical officer of the court, on his examination of the body, as to the cause of death

(*e*) The commanding officer shall, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest

Prescribed officer for competent military authority (Army Act, s 101)

128 The competent military authority in Part II of the Army Act shall include the following officers, viz —

(i) In India,

The commander-in-chief of the forces in India, the general officer commanding-in-chief a command, the general or other officer commanding a district or division, and the general or other officer commanding a brigade area which does not form part of a district

(ii) In any place situate out of India, and out of the United Kingdom, the general or other officer commanding the forces in that place, the general or other officer in charge of administration, or in command of a division or independent brigade in that place

In addition to the above-mentioned officers, it also includes —

(iii) For the purposes of Sections 80, 82, 84, and 85 of the said Act, the commanding officer of the soldier, and every officer superior in command to that commanding officer, and not hereinbefore included

(iv) For the purposes of any transfer by consent under Section 83 (2) any authority superior in command to the commanding officer of the soldier

(v) For the purposes of Section 99 any officer having power to convene a district court-martial for the trial of the soldier

(vi) Such officer as may be directed from time to time by His Majesty's Regulations to perform in any place or for any purpose specified in that behalf the duty of the competent military authority [1]

1 See K R 657, directing other officers to act as the competent military authority for the purpose of A A 83 (7)

Definition of "commanding officer"

129. The expression "commanding officer" as used in the sections of the Army Act, relating to "*Courts-Martial*," and to the "*Power of Commanding Officer*," and in the provisions consequential thereon, and in these rules, means, in relation to any person, the officer whose duty it is, under the provisions of His Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority [1]

It also, so far as relates to the summary award of any punishments for offences, being punishments which under the provisions of His Majesty's Regulations an officer commanding a squadron, company, troop, or battery is authorised to award, and so far as relates to a summary finding in a case of absence without leave, includes the officer commanding a squadron, company, troop, or battery [2]

1 Every officer, however temporary or casual his command over a person accused may be, will be within this definition if the custom of the service enables him to "tell off" the accused In all of these rules "commanding officer" has the meaning given to it by this rule

A soldier who commits an offence while on leave may be confined in the guard detention room of any unit in the locality, but the C O of that unit cannot dispose of the charge and the man must be referred to his own unit for disposal

In the portions of the Army Act not above mentioned "commanding officer" is not limited to the C O as defined by this rule, though the C O, as so defined, is often (see notes) the proper officer to act (See K R 526)

It is laid down in K R 563, 564 that the C O of a detachment has the same power of awarding summary punishment (as laid down in K R 558–560) as the C O of the unit, subject to any restrictions that may be imposed by superior authority

See also as to field general courts martial, r 122 (B)

2 See K R 542 and 565

Prisons and Detention Barracks abroad

Committal and removal of soldiers under sentence abroad.

130.[1]—(A) A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may be committed, or, if he has been committed to prison, be removed, if occasion arises, to a *military* prison or detention barrack wherever situate, or if he is in any place mentioned in the first column of the following table, or if, having been sentenced in a foreign country, he is brought into any place so mentioned, may be committed or removed to a civil prison situate in any place mentioned opposite thereto in the second column of the table[2] —

TABLE

A military prisoner being in (or, having been sentenced in a foreign country, is brought into) any place in any of the groups following —	May be committed or, if he has been committed to a prison, may be removed, to a civil prison in—
GROUP I	
(American and Mediterranean)	
Canada Newfoundland Bermuda Falkland Islands Gibraltar Malta Cyprus Sudan	Any place in Group I (American and Mediterranean), or In Group III (South African), or In Group VII
GROUP II	
(West Indian)	
Bahamas Barbados British Guiana British Honduras Jamaica (including Turks and Caicos Islands) Leeward Islands Trinidad and Tobago Windward Islands	Any place in Group II (West Indian), or In Group I (American and Mediterranean), or In Group III (South African), or In Group VII
GROUP III	
(South African	
Union of South Africa South African High Commission Territories (Basutoland, Bechuanaland Protectorate and Swaziland) Southern Rhodesia St Helena	Any place in Group III (South African), or In Group I (American and Mediterranean) or In Group V (Australasian), or In Group VII

TABLE—*continued.*

GROUP IV	
(West African)	
Nigeria (including British Cameroons) Gold Coast (including British Togoland) Sierra Leone Gambia	Any place in Group IV (West African) or In Group I (American and Mediterranean), or In Group II (West Indian) or In Group III (South African), or In Group VII
GROUP V	
(Australasian)	
Commonwealth of Australia New Zealand Fiji and the Western Pacific High Commission	Any place in Group V (Australasian), or In Group I (American and Mediterranean), or In Group III (South African), or In Group VII
GROUP VI	
(Eastern)	
India, as defined by the Army Act, and including Aden and Perim Palestine Iraq Mauritius Seychelles Ceylon Straits Settlements Malay States Hong Kong	Any place in Group VI, or In Group I (American and Mediterranean), or In Group III (South African), or In Group V (Australasian), or In Group VII
GROUP VII	
Channel Islands and the Isle of Man	Any place in Group VII
GROUP VIII	
(East African)	
Kenya Colony and Protectorate Uganda Zanzibar Nyasaland Tanganyika Territory Somaliland Northern Rhodesia	Any place in Groups I—VIII.

This rule shall not authorise any removal from a prison in the United Kingdom to a prison elsewhere

(B) A soldier sentenced to detention in any place out of the United Kingdom may be committed, or if he has been committed to a detention barrack or branch detention barrack, be removed, if occasion arises, to a detention barrack or branch detention barrack wherever situate, but this rule shall not authorise any removal from a detention barrack or branch detention barrack in the United Kingdom to a detention barrack or branch detention barrack elsewhere

1 This rule is rendered necessary by A A 64 (3), (4)

2 Where a sentence of imprisonment is passed on a soldier serving outside the United Kingdom, the military prisoner can undergo his sentence as provided in A A 64 (3), (4), or as prescribed by this rule

The main object as regards a colony where there is no military prison, is to enable a military prisoner to be removed with, or sent to, his regiment if the regiment is serving in that colony, but not to allow prisoners in any other

case to be sent to that colony No prisoners will be committed or removed to a colony where troops are not serving, without the consent of the government of that colony

Military prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a *military* prison in any place, if they could not be removed under this rule to a civil prison in that place

The Isle of Man, Channel Islands, and Cyprus are declared to be colonies for the purpose of imprisonment by A A 187 (2), 190 (23)

PART III —SUPPLEMENTAL

Exercise of powers vested in holder of military office

131 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 purpose 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[1], and requisitions of emergency under Section 115 of the Army Act may be signed on behalf of a general officer commanding-in-chief (or general officer commanding) regular forces in Great Britain or Northern Ireland by a deputy-assistant director of remounts or an assistant (or deputy-assistant) director of supplies and transport.

1 See A A 171

Cases unprovided for

132 In any case not provided for by these rules such course will be adopted as appears best calculated to do justice

Forms in Appendices

133.—(A) The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from any such form 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 the 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 the notes and instructions apply

The Army Council may append to any of the forms when issued for use such further notes as they think fit, and any such notes will be considered as instructions which it is expedient to follow in all cases to which they apply

Definitions

134. In these rules, unless the context otherwise requires—

(A) The expression " proper military authority," when used in relation to any power, duty, act, or matter, means such military authority as, in pursuance of His Majesty's Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter

(B) The expression " Army Act " includes any Act, whether passed before or after the date of these rules, which amends or applies the Army Act, also any Act, whether passed before or after the date of these rules, which enacts an offence which is triable by court-martial.[1]

(c) In any sentence of imprisonment, detention or field punishment passed after the date on which these rules come into operation, the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month"

(d) Other expressions have the same meaning as if these rules formed part of the Army Act,[2] and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender

1 See for instance the Reserve Forces Act, 1882, and the T R F Act, 1907.
2 See particularly A A 190 and note

135 —(a) Time, for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment or of any deduction of pay, shall include those days **Construction of rules**

(b) 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

(c) These rules shall apply to a person subject to military law as an officer,[1] in like manner, so nearly as circumstances admit, as if he were an officer, and to a person subject to military law as a soldier[2] in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the Army Act, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier

(d) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act

1 See A A 175
2 See A A 176

136 These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom [1] **Application of rules to Channel Islands and Isle of Man**

1 The Channel Islands and Isle of Man are colonies for the purpose of imprisonment and detention see A A 187 (2) and r 130

137. These rules shall apply in every place, whether within or without His Majesty's dominions **Extent of application of rules.**

138. These rules may be cited as the Rules of Procedure, 1926 **Short title.**

139.—(a) The foregoing rules shall come into full force on the first day of October, 1926, and on that day the Rules of Procedure, 1907, as amended by any subsequent rules, so far as they are then in force, shall determine. **Commencement of rules.**

(B) Any court-martial, proceeding, or thing held, done, or commenced under the last-mentioned Rules of Procedure shall be as valid and may be completed and carried into effect as if those rules were still in force

His Majesty has made the foregoing rules in pursuance of the Army Act, and those rules will therefore be observed by all persons concerned

(Signed) L WORTHINGTON-EVANS

War Office,
12th August, 1926

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of Section 70 of the said Act

(Signed) JOHN D KELLY
(Signed) F L FIELD

Admiralty,
12th August, 1926

Appendices to Rules of Procedure, 1926.

FIRST APPENDIX App I

FORMS OF CHARGES

NOTE AS TO USE OF FORMS OF CHARGES

(1) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges which are given as examples

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, 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 12)

(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 13 (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 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 13 (A))

(8) For example, a man may be charged with making away with, by selling, his arms, ammunition, *and* regimental necessaries , but a charge for making away with, by selling, his arms, ammunition, *or* regimental necessaries will be a bad charge

(9) A man should not be charged, however, with making away with by pawning *and* selling his arms and regimental necessaries, as in such case he is charged with two distinct offences, which

App. I. ought to be included in two distinct charges, one for making away with by *pawning* his arms and regimental necessaries, the other for making away with by *selling* his arms and regimental necessaries

(10) In the first example (para 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles In the second example (para 9) there are two distinct offences of making away with his articles—(*a*) by pawning, (*b*) by selling—although committed in respect of the same objects—arms and regimental necessaries

(11) In a few cases, shown in italics bracketed thus [ ] (as for instance, in s 4 (1), s 6 (1), (*h*), s 6 (2), (*d*), and s 24 (1), (3), and (5)), 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 person," or "other place," or "other means," and the officer framing the charge must omit these words, and insert a description of the person, place, or means

(12) Words inserted in brackets, thus [ ], without italics, must be adopted or not according to circumstances For example, if the offender was not on active service, the words, "when on active service," must be omitted

(13) In some cases (for example, s 10 (4), s 15 (3) and (4), s 16, and ss 27 (3) and (4), and 37) the offence can only be committed by an officer or by a non-commissioned officer or by a soldier The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the accused is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit

(14) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," &c , or "in having," &c , and stating in brief ordinary language what the accused is alleged to have done

(15) 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

(16) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 13 (F)), as, for example, "in having done the acts alleged in the particulars of the first charge," or "in that, at the place and time aforesaid, he was deficient of the regimental necessaries above mentioned 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.

(17) The statement of particulars should specify all the ingredients necessary to constitute the offence for example, if the charge is under s 9 (2), 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, while, if the charge is under s 9 (1), the "particulars" should also show how the command was given personally, how the superior officer was in the execution of his office, and how the accused showed a wilful defiance of authority

(18) 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.

(19) 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, the case of absence without leave or being drunk on a post

(20) In some cases the offence may be stated with 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

(21) 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

(22) 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 they are not the essence of the offence

(23) There must be added at the end of the "particulars" a statement of any expenses, loss, damage, or destruction in respect of which the court-martial will be asked to award compensation under s 137 or 138 of the Army Act (Rule 13 (F)) For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment, an averment to the effect that the accused thereby obtained a free kit of regimental necessaries, value* pounds, and in the case of a charge under s 10 (2) or (3), that the accused thereby damaged 's coat, to the value of shillings, and 's watch to the value of shillings, and other statements may be made, according to the facts

(24) If, however, the expenses, loss, damage, or destruction were caused by an act or omission which constitutes another offence

* See K R 624, 626

App I — specially specified in the Act, that act or omission should be charged as a separate offence, for example, if a man deserts, and is deficient of his regimental necessaries, he should be charged in a separate charge for loss by neglect of his regimental 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

(25) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces, or any Act other than the Army Act must, in accordance with Rules of Procedure 13 and 134 (B), follow as nearly as possible the words of the Act, and where the enactment is in the alternative, each charge must as in the following forms, state only one of the alternatives

FORMS OF CHARGES

PART I

Commencement of Charge-Sheet

The accused [*number, rank, name, battalion, regiment*] a soldier [officer] of the regular forces,

or,

The accused [*rank, name*] an officer of the regular forces on the active list on half-pay,

or,

The accused [*rank, name*] retired pay [*or* pensioner, *or* reservist] employed on military service under the orders of an officer of the regular forces who is subject to military law,

or,

The accused [*rank, name, corps (if any)*] an officer of the reserve of officers ordered on duty (or service), for which as such he is liable,

or,

The accused [*rank, name, corps (if any)*] an officer of the supplementary reserve of officers ordered on duty (or service) for which as such he is liable,

or,

The accused [*rank, name, corps*] an officer of the territorial army, on the active list [*or as the case may be* (see Sect 175 (3A) of the Army Act)],

or,

The accused [*number, rank, name, battalion, regiment*] a soldier of the territorial army out for training [*or otherwise subject to military law*],

or,

The accused [*rank, name, regiment*] an officer of the militia,

or,

The accused [*rank, name*] an officer of the volunteer battalion of the regiment, whose corps is on actual military service [*or who is otherwise subject to military law*],

or,

The accused [*rank, name, corps*] an officer [a soldier] of a colonial force raised by order of His Majesty, and serving under the orders of an officer of the regular forces,

or,

The accused [*name*] being a person subject to military law as an officer [under the provisions of s 175 (7) [*or* (8)] of the Army Act],

or,

The accused [*number, rank, name*] a militiaman (supplementary reservist) out for training [*or otherwise subject to military law*],

or,

The accused [*name*] a follower [sutler] of His Majesty's forces being subject to military law as a soldier [under the provisions of s 176 (9) [*or* (10)] of the Army Act],

is charged with—

Where the offence has been committed by a person while subject to military law, and he has ceased to be so subject at the time when he is charged (in accordance with the provisions of s 158 of the Army Act), as, for example, if a soldier has been transferred to the reserve, or discharged, or if the training period of a militiaman (supplementary reservist) or man of the territorial army has expired, the commencement of the charge will run as follows —

The accused [*name*] is charged with having, while being [*number, rank*] of the battalion regiment [a soldier of the regular forces] [*or otherwise subject to military law*] committed the following offence [offences], namely,

or,

The accused [*name*] is charged with having, while being [*number, rank*] of the battalion, regiment, a militiaman (supplementary reservist) [*or* man of the territorial army] out for training [*or otherwise subject to military law*], committed the following offence [offences], namely,

or,

(*as the case may be, see Sections 175 and 176 of the Army Act*)

App. I.

PART II

Statement of Offence

OFFENCES IN RESPECT OF MILITARY SERVICE.

Section 4.

(1) Shamefully {abandoning / delivering up} {a garrison / a place / a post / a guard}

Using means / to } compel / induce {a governor / a commanding officer / [*or other person*]} shamefully to {abandon / deliver up} {a garrison, / a place, / a post, / a guard,} which it was his duty to defend

(2) Shamefully casting away his {arms / ammunition / tools} in the presence of the enemy

(3) Treacherously {holding correspondence with / giving intelligence to} the enemy

Treacherously / Through cowardice } sending a flag of truce to the enemy

(4) Assisting the enemy with {arms / ammunition / supplies}

Knowingly {harbouring / protecting} an enemy not being a prisoner

(5) Having been made a prisoner of war, voluntarily {serving with / aiding} the enemy

(6) Knowingly doing, when on active service, an act calculated to imperil the success of {His Majesty's forces / part of His Majesty's forces}

(7) Misbehaving / Inducing others to misbehave } before the enemy in such manner as to show cowardice

Section 5.

(1) When on active service, without orders from his superior officer, leaving the ranks {in order to secure prisoners / in order to secure horses / on pretence of taking wounded men to the rear}

(2) When on active service wilfully {destroying / damaging} property without orders from his superior officer

(3) When on active service, being taken prisoner

After being taken prisoner when on active service, failing to rejoin His Majesty's service when able to rejoin the same

(4) When on active service, without due authority {holding correspondence with / giving intelligence to / sending a flag of truce to} the enemy

(5) When on active service {by word of mouth / in writing / by signals / [*otherwise*]} spreading reports calculated to create unnecessary {alarm / despondency}

(6) When on active service {in action / previously to going into action} using words calculated to create {alarm / despondency.}

Section 6. App. I.

(1) (*b*) [When on active service,] leaving his { guard / picquet / patrol / post } without orders from his superior officer

(*h*) [When on active service,] by { discharging firearms / drawing swords / beating drums / making signals / using words / [*any means whatever*] } intentionally occasioning false alarms { in action / on the march / in the field / [*elsewhere*] }

(*i*) [When on active service,] treacherously making known the { parole / watchword / countersign } to a person not entitled to receive it

[When on active service,] treacherously giving a { parole / watchword / countersign } different from what he received

(*k*) When a soldier acting as sentinel [on active service] leaving his post before he was regularly relieved

(2) (*a*) [When on active service,] leaving his commanding officer to go in search of plunder

(*b*) [When on active service,] forcing a safeguard

(*c*) [When on active service,] { forcing / striking } a sentinel

(*d*) [When on active service] { breaking into a } { house / [*other place*] } in search of plunder

(*e*) When a soldier acting as sentinel [on active service] { sleeping on his post / being drunk on his post }

(3) (*a*) By { discharging firearms / drawing swords / beating drums / making signals / using words / [*any means whatever*] } negligently occasioning false alarms { in action / on the march / in the field / [*elsewhere*] }

(*b*) Making known the { parole / watchword / countersign } to a person not entitled to receive it

Without good and sufficient cause giving a { parole / watchword / countersign } different from what he received

(*c*) Impeding { the provost marshal / an assistant provost marshal / an officer / a non commissioned officer / [*other person*] } { legally exercising authority } { under / on behalf of } { the provost-marshal }

When called on, refusing to assist in the execution of his duty { the provost marshal / an assistant provost marshal / an officer / a non commissioned officer / [*other person*] } { legally exercising authority } { under / on behalf of } { the provost-marshal. }

(*d*) Doing violence to a person bringing { provisions / supplies } to the forces

Committing an offence against the { property / person } { of an inhabitant of / of a resident in } { the country in which he was serving }

(*e*) Irregularly { detaining / appropriating to his own { corps / battalion / detachment } { contrary to orders issued in that respect } { provisions / supplies } } proceeding to the forces,

App I

MUTINY AND INSUBORDINATION.

Section 7.

(1) {Causing / Conspiring with other persons to cause} {a mutiny / sedition} in His Majesty's {military forces / naval forces / air forces}

(2) Endeavouring to seduce a person in His Majesty's {military forces / naval forces / air forces} from allegiance to His Majesty

Endeavouring to persuade a person in His Majesty's {military forces / naval forces / air forces} to join in {a mutiny / sedition}

(3) Joining in {a mutiny / sedition} in forces belonging to His Majesty's {military forces / naval forces / air forces}

Being present at and not using his utmost endeavours to suppress {a mutiny / sedition} in forces belonging to His Majesty's {military forces / naval forces / air forces}

(4) After coming to the knowledge of {an actual mutiny / an intended mutiny / actual sedition / intended sedition} in forces belonging to His Majesty's {military forces / naval forces / air forces} {failing to inform without delay his commanding officer of the same}

Section 8.

(1) {Striking / Using violence to / Offering violence to} his superior officer, being in the execution of his office

(2) [When on active service,] {striking / using violence to / offering violence to} his superior officer

[When on active service,] using {threatening / insubordinate} language to his superior officer

Section 9.

(1) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office

(2) [When on active service], disobeying a lawful command given by his superior officer

Section 10

(1) When concerned in a {quarrel / fray / disorder} {refusing to obey / striking / using violence to / offering violence to} an officer who ordered him into arrest

(2) {Striking / Using violence to / Offering violence to} a person in whose custody he was placed

(3) Resisting an escort whose duty it was {to apprehend him / to have him in charge}

(4) Breaking out of {barracks / camp / quarters}

Section 11.

Neglecting to obey {general / garrison / [*other*]} orders

DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE

Section 12.

(1) (*a*) {[When on active service] / [When under orders for active service]} {deserting His Majesty's service / attempting to desert His Majesty's service}

(*b*) {[When on active service] / When under orders for active service} {persuading / endeavouring to persuade / procuring / attempting to procure} a person subject to military law to desert from His Majesty's service

Section 13.

(1) (*a*) or (*b*) Fraudulent enlistment

Section 14.

(1) Assisting a person subject to military law to desert His Majesty's service

(2) When cognisant of { the desertion / the intended desertion } { of a person subject to military law not forthwith } { giving notice to his commanding officer, taking some steps in his power to cause the } { deserter / intending deserter } to be apprehended

Section 15.

(1) Absenting himself without leave

(2) Failing to appear at the place of { parade / rendezvous } appointed by his commanding officer

Without leave, before he was relieved going from the place of { parade / rendezvous } appointed by his commanding officer

Without urgent necessity quitting the ranks

(3) { When in camp / When in garrison / When [*elsewhere*] } being found { beyond the limits fixed by / in a place prohibited by } { general / garrison / [*other*] } orders, without a pass or written leave from his commanding officer

(4) Without leave from his commanding officer or due cause absenting himself from school when duly ordered to attend there

Disgraceful Conduct

Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman

Section 17.

{ When charged with / When concerned in } { the care / the distribution } { of public / of regimental } { money / goods } { stealing / fraudulently misapplying / embezzling } the same

{ When charged with / When concerned in } the care / the distribution } { of public / of regimental } { money / goods } { being concerned in the conniving at the } { stealing / fraudulent misappropriation / embezzlement } thereof

{ When charged with / When concerned in } { the care / the distribution } { of public / of regimental } goods wilfully damaging the same

Section 18.

(1) Malingering

{ Feigning / Producing } { disease / infirmity }

(2) Wilfully { maiming / injuring } { himself / a person subject to military law } { with intent thereby to render } { himself / that person } unfit for service

Causing himself to be { maimed / injured } by some person, with intent thereby to render himself unfit for service

(3) { Being wilfully guilty of misconduct by means of which misconduct / Wilfully disobeying orders by means of which disobedience } he { produced / aggravated / delayed the cure of } { disease / infirmity }

(4) { Stealing / Embezzling / Fraudulently misapplying } { money / goods / public money / public goods } { the property of a person subject to military law / belonging to a regimental { mess / band / institution } / belonging to the Navy, Army and Air Force Institutes, }

App. I.

Receiving, knowing them to be { stolen / embezzled } { money / goods } { the property of a person subject to military law / belonging to a regimental { mess / band / institution } / belonging to the Navy, Army, and Air Force Institutes } / public money / public goods

(5) Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act

Disgraceful conduct of { a cruel / an indecent / an unnatural } kind

DRUNKENNESS

Section 19.

Drunkenness

OFFENCES IN RELATION TO PERSONS IN CUSTODY

Section 20

(1) When in command of a { guard / picquet / patrol / post } [wilfully] releasing without proper authority a person committed to his charge

(2) { Wilfully / Without reasonable excuse } allowing to escape a person { committed to his charge / whom it was his duty to { keep / guard } }

Section 21.

(1) Unnecessarily detaining a { arrest / confinement } without bringing him to trial

Unnecessarily failing to bring a person's case before the proper authority for investigation

(2) After having committed a person to the custody of { an officer / a non commissioned officer / a provost marshal / an assistant provost marshal } failing { without reasonable cause to deliver { at the time of the committal / as soon as practicable within 24 hours after such committal } { to the officer / to the non commissioned officer / to the provost marshal / to the assistant provost marshal } { into whose custody the person was committed, an account in writing signed by himself of the offence with which the person so committed was charged }

(3) When in command of a guard failing { as soon as he was relieved from { guard / duty } / within twenty four hours after a person was committed to his charge } to give in writing to the officer to whom he was ordered to report { that person's name / that person's offence so far as known to him / the name / the rank } of the officer [person] { by whom the person was charged / the written account given him by the } officer [person] { by whom the person was committed to his custody }

Section 22.

When in { arrest / confinement / prison / [other lawful custody] } { escaping / attempting to escape }

OFFENCES IN RELATION TO PROPERTY. App I

Section 23.

(1) Conniving at the exaction of an exorbitant price for a {house / stall} let to a sutler

(2) {Laying a duty upon / Taking a fee in respect of / Taking an advantage in respect of / Being interested in} {the sale of provisions / the sale of merchandise / the sale of / the purchase of} {brought into / sions / s} {a garrison / a camp / a station / a barrack / a [*place*]} {in which he had} {command / authority}

{the sale of / the purchase of} {sions / s} for the use of some of His Majesty's forces

Section 24.

{Making away with by / Being concerned in making away with by} {pawning / selling / destruction / [*otherwise*]} {his arms / his ammunition / his equipments / his instruments / his clothing / his regimental necessaries / a horse of which he had charge / public property issued to him for his use / public property entrusted to his care for military purposes}

(2) Losing by neglect {his arms / his ammunition / his equipments / his instruments / his clothing / his regimental necessaries / a horse of which he had charge / public property issued to him for his use / public property entrusted to his care for military purposes}

(3) Making away with by {pawning / selling / destruction / [*otherwise*]} {a military / an air force} decoration granted him.

(4) Wilfully injuring {his arms / his ammunition / his equipments / his instruments / his clothing / his regimental necessaries / a horse of which he had charge / public property issued to him for his use / public property entrusted to his care for military purposes / a military decoration granted him / an air force decoration granted him / property belonging to {a comrade / an officer / a regimental mess / a regimental band / a regimental institution} / public property}

(5) Ill treating a {horse / [*other animal*]} used in the public service

OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

Section 25.

(1) In {report / return / muster roll / pay list / certificate / book / route / [*other document*]} {made by him / signed by him / of the contents of which it was his duty to ascertain the accuracy} {knowingly making / being privy to the making of} {a false statement / a fraudulent statement / an omission with intent to defraud}

(2) {Knowingly, and with intent to} {injure some person / defraud} {suppressing / making away with / defacing / altering} {a document which it was his duty to} {preserve / produce}

(3) Where it was his official duty to make a declaration respecting a matter knowingly making a false declaration

App I.

Section 26.

(1) When signing a document relating to { pay / arms / ammunition / equipments / clothing / regimental necessaries / provisions / furniture / bedding / blankets / sheets / utensils / forage / stores } leaving in blank a material part for which his signature was a voucher

(2) { Refusing to / By culpable neglect omitting to } { make / send } { a report / a return } which it was his duty to { make / send }

Section 27.

(1) Making a false accusation against { an officer / a soldier } knowing such accusation to be false

(2) In making a complaint where he thought himself wronged { knowingly making a false statement affecting the character of { an officer / a soldier } / knowingly and wilfully suppressing { material facts / a material fact }

(3) Falsely stating to his commanding officer that he had { been guilty of { desertion / fraudulent enlistment / desertion from the navy / desertion from the air force } / served in and been discharged from { a portion of the regular forces / a portion of the reserve forces / a portion of the auxiliary forces / the navy / the air force } }

(4) Making a wilfully false statement to a { military officer / justice } in respect of the prolongation of furlough

Offences in Relation to Courts-Martial.

Section 28.

(1) When duly { summoned / ordered to attend } as a witness before a court martial, making default in attending

(2) Refusing to { take an oath legally required by a court martial to be taken / make a solemn declaration legally required by a court martial to be made }

(3) Refusing to produce a { power / control } legally required by a court martial to be produced by him

(4) Refusing when a witness to answer a question to which a court martial legally required an answer

(5) Being guilty of contempt of a court martial by { using { insulting / threatening } language / causing { an interruption / a disturbance } in the proceedings of such court }

Section 29.

Wilfully giving false evidence when examined on { oath / solemn declaration } before { a court martial / a court / an officer } authorised by the Army Act to administer an oath

OFFENCES IN RELATION TO BILLETING App 1

Section 30.

(1) Being guilty of ill treatment by {violence / extortion / making disturbances in billets} of the occupier of a house in which a {person / horse} was billeted

) {Refusing / Neglecting} {on complaint and proof of the ill-treatment by / violence by / extortion by / making disturbances in billets by} {an officer / a soldier} {under his command / of the occupier of a house in which a person / horse} was billeted to cause compensation to be made for the same

(3) Failing to comply with the provisions of the Army Act with respect to the {payment of the just demands of a person on whom / making up and transmitting of an account of the money due to a person on whom} {he / his horse / {an officer / a soldier} / the horse of {an officer / a soldier}} {under his command} had been billeted

(4) Wilfully demanding billets which were not actually required for some {person / horse} entitled to be billeted

(5) {Taking / Knowingly suffering to be taken} from a {person / money / a reward} for {excusing / relieving} a person from {his liability / a part of his liability} in respect of the {billeting / quartering} of {officers / soldiers / horses}

(6) {Offering / Using} {menace to / compulsion on} {a constable / a civil officer} to make him give billets contrary to the Army Act

Using Offering {menace to compulsion on} {a constable / a civil officer} {tending to {deter / discourage} {him from performing part of} / tending to induce him to do something contrary to} his duty under the provisions of the Army Act relating to billeting

(7) {Using / Offering} {menace to / compulsion or} {a person tending to oblige him} {to receive without his consent, a {person / horse} not duly billeted upon him in pursuance of / to furnish some accommodation which he was not required to furnish by} the provisions of the Army Act relating to billeting

OFFENCES IN RELATION TO IMPRESSMENT OF CARRIAGES.

Section 31.

(1) Wilfully demanding {carriages / animals / vessels / food / forage / stores} which were not actually required for purposes authorised by the Army Act

(2) Failing to comply with the provisions of the Army Act, relating to the impressment of carriages, as regards {the payment of sums due for carriages / the weighing of the load}

(3) Constraining {a carriage / an animal / a vessel} {furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages} to travel against the will of the person in charge thereof, beyond the proper distance / to carry against the will of the person in charge thereof, a greater weight than he was required by the said provisions to carry.

App I

(4) Failing to discharge as speedily as practicable { a carriage / an animal / a vessel } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages

(5) { Compelling / Permitting / the compelling of } a person in charge of { a carriage / an animal / a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages / baggage / stores } { not entitled to be carried / though not furnished on a requisition of emergency a { soldier servant { who was not sick } / woman / person } }

(6) { Ill treating / Permitting the ill treatment of } a person in charge of { a carriage / an animal / a vessel } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages

(7) { Using / Offering } { menace to compulsion on / a constable } { to make him provide { a carriage / an animal / a vessel / food / forage / stores } which he was not bound in pursuance of the provisions of the Army Act relating to the impressment of carriages, to provide / tending to { deter / discourage } { him from performing a part of / his duty in relation to the providing of } { carriages / animals / vessels / food / forage / stores } / tending to induce him to do something contrary to }

(8) Forcing { a carriage / an animal / a vessel / food / forage / stores } from the owner thereof

Offences in Relation to Enlistment.

Section 32.

(1) After having been { discharged with disgrace from a part of His Majesty's { military / air / forces } enlisting in the regular forces without declaring the circumstances of his / dismissed with disgrace from the navy } { discharge / dismissal }

Section 33.

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the justice before whom he appeared for the purpose of being attested

Section 34.

(1) Being concerned in the enlistment for service in the regular forces of a man when he { knew / had reasonable cause to believe } such man to be so circumstanced that by enlisting he committed an offence against the Army Act

(2) Wilfully contravening { the enactments of the Army Act / *[other enactments]* / the regulations of the service } in a matter relating to the { enlistment / attestation } of soldiers of the regular forces

Miscellaneous Military Offences.

Section 35.

Using { traitorous / disloyal } words regarding the Sovereign

Section 36.

Without due authority { verbally / in writing / by signal / [*otherwise*] } disclosing { the numbers of / the position of } { some forces / some magazines / of the forces / some stores of / the forces } / { some preparations for / some orders relating to } { operations / movements } of some forces } at such time and in such manner as to have produced effects injurious to His Majesty's service

Section 37.

(1) { Striking / Ill treating } a soldier

(2) After receiving the pay of { an officer / a soldier } { unlawfully detaining / unlawfully refusing to pay } the same when due

Section 38.

(1) { Fighting / Promoting / Being concerned in / Conniving at fighting } a duel

(2) Attempting to commit suicide

Section 39.

On application being made to him { neglecting / refusing } { to deliver over to the civil magistrate / to assist in the lawful apprehension of } { an officer / soldier } { accused of an offence punishable by a civil court }

Section 40.

{ An act / Conduct / Disorder / Neglect } to the prejudice of good order and military discipline

Section 41.

(1-4) { When on active service / In Gibraltar / In a place not in the United Kingdom or Gibraltar and more than one hundred miles as measured in a straight line from any city or town in which he can be tried by a competent civil court for the offence } committing the offence of { treason / murder / manslaughter / treason felony / rape }

(5) Committing a civil offence, that is to say [*state the offence according to English law, either using legal terms, e g*, arson, larceny, larceny from the person, assault, robbery, with violence, &c, *or, in ordinary language, e g*, stealing, maliciously injuring property, setting fire to a house, &c]

Section 155.

(1-3) { Negotiating / Acting as agent for / Aiding / Conniving at } { the { sale / purchase } of a commission in His Majesty's regular forces / the { giving / receiving } { of a valuable consideration in respect of a } { promotion in / retirement from / employment in } His Majesty's regular forces / any exchange made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which a } sum of money [*consideration*] was { given / received }

App I. *ILLUSTRATION OF CHARGE*

Note.—The following is an illustration of a complete charge-sheet, with statement of offences and particulars, as it would be placed before a district court-martial

CHARGE-SHEET

The accused, No 153, Private John Smith, 2nd Battalion Regiment, a soldier of the regular forces, is charged with —

First charge Sec. 8 (2) Army Act

Using threatening language to his superior officer—

in that he

at Plymouth, on the 20th January, 19 , said to Serjeant William Robinson, the Regiment, "I will punch your head," or words to that effect

Second charge Sec 10 (3) Army Act

Resisting an escort whose duty it was to have him in charge—

in that he

at Plymouth, on the 20th January, 19 , resisted the escort taking him to the guard detention room, and kicked Private John Jones, one of the said escort, and damaged the trousers of Private James Brown, another of the said escort, to the value of five shillings

A B,

Plymouth, *Commanding 2nd Battalion, Regiment*

22nd January, 19

To be tried by a district court-martial

X Y,

Commanding Brigade,

(*or* Staff-Officer who should sign *for* Commanding Brigade)

Devonport

24th January, 19 .

[*The following specimen charges (which are not, however, prescribed by any Rules) may be found useful*]

SPECIMEN CHARGES

Note —The words in brackets in the following specimen charges do not necessarily form part of the charge, but are sometimes alternatives, and sometimes are inserted as aggravating or explaining the offence, or for the purpose of the award by the court of stoppages from pay

Where the words in brackets are "when on active service" they increase the gravity of the charge, and are very material, but are inserted in brackets because the charge will be a good charge without them, although if they are omitted the charge will be for a less grave offence

The words "soldier of the regular forces" in the description of the accused are not essential where he is described as belonging to a regiment or battalion in the regular forces

A second charge may be added to the charge sheet as an alternative to the first charge in those cases (some of which are mentioned in the notes) where it is doubtful whether the offence committed by the person amounted to one charge or to the other

No 1

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Shamefully casting away his arms in the presence of the enemy, Sec 4 (2), Army Act

in that he, at , on , when on outlying piquet, and attacked by the enemy, shamefully cast away his rifle, left his piquet, and ran away

No 2

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Misbehaving before the enemy in such manner as to show cowardice, Sec 4 (7) Army Act

in that he, at , on , during in attack on , and when under the enemy's fire, fell out of the ranks, ran away and secreted himself under a bank

No 3

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service, without orders from his superior officer, leaving the ranks on pretence of taking wounded men to the rear, Sec 5 (1), Army Act

in that he, at , on , when in the ranks, and during an attack upon , left the ranks without orders from his superior officer, on pretence of taking to the rear Lieutenant who was wounded

No 4

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service, wilfully destroying property without orders from his superior officer, Sec 5 (2), Army Act

in that he, on , in , and encamped near the village of , without orders from his superior officer, wilfully set fire to a dwelling house, situate in the said village

No 5

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 6 (1) (*h*), Army Act — [*When on active service*] *by discharging firearms, intentionally occasioning false alarms on the march*,

in that he, on , when on the march with his Battalion between and , by intentionally discharging his rifle occasioned a false alarm

No 6

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 6 (1) (*k*), Army Act — *When a soldier acting as sentinel* [*on active service*] *leaving his post before he was regularly relieved*,

in that he, at , on , after being posted as a sentry on No Post, Guard, left his post without having been regularly relieved

No 7

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 6 (2) (*a*), Army Act — *When on active service, leaving his commanding officer to go in search of plunder*,

in that he, on , when belonging to a force in military occupation of , and when marching with his battalion under Lieutenant Colonel , through the town of , left his commanding officer, and went in search of plunder

No 8

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 6 (2) (*b*), Army Act — [*When on active service*] *forcing a safeguard*,

in that he, at , on , in , forced his way past Serjeant into a house in street, at , in which, by orders of the General Officer Commanding, the said Serjeant had been placed as a safeguard, for the protection of the occupants and the property therein

No 9

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 6 (2) (*c*), Army Act — [*When on active service*] *forcing a sentinel*,

in that he, at , on , after being warned by the sentry on No Post, Guard, not to pass, passed the said sentry

No 10

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 6 (2) (*d*), Army Act — *When on active service, breaking into a house in search of plunder*,

in that he, at , on , broke into a house, No , in street, and entered it in search of plunder

No 11.

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When a soldier acting as sentinel [on active service] sleeping on his post, Sec 6 (2) (*c*), Army Act
in that he, at , on , between 1 and 2 a m , when sentry on No Post, Guard, was asleep

No 12

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Impeding a non-commissioned officer legally exercising authority under the Provost Marshal, Sec 6 (3) (*c*), Army Act
in that he, at , on , when Serjeant of the Military Foot Police, a non commissioned officer legally exercising authority under the Provost-Marshal, was endeavouring to arrest a soldier, impeded the said Serjeant by tripping him

No 13

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Doing violence to a person bringing provisions to the forces, Sec 6 (3) (*d*), Army Act
in that he, at , on , assaulted one , a sutler, who was bringing into camp bread and vegetables for the use of the troops.

No 14

CHARGE-SHEET

The accused, A B , sutler, being subject to military law as a soldier by reason of accompanying His Majesty's troops on active service in [Egypt], is charged with—

Committing an offence against the property of a resident in the country in which he was serving, Sec 6 (3) (*d*), Army Act
in that he, at , in [Egypt], on , maliciously damaged a motor car belonging to of , a resident in [Egypt], by thrusting a knife into one of the tyres

No 15

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing an offence against the person of an inhabitant of the country in which he was serving, Sec 6 (3) (*d*), Army Act
in that he, when serving in [Egypt], at , on , assaulted of , an inhabitant of [Egypt]

No. 16.

CHARGE-SHEET

The accused, No. , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Causing a mutiny in His Majesty's military forces, First charge.
in that he, at , on , in his barrack room addressed Serjeant , Private , and other soldiers, Sec 7 (1), Army Act.
Regiment, there assembled, in mutinous language, by advising them not to turn out at commanding officer's parade at 10 o'clock next day, in consequence of which language they, the said Serjeant and Private , and other soldiers of the said Battalion, did not turn out for the said parade.

Second charge

Sec 7 (2), Army Act

Endeavouring to persuade a person in His Majesty's military forces to join in a mutiny,

in that he, at , on , endeavoured to persuade Lance Corporal , Battalion, Regiment, to join in a mutiny, and not to mount guard, for which duty he, the said Lance Corporal, had been duly warned

No 17

(Joint Trial)

CHARGE SHEET

The accused persons, No , Private , Battalion, Regiment, and No , Private , Battalion, Regiment, soldiers of the Regular Forces, are charged with—

Sec 7 (3), Army Act.

Joining in a mutiny in forces belonging to His Majesty's military forces, in that they, at , on [or about] , joined in a mutiny by combining among themselves [and with other soldiers of the] to resist and offer violence to their superior officers in the execution of their duty

Note.—This charge is equally applicable to the case where a single person is charged

No 18

CHARGE-SHEET

The accused, No , Bombardier , Battery, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec 7 (4), Army Act

After coming to the knowledge of an intended mutiny in forces belonging to His Majesty's military forces, failing to inform without delay his commanding officer of the same,

in that he, at , on , having been present in the public house known as the Red Lion, where Bombardier , Gunner , and other soldiers of Battery, Royal Artillery, in his hearing, agreed to cut up and destroy the harness belonging to the said Battery, failed to inform his commanding officer thereof

No 19

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 8 (1), Army Act

Striking his superior officer, being in the execution of his office, in that he, at , on , struck with his fist in the face Corporal , Regiment, who was at the time in command of an escort taking soldiers in custody to the guard room

No 20

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 8 (2), Army Act

[*When on active service*] *offering violence to his superior officer*, in that he, at , on , when checked by Corporal , Regiment, attempted to strike the said corporal

No 21

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 8 (2), Army Act.

[*When on active service*] *using threatening language to his superior officer*, in that he, at , on , after having been awarded a punishment by his commanding officer, said to Serjeant , Regiment, "I'll be revenged on you for this, yet"

No 22

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office, Sec 9 (1) Army Act
in that he, at , on , when personally ordered by Captain , Regiment, upon commanding officer's parade, to take up his rifle and fall in, did not do so, divesting himself at the same time of his waist belt, and saying, 'I'll soldier no more, you may do what you please"

No 23

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[When on active service] disobeying a lawful command given by his superior officer, Sec 9 (2), Army Act
in that he, at , on , did not leave the regimental institute when ordered to do so by Corporal , Regiment

No 24

CHARGE SHEET

The accused, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with—

When concerned in a quarrel, refusing to obey an officer who ordered him into arrest, Sec 10 (1), Army Act
in that he, on , in the ante room of the officers' mess at , after having quarrelled with and struck Lieutenant , Regiment, on being ordered into arrest by Lieutenant , Regiment, refused to obey the order

No 25

CHARGE SHEET

The accused, No , Corporal , Dragoons, a soldier of the Regular Forces, is charged with—

Striking a person in whose custody he was placed, Sec 10 (2), Army Act
in that he, at , on , when placed by Serjeant , 9th Dragoons, in the custody of Police Constable , struck with his waist belt, on the head, the said Police Constable

No 26

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Resisting an escort whose duty it was to have him in charge, Sec 10 (3), Army Act
in that he, at , on , while under escort of Private , and Private , Battalion, Regiment, resisted the escort by kicking and struggling

No 27

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Breaking out of barracks, Sec 10 (4), Army Act.
in that he, at , on , broke out of barracks, when his duty required him to be in barracks

Note—If the soldier was confined to barracks by any special duty the duty should be specified, *e g*, "when a defaulter," or "when under open arrest"

No 28

CHARGE SHEET

The accused, No , Sergeant , Hussars, a soldier of the Regular Forces, is charged with—

Sec 11, Army Act — *Neglecting to obey camp orders*, in that he, at , on , bathed in the river , above camp, contrary to a camp order [No] dated , directing all persons to abstain from bathing in that part of the river

No 29

CHARGE SHEET

The accused, W R , being a person subject to military law as an officer by reason of his accompanying His Majesty's Forces on active service in [Afghanistan,] and holding a pass entitling him to be treated on the footing of an officer, is charged with—

Sec 11, Army Act — *Neglecting to obey camp orders*, in that he, on , entered the village of , contrary to a camp order [No], dated , directing all persons to abstain from entering that village

No 30

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 12(1)(a), Army Act — [*When on active service*] *deserting His Majesty's service*, in that he, at , on , absented himself from Regiment, until apprehended at , on , by the civil power, on board the steamer , which was about to leave the harbour for

No 31

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 12(1)(a), Army Act — [*When on active service*] *attempting to desert His Majesty's service*, in that he, at , on , absented himself from his battalion and concealed himself in a back room of a house situate in , and when apprehended by the military police on the same day was partly dressed in plain clothes

Note—In the two preceding charges, if the soldier was under orders for active service, the charge will be the same, with the substitution of "under orders for active service" for "on active service"

No 32

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 12(1)(a), Army Act — *Deserting His Majesty's service*, in that he, at , on , absented himself from Regiment, until apprehended by the civil power at , on , dressed in plain clothes

No 33

CHARGE SHEET

The accused, No , Trooper , Dragoons, a soldier of the Regular Forces, is charged with—

Sec 12(1)(a), Army Act. — [*When under orders for active service*] *deserting His Majesty's service*, in that he, at , on , when under orders for embarkation [for active service] absented himself without leave from the Regiment, from the of until the of with intent to avoid such embarkation.

No 34

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Fraudulent enlistment, Sec 13 (1), Army Act

in that he, at , on , when belonging to the Regiment, without having fulfilled the conditions enabling him to enlist, enlisted into His Majesty's Regular Forces for general service [*or* for service in the Regiment], thereby obtaining a free kit of necessaries, value

No 35

CHARGE-SHEET

The accused, No , Private , of the Battalion, Regiment, a soldier of the Territorial Army when embodied, is charged with—

Fraudulent enlistment, Sec 13 (1), Army Act

in that he, at , on , when belonging to the Territorial Army called out on embodiment, without having fulfilled the conditions enabling him to enlist, enlisted into His Majesty's Regular Forces for service in the Regiment, thereby obtaining a free kit of necessaries, value .

No 36

CHARGE-SHEET.

The accused, No , Trooper , Dragoons, a soldier of the Regular Forces, is charged with—

Assisting a person subject to military law to desert His Majesty's service, Sec 14 (1), Army Act

in that he, at , on [or about] , well knowing that Private , Regiment, was about to desert, provided him with a suit of plain clothes

No 37

CHARGE-SHEET.

The accused, No , Trooper , Lancers, a soldier of the Regular Forces, is charged with—

Absenting himself without leave, Sec 15 (1), Army Act

in that he, at , absented himself without leave from tattoo roll call on till 7 30 a m on

No 38

CHARGE-SHEET.

The accused, No , Private , Battalion, Regiment, a militiaman (supplementary reservist) out for training, is charged with— First charge

Absenting himself without leave, Sec 15 (1), Army Act.

in that he, at , when his battalion was out for training, absented himself at 9 a m on till 11 15 a m on .

Losing by neglect his equipment and regimental necessaries, Second charge

in that he, at , on or about , was deficient of one waist belt value four shillings and tenpence, one pair of socks value eightpence, one shirt value four shillings, and one razor and case value fivepence Sec 24 (2), Army Act

Note—All articles of clothing and necessaries issued to a militiaman (supplementary reservist) are the property of the public. The value of such articles should therefore be given in the particulars of the charge, and stoppages should form part of the sentence.

No 39

CHARGE SHEET

The accused, No , Gunner , Battery, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec 15 (2), Army Act — *Failing to appear at the place of parade appointed by his commanding officer*, in that he, at , on , when in billet at that place failed to appear at the market square in that town at a m , the place of parade duly appointed by , his commanding officer

Note—When the charge is laid under this paragraph it is necessary to prove that the place of parade specified in the particulars is the place appointed by the C O , and that the hour of such parade has also been appointed When a C O has appointed a place and time for parades generally, and this has been duly notified so that it is or ought to be, within the knowledge of the accused, it is not necessary to prove that the place and time for the particular parade was notified, provided it comes within the general order

No 40

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 15 (3), Army Act — *When in camp being found beyond the limits fixed by regimental orders without a pass or written leave from his commanding officer*, in that he, when encamped near Exeter, was found on , in Topsham, a place beyond the limits fixed by regimental orders, without a pass or written leave from his commanding officer

No 41

CHARGE SHEET

The accused, Lieutenant , Regiment, an officer of the Regular Forces, is charged with—

Sec 16, Army Act — *Behaving in a scandalous manner unbecoming the character of an officer and a gentleman*, in that he, at , on , in payment of his mess account, gave Mr , the mess man, a cheque for £31 (thirty one pounds) on Lloyds Bank, Ltd , Cox's and King's Branch, Army Agents, well knowing that he had not sufficient funds in the hands of the said Agents to meet the said cheque, and having no reasonable grounds for supposing that the aforesaid cheque would be honoured when presented

No 42

CHARGE SHEET

The accused, Captain , Regiment, an officer of the Regular Forces, is charged with—

Sec 16, Army Act. — *Behaving in a scandalous manner unbecoming the character of an officer and a gentleman*, in that he, at , on , [*or* between and], wrote and sent to his commanding officer, Lieut-Colonel , Regiment, an anonymous letter in which he made use of the following words —

"By stopping leave and overworking your officers and men, you make the Regiment a hell upon earth Your tyrannical conduct is a matter of general remark, and you may rely on it, unless you change, complaints will be made against you at the next General's inspection "

No 43

CHARGE SHEET

The accused, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with—

Sec 17, Army Act. — *When concerned in the care of regimental money, embezzling the same*, in that he, at , on or about , when as President of the Mess Committee of the Officers' Mess, Battalion, Regiment, he was concerned in the care of regimental money, that is to

say, fifteen pounds, in money received by him for and on account of the said Mess from , applied the said sum of fifteen pounds to his own use, with intent to defraud

No 44

CHARGE SHEET

The accused, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with—

When concerned in the care of public money, fraudulently misapplying the same, Sec 17, Army Act
in that he, at , on , when as officer commanding Company, Battalion, Regiment, he was concerned in the care of public money, applied twenty pounds, ten shillings, part thereof, to his own use with intent to defraud

No 45

CHARGE SHEET

The accused, Captain , Quartermaster, Royal Army Medical Corps, an officer of the Regular Forces, is charged with—

When charged with the care of public goods, fraudulently misapplying the same, Sec 17, Army Act
in that he, at , on [or about] , when charged with the care of ten rugs, of the value of the property of the public, sold the said rugs to , with intent to defraud

No 46

CHARGE SHEET

The accused, No , Corporal , Royal Army Ordnance Corps, a soldier of the Regular Forces, is charged with—

When concerned in the care of public goods, stealing the same, Sec 17, Army Act
in that he, at , on [or about] , when as storeman of the stores, he was concerned in the care of ordnance stores, stole three Webley pistols value each, part of the said stores

No 47

CHARGE SHEET

The accused, No , Staff Sergeant , Royal Army Service Corps, a soldier of the Regular Forces, is charged with—

When concerned in the distribution of public goods, fraudulently misapplying the same, Sec 17, Army Act
in that he, at , on when concerned in the distribution of coals, public goods, to Battalion, Regiment, issued four sacks thereof, weighing two cwt each or thereabout, of a total value of , or thereabout, to , a person not entitled to receive them, with intent to defraud

No. 48

CHARGE-SHEET.

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Malingering, Sec 18(1), Army Act
in that he, at , on , [between and], with the intention of evading his duties as a soldier, counterfeited dumbness

No. 49.

CHARGE-SHEET.

The accused, No , Trooper , Hussars, a soldier of the Regular Forces, is charged with—

Feigning infirmity, Sec. 18(1), Army Act.
in that he, at , on , pretended to the Medical Officer in charge of troops that he was suffering from a stiff knee which he could not bend, whereas, as he well knew, he was not so suffering

No 50

CHARGE SHEET.

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 18(2), Army Act — *Wilfully maiming himself with intent thereby to render himself unfit for service,*

in that he, at , on , when sentry on No Post, Guard, by discharging his rifle wilfully maimed himself by blowing off the fore and middle fingers of his right hand, with intent thereby to render himself unfit for service

No 51

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 18(3), Army Act — *Being wilfully guilty of misconduct by means of which misconduct he delayed the cure of disease,*

in that he, at , on , [between and], when under medical treatment for syphilitic sores, tampered with the said sores by the secret application of , thereby delaying the cure of his disease

No 52

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 18(3), Army Act. — *Wilfully disobeying orders by means of which disobedience he delayed the cure of disease* [*or infirmity*],

in that he, at , on , when under medical treatment for ophthalmia refused to submit to the treatment, viz , the application of lotion, deemed advisable to effect his cure, and as such ordered by in medical charge of the accused, thereby delaying the cure of his disease

No 53

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 18(4), Army Act — *Stealing public money,*

in that he, at , on , stole two pounds, ten shillings and four-pence, public money, from a cash box in the orderly room of the Battalion, Regiment

No 54

CHARGE SHEET

The accused, No , Trooper (Lance-Corporal) , Hussars, a soldier of the Regular Forces, is charged with—

Sec 18(4), Army Act. — *Stealing public money,*

in that he, at , on , when entrusted by Company Serjeant-Major , Battalion, Regiment, with two pounds, ten shillings, public money, in a sealed envelope, for delivery to Captain , fraudulently converted the said money to his own use.

Note—The particulars of this charge allege stealing as a "bailee"

No 55.

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

First charge Sec 18(4), Army Act. — *Stealing goods, the property of a person subject to military law,*

in that he, at , on , stole a watch, the property of No. , Serjeant Regiment, a person subject to military law.

Receiving, knowing them to be stolen, goods, the property of a person subject to military law, Second charge (alternative) Sec 18 (4), Army Act
in that he, at , on , did receive a watch, the property of the said No , Serjeant , Regiment, a person subject to military law, which he (the accused) knew to have been stolen.

No 56

CHARGE-SHEET

The accused, No , Colour Serjeant (Company Quartermaster Serjeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Embezzling money belonging to a regimental mess, Sec 18 (4), Army Act
in that he, at , on , having as Treasurer of the Serjeants' Mess of the Regiment received from Serjeant , eighteen shillings for and on behalf of the said Mess, fraudulently embezzled the same

No 57

CHARGE-SHEET

The accused, No , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act, Sec 18 (5) Army Act
in that he, at , on [*or* about] , when employed as caterer of the Serjeants' Mess, Regiment, with intent to defraud, added water to a cask of ale belonging to the stores of the said Mess

No 58

CHARGE SHEET

The accused, No , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act, Sec 18 (5), Army Act
in that he, at , on , with intent to defraud, presented to his company commander for signature by him as correct the Pay and Mess Roll for the month of containing an entry purporting to show that a casual payment of £ had been made to No , Corporal , on , well knowing that no such payment had in fact been made (and thereby obtained £ to which he was not entitled)

No 59

CHARGE SHEET.

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act, Sec 18 (5), Army Act
in that he, at , on [*or* about] , with intent to defraud, presented to Company Serjeant-Major , Battalion, Regiment, in support of a claim for marriage allowance, a certified copy of an entry of birth, purporting to relate to him, the accused, in which the date set out under the heading "When and where born" had been altered from to , as he, the accused, well knew, and thereby attempted to obtain marriage allowance to which he was not entitled

No 60

CHARGE-SHEET.

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Disgraceful conduct of a cruel kind, Sec 18 (5), Army Act
in that he, at , on , cruelly ill-treated a cat by throwing it against a wall

No 61

CHARGE-SHEET.

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 19, Army Act

[*When on active service*] ***drunkenness***,

in that he, at , on , [when on duty (*specify duty*) or having been previously warned for duty (*specify duty*)], was drunk

Note.—If the offender has been warned for special duty, *e g*, night piquet or in aid of the civil power, the nature of that special duty should be stated

No 62

CHARGE-SHEET

The accused, No , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 20 (1), Army Act

When in command of a piquet wilfully releasing, without proper authority, a person committed to his charge,

in that he, at , on , when in command of a piquet patrolling the town, without authority released Private , Regiment, a person who had been committed to his charge by Provost-Serjeant

No 63

CHARGE-SHEET

The accused, No , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 20 (1), Army Act

When in command of a guard releasing, without proper authority, a person committed to his charge,

in that he, at , on , when in command of the barrack guard, without authority released Corporal , Battalion, Regiment, a person committed to his charge

No 64

CHARGE SHEET

The accused, No , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 20 (2), Army Act

Wilfully allowing to escape a person committed to his charge,

in that he, at , on , when in command of an escort conducting to , Private , Battalion, Regiment, a person committed to his charge, wilfully allowed the said person to escape

Note.—Upon this charge it is competent for a court martial to find the accused guilty of "without reasonable excuse, allowing to escape a person committed to his charge" Sec 56 (5), Army Act

No 65

CHARGE SHEET

The accused, No , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 20 (2), Army Act

Without reasonable excuse allowing to escape a person committed to his charge,

in that he, at , on , when conducting to his Battalion, Private , Battalion, Regiment, a person committed to his charge [allowed a crowd to assemble round the said person without taking reasonable means to prevent it, and thus] permitted the escape of the said person

No 66

CHARGE SHEET

The accused, No , Trooper , Dragoon Guards, a soldier of the Regular Forces, is charged with—

Sec 22 Army Act

When in confinement escaping,

in that he, at , on , when in confinement (in the detention barrack) at , escaped

No 67

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When in lawful custody attempting to escape, Sec 22, Army Act

in that he, at , on when proceeding under escort to , broke away from his escort and attempted to escape

No 68

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Making away with by pawning his clothing and regimental necessaries, First charge Sec 24 (1) Army Act

in that he, at , on [or about] , pawned to for the sum of five shillings, one pair of ankle boots, two brushes and one flannel shirt, articles of his clothing, and regimental necessaries

Losing by neglect his clothing and regimental necessaries, Second charge (alternative) Sec 24 (2) Army Act

in that he, at the place and on [or about] the day aforesaid, was deficient of the articles of his clothing and regimental necessaries specified in the first charge

Note—If the accused sold his clothing, &c, this same charge can be used with the substitution of 'selling' for 'pawning'

The second charge should only be added where there is any doubt about the proof of the pawning or selling being sufficient

No 69

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Losing by neglect his equipments, clothing, and regimental necessaries, Sec 24 (2), Army Act

in that he, at , on [or about] , was deficient of one waist belt, value , one khaki drill frock, two towels, and two pairs of socks

No 70

CHARGE SHEET.

The accused, No , Colour Serjeant (Company Quartermaster-Serjeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

In a document made by him knowingly making a fraudulent statement, Sec 25 (1), Army Act

in that he, at , on [or about] , [between and], in his capacity as Company Quartermaster-Serjeant of Company, Regiment, fraudulently entered in his cash account for the month of , 19 , the following item—Washing bills, three pounds four shillings and two pence, whereas the actual amount paid by him in respect of such bills was two pounds fifteen shillings and four pence

No 71

CHARGE SHEET.

The accused, Lieutenant , Battalion, Regiment, an officer of the Regular Forces, is charged with—

In a report signed by him knowingly making a false statement, Sec 25 (1), Army Act.

in that he, at , on , in the orderly officer's report signed by him stated that he had turned out the guard at , on , well knowing that he had not in fact turned out the guard at that time

No 72

CHARGE SHEET

The accused, No , Colour Serjeant (Company Quartermaster-Serjeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 25 (1), Army Act — *In a pay list of the contents of which it was his duty to ascertain the accuracy knowingly making a fraudulent statement,*

in that he, at , on [or about] , when acting as pay serjeant of Company, Battalion, Regiment, in the Pay and Mess Roll of the said Company for the month of , of the contents of which it was his duty to ascertain the accuracy, made an entry purporting to show that on the a casual payment of £ had been made to No , Private , Battalion Regiment, well knowing that such payment had not been made and with intent to defraud

No 73

CHARGE-SHEET

The accused, No , Serjeant , Battery, Brigade, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec 25 (1), Army Act — *In a book made by him knowingly making an omission with intent to defraud,*

in that he, at , on [or about] , when caterer of the Serjeants' Mess of the Brigade, Royal Artillery, with intent to defraud, omitted to make an entry in the caterer's daily stock book kept by him recording the receipt into the stock of the said Mess of 18 gallons of India Pale Ale delivered by Messrs on

No 74

CHARGE SHEET

The accused, No , Colour Serjeant (Company Quartermaster Serjeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 25 (2), Army Act — *Knowingly and with intent to defraud, altering a document which it was his duty to preserve,*

in that he, at , on [or about] , when Company Quartermaster-Serjeant of Company, Battalion Regiment, held charge of a certain detachment monthly pay sheet (Army Form N 1010) for the month of , with intent to defraud, altered the figures '£1 0s 0d' in the first payment column of the said form set against the several names of Lance Corporal and Private , and changed the said figures in each case into '£2 0s 0d'

No 75

CHARGE SHEET

The accused, No , Colour Serjeant (Company Quartermaster-Serjeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 25 (2), Army Act — *Knowingly and with intent to defraud making away with a document which it was his duty to preserve,*

in that he, at , on [or about] , with intent to defraud, burned the Pay and Mess Roll of Company, Regiment, for the month of , 19 , which it was his duty to preserve

No 76

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 27 (1), Army Act — *Making a false accusation against a soldier knowing such accusation to be false,*

in that he, at , on , when appearing before Captain Regiment, used language to the effect following, that is to say "The Company Serjeant-Major is not fair in taking men for duty, and no one in the company can get on if he does not give him a bribe," meaning thereby the Company Serjeant-Major of his company, Regiment, well knowing the said statement to be false

No 77.

CHARGE SHEET

The accused, No , Trooper , Dragoons, a soldier of the Regular Forces, is charged with—

Falsely stating to his commanding officer that he had been guilty of desertion, Sec 27(3), Army Act
in that he, at , on , stated to , his commanding officer, that he was a deserter from , well knowing such statement to be false

No 78

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Wilfully giving false evidence when examined on oath before a court-martial, Sec 29 Army Act
in that he, at , on , when examined as a witness before a court martial stated on oath, that Private , Regiment, the person charged before the said court, was in his, the witness's, company in his barrack room, at , between 4 and 5 p m on , well knowing such statement to be false

No 79

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

After having been discharged with disgrace from a part [parts] of His Majesty's military forces, enlisting in the Regular Forces without declaring the circumstances of his discharge [discharges], Sec 32, Army Act
in that he, at , on , after having been discharged with ignominy from , [for misconduct from , and on conviction for felony from], enlisted in His Majesty's Regular Forces for general service [for service in the Regiment], without declaring the circumstances of his discharge [discharges]

No 80

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested, Sec 33, Army Act
in that he, at , on , when he appeared before A B , a Justice of the Peace [*or* recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [*or* for service in the Regiment]—to the question put to him, "Have you ever served in the Army?" answered "No", whereas, he had served, as he well knew, in the Regiment

No 81

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested, Sec 33, Army Act.
in that he, at , on , when he appeared before A B , a Justice of the Peace [*or* recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [or for service in the Regiment]—to the question put to him, "Do you now belong to the Royal Navy?" answered "No", whereas, he was serving, as he well know, in H M S " ."

No 82

CHARGE SHEET

The accused No , Private , Battalion, Regiment, a militiaman (supplementary reservist), out for training, is charged with—

Sec 33 Army Act — *Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested*

in that he, at , on , when belonging to the supplementary reserve, when he appeared before A B , a Justice of the Peace [*or* recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for the supplementary reserve, to the question put to him, "Do you now belong to the Army Reserve?" answered "No", whereas he belonged, as he well knew, to the supplementary reserve of the Regiment

Note—If the reservist is not subject to military law when the charge is preferred against him he should not be charged under this section but should be dealt with by a civil court under s 99, and 18 (1) Reserve Forces Act, 1882

No 83

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 33, Army Act — *Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested*,

in that he, at , on , when he appeared before A B , a Justice of the Peace [*or* recruiting staff officer having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [*or* for service in the Regiment], to the question put to him, "Do you now belong to the Army Reserve?" answered "No", whereas he belonged, as he well knew, to the Army Reserve, and by his enlistment obtained a free kit of necessaries, value

No 84

CHARGE SHEET

The accused No , Gunner , Battery, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec 38 (2), Army Act — *Attempting to commit suicide*,

in that he, at , on , with intent to commit suicide, cut his throat with a razor

No 85

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 40, Army Act — *An act to the prejudice of good order and military discipline*,

in that he, at , on , when sentry over soldiers in custody while employed on fatigue duty in the barrack yard, improperly gave to No , Private , Regiment, one of the said soldiers in custody, a pipe and some tobacco

No 86.

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 40, Army Act — *Conduct to the prejudice of good order and military discipline*,

in that he, at , on , on returning as a soldier in custody to the guard room on remand, said, "What the do I care for Captain [being the commanding officer of the accused]. He may go to for me," or words to that effect.

No 87

CHARGE-SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline, Sec 40, Army Act
in that he, at , on , became unfit for duty by reason of previous indulgence in alcoholic stimulants

No 88

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

An act to the prejudice of good order and military discipline, Sec 40 Army Act
in that he, at , on , made use of [*or* was in possession of] a document purporting to be a genuine pass [to be signed by], well knowing that it was not genuine [so signed]

No 89

CHARGE SHEET

The accused, No , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with —

Neglect to the prejudice of good order and military discipline, Sec 40 Army Act
in that he, at , on , after being duly warned by Company Sergeant Major to parade the regimental defaulters at 3 p m on that day, neglected to do so

Note —This form of charge is applicable when disobedience is not imputed

No 90

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline, Sec 40, Army Act
in that he, at , on , was improperly in possession of a pair of boots the property of No Private , Battalion, Regiment

No 91

CHARGE SHEET

The accused, No , Corporal , Royal Corps of Signals, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline, Sec 40, Army Act
in that he, at , on , when on duty as wireless and telephone operator, was asleep

No 92

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Neglect to the prejudice of good order and military discipline, Sec 40, Army Act
in that he, at , on , so negligently handled a rifle as to cause it to be discharged and thereby injured his left foot and rendered himself temporarily unfit for service

No 93

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces is charged with—

Conduct to the prejudice of good order and military discipline, Sec 40, Army Act
in that he, at , on [or about] , sent to his commanding officer a document purporting to be a certificate of Dr of , to the effect that he, the accused, was unfit to travel, well knowing the same not to be genuine

No 94

CHARGE-SHEET

Sec 40, Army Act

The accused Captain , Battery, Brigade, Royal Artillery, an officer of the Regular Forces, is charged with—

Neglect to the prejudice of good order and military discipline,

in that he, at between the and , when as officer in command of Battery, Brigade, Royal Artillery, he was concerned in the care of public money, so negligently performed his duties as to be unable to account for £ , part of the said money

No 95

CHARGE SHEET

Sec 41 Army Act

The accused No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service committing a civil offence, that is to say, murder,

in that he, at [Ismailia,] on [or about] , when on active service, murdered one Humantoo, a native of the East Indies, a camp follower

No 96

CHARGE SHEET

Sec 41, Army Act

The accused, No , Private (Lance Corporal) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, manslaughter,

in that he, at [Alexandria] , on , unlawfully killed No , Private , Battalion, Regiment

No 97

CHARGE SHEET

Sec 41, Army Act

The accused, No , Rifleman , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, burglary, with intent to commit a felony contrary to Section 25 (1) of the Larceny Act, 1916,

in that he, at , on , during the night, did break and enter the dwelling-house of , with intent to commit a felony therein

No 98

CHARGE-SHEET

Sec. 41, Army Act

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, housebreaking and larceny contrary to Section 26 (1) of the Larceny Act, 1916,

in that he, at , on , did break and enter the dwelling house of , and did steal therein one watch, the property of , [the said watch being of the value of £]

Note—This form of charge is appropriate when a dwelling house is broken into and a felony committed therein by day, or when a shop, warehouse, office, store, garage, factory, pavilion, or workshop, or any building belonging to His Majesty or to any Government Department, is broken into and a felony committed at any time, during the night or day

No 99

CHARGE-SHEET

Sec 41, Army Act

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence that is to say, housebreaking with intent to commit a felony contrary to Section 27 (2) of the Larceny Act, 1916,

in that he, at Barracks, on , did break and enter the Quartermaster's Store of the Battalion, Regiment, with intent to commit a felony therein

Note—This offence may be committed at any time during the night or day, and the charge is appropriate where a completed theft has not in fact taken place (*See* note to preceding specimen charge as to class of buildings)

No 100

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with –

Committing a civil offence, that is to say, robbery with violence contrary to Section 23 (1) (b) of the Larceny Act, 1916, Sec 41, Army Act

in that he, at , on , robbed A B of a watch and at the time of such robbery did use personal violence to the said A B

No 101

CHARGE SHEET

The accused, No , Bombardier , Battery, Brigade, Royal Artillery, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, wounding with intent, contrary to Section 18 of the Offences against the Person Act, 1861, Sec 41, Army Act

in that he, at , on , wounded No , Private , Battalion, Regiment, with intent to do him grievous bodily harm

No 102

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, common assault, Sec 41, Army Act

in that he, at , on , assaulted Mr of by striking him with a stick

No 103

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, stealing, First charge. Sec 41, Army Act

in that he, at , on , stole half a pound of tobacco or thereabout, value , the property of

Committing a civil offence, that is to say, receiving stolen goods, Second charge (alternative) Sec 41, Army Act

in that he, at , on , did receive half a pound of tobacco or thereabout, value , the property of the said , knowing the same to have been stolen

No 104

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, fraudulent conversion of property, contrary to Section 20 (1) (iv) (a) of the Larceny Act, 1916, Sec 41, Army Act

in that he, at , on , fraudulently converted to his own use and benefit certain property, that is to say, a postal packet addressed to , containing two one pound currency notes entrusted to him by in order that he, the accused, might deliver the same to the civil postal authorities for registration and despatch by post

No 105

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, obtaining goods by false pretences, contrary to Section 32 (1) of the Larceny Act, 1916, Sec 41 Army Act

in that he, at on , with intent to defraud, obtained from A B, a leather attaché case of the value of , by falsely pretending that he, the accused, was a servant to Captain , Battalion, Regiment, and that he, the accused, had been sent by the said Captain , to the said A B for the said attaché case, and that he, the accused, was then authorised by the said Captain to receive the said attaché case on his behalf

No 106

CHARGE SHEET

The accused, No , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 41 Army Act — *Committing a civil offence, that is to say, forgery,*

in that he, at , on [or about] , with intent to defraud, forged the name of Captain to a post office order for four pounds two shillings and sixpence [and thereby obtained the sum of four pounds two shillings and sixpence]

No 107

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec 41, Army Act — *Committing a civil offence, that is to say, uttering a forged document contrary to Section 6 (1) of the Forgery Act, 1913,*

in that he, at , on [or about] , uttered a certain forged cheque purporting to be a cheque drawn on Bank, Limited, Branch, for £ , in favour of , and to be signed by , knowing the same to be forged and with intent to defraud

No 108

CHARGE SHEET

The accused [*name*], is charged with having, while being No , Serjeant, of the Battalion, Regiment, a soldier of the Regular Forces, committed the following offence, namely—

Sec 17, Army Act — *When concerned in the care of regimental money, fraudulently misapplying the same,*

in that he, at , on [or about] , when as caterer of the Serjeants' Mess of the Battalion, Regiment, he was concerned in the care of regimental money, to wit, a sum of £ , being the proceeds of sale of certain stock sold by him on the , applied £ , part thereof, to his own use with intent to defraud

Note—This form of charge is applicable in cases where an offence has been committed by a person while subject to military law, and after he has ceased to be so subject he is tried by court martial for that offence under the provisions of Section 158 of the Army Act

No 109

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a soldier of the Territorial Army out for annual training, is charged with—

Sec 11, TR1 Act — *After having been discharged with disgrace from a part [parts] of His Majesty's forces, enlisting in the Territorial Army without declaring the circumstances of his discharge [discharges],*

in that he, at , on , after having been discharged with ignominy [for misconduct, &c.] from the Regiment, enlisted in the Territorial Army for service in the Regiment of , without declaring the circumstances of his discharge

No 110

CHARGE SHEET

The accused, [*name*], a man belonging to the Army Reserve, is charged with—

Sec 6, Reserve Forces Act, 1882 — *Using insulting language to a non commissioned officer acting in the execution of his office, and who would be his superior officer if the accused were subject to military law,*

in that he, at , on , when receiving his pay from Company Quartermaster-Serjeant , Regiment, said to him, "You are a cheat," or words to that effect

SPECIMEN CHARGES

No 111

CHARGE SHEET

The accused, No , Private , Battalion, Regiment, a militiaman (supplementary reservist) called out for annual training, is charged with—

Absenting himself without leave, See 15, Reserve Forces Act, 1882
in that he, at , on , without leave lawfully granted, or reasonable excuse, failed to appear for the annual training of his battalion, and remained absent until apprehended by the civil power at , on

No 112

CHARGE SHEET

The accused, [*name*], a man belonging to the Army Reserve called out for annual training, is charged with -

Absenting himself without leave, See 15, Reserve Forces Act, 1882
in that he, at , on , the place and time appointed for him to attend, without leave lawfully granted or reasonable excuse, failed to appear

App II

SECOND APPENDIX

(1)—FORMS AS TO COURTS-MARTIAL
(2)—FORMS OF SUMMONS TO WITNESSES
(3)—FORMS OF OATHS AND DECLARATIONS

(1)—FORMS AS TO COURTS MARTIAL

Army Form A 47

Form of Order for the Assembly of a General or District Court-Martial.

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] *

PRESIDENT

is appointed president ‡

MEMBERS

WAITING MEMBERS

JUDGE-ADVOCATE

has been [*or where the convening officer has the appointment of a judge advocate*, is hereby] appointed judge-advocate

Note —The President must be named The members and the waiting members may be mentioned by name, or the number and ranks and the unit† to which they belong may alone be named

The accused will be warned and all witnesses duly required to attend

The proceedings will be forwarded to

Signed this day of

A B

**Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s 48 (10) and Rules of Procedure 20 and 21) should be added here, thus*

"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available" (*or as the case may be*)

†*The "unit," in the case of Royal Artillery, is a Brigade, where such organisation exists*

‡ *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the

convening officer a field officer is not, having due regard to the public service, available" *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available" (*See Army Act, s* 48 (9)) App II

Form for Assembly and Proceedings of Field General Court-Martial on Active Service.

Army Form A 3.

PROCEEDINGS

A
Order convening the court

On Active Service, this day of 19

Whereas it appears to me, the undersigned, an officer in command of , on active service that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned,

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court-Martial, *[and that it is not practicable to delay the trial for reference to a superior qualified Officer],

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court-Martial to try the said persons, and to consist of the Officers hereunder named

*[I am unable to appoint —

*(1 Three Officers to form the Court)
*(2 A Field Officer as President)
*(3 Three Officers having more than one year's service)

for the following reasons, namely —]

*Omit if not applicable

President

Rank	Name	Regiment

Members

Rank	Name	Regiment

*Must be signed personally by the Officer actually in command at the time and all alterations in the composition of the Court to be initialled by him.

*Signed

Commanding

Convening Officer.

App II

SCHEDULE

Number, Rank, (*a*) Name and Unit of accused (*b*)	Offence charged	Plea *	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)

*Question to be asked of accused if he pleads not guilty (Rule of Procedure 39 (A)) —

Do you wish 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 you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer (*to be recorded on separate sheet if necessary*) —

(Signed)———————— (Signed)————————————

Commanding———————— ————————————

Convening Officer (*e*) President

(*a*) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only

(*c*) Recommendation to mercy, if any, to be inserted in this column

(*d*) It is not necessary that the Confirming Officer should sign his name in this column Initials are sufficient

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him

B

Certificate of President as to proceedings

I certify that the above Court assembled on the day of and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of

each such person were as stated in the third and fourth columns of that Schedule App II

I also certify that

1 The members of the Court

2 The witnesses

*(3 The interpreter)

*(4 The officers under instruction)

*Omit if not applicable

were duly sworn

Signed this day of , 19 .

President of the Court-Martial

C

I certify that the terms of A C I 570 of 1918 have been complied with †,

Signed this day of 19

Certificate in case of death sentences

President of the Court-Martial

D

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences

Confirmation

*(I direct that the soldier named in the margin be not committed to prison until further orders)

Signed this day of 19

*To be omitted unless, penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension

Confirming Officer

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the officer need only sign once

†See footnote (b), R P App II, page 762

App II

Army Form A 3

Form for Assembly and Proceedings of Field General Court-Martial when Troops are not on Active Service.

PROCEEDINGS

A Order convening the Court

At this day of 19 .

Whereas a complaint has been made to me, the undersigned, an Officer in Command of in the above-named country, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned, being offences against the property or person of inhabitants of, or residents in, the above-named country,

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court-Martial, *[and that it is not practicable to delay the trial for reference to a superior qualified Officer,]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court-Martial to try the said persons, and to consist of the Officers hereunder named

*Omit if not applicable

*[I am unable to appoint —

*(1 Three Officers to form the Court)

*(2 A Field Officer as President)

*(3 Three Officers having more than one year's service)

for the following reasons, namely —]

President

Rank	Name	Regiment

Members

Rank	Name	Regiment

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed———— ————

Commanding————————

Convening Officer

[*Note* —*The remainder of this Form and the Schedule are the same as in the case of Proceedings of a Field General Court-Martial on Active Service*.]

Form of Declaration for Suspension of Rules under Rule of Procedure, 104.

Army Form A 49

In my opinion [*military exigencies, namely (*state them*)] render it [†impossible] to observe the provisions of rules‡ on the trial of by court-martial assembled pursuant to the order of the of

Signed at this day of

A B

*[*or* the necessities of discipline]
†[*or* inexpedient]
‡State the rule or rules which cannot be observed (See Rule 104)

[Instruction —*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings*]

**Form of Proceedings for General and District Courts-Martial.

Army Form A 9

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President

Form of Proceedings of a General 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

N B —The proper Army Forms, to be obtained from Convening Officers, will be used in accordance with the instructions

The same Form will be used for district courts-martial, and will apply as nearly as may be, with the substitution of "district" for "general," and with the omission, where there is no Judge Advocate, of all reference to the Judge-Advocate

A

PROCEEDINGS OF A GENERAL 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

Trial of*

*Here insert No Rank, full 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, and attached to the proceedings*]

App II.

—

The Court satisfy themselves that is not available

**Here insert reason.

** to serve owing to**

§ waiting member takes his place as a member of

§Here insert Rank, Name and Regiment

the Court

The Court satisfy themselves as provided by Rules of Procedure 22 and 23

Note —Before certifying that the Court have satisfied themselves as provided by Rules 22 and 23, 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 of Procedure 22 and 23," 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 compared the names of the officers who served upon the Court of "Inquiry respecting the matter on which the ——— (first) charge against the "accused has been founded, with those of the officers detailed to serve on this "Court-Martial

———————————

"(*Signature of President*)"

The accused is brought before the Court

†Here state Rank and Name, and Regiment (if any)

Prosecutor†

Counsel‡ or defending officer†

‡Qualification to be stated

At o'clock the trial commences

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

Question by the President to the accused

Answer by accused

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?

No [Yes—*see variation below*]

[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*]

VARIATION

CHALLENGING OFFICERS

(*Rule of Procedure* 25)

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*)

Answer —

[*If the president is objected to, that objection will be dealt with first, otherwise an objection to the junior officer will be disposed of first*]

Objection to the President

Question to accused —What is your objection to me as president ?

The accused, in support of his objection to the president, makes the following statement (*set out*) [and calls who states (*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, and the Court adjourn

Objection to Member

Question to accused —What is your objection to (*the junior officer objected to*)?
The accused in support of his objection to , makes the following statement (*set out*) [and calls who states (*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 he accused

retires

Fresh Member —* takes his place as a member of the Court
(*This only applies where there are waiting members of the Court, otherwise the Court must adjourn*)
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*)?
Accused —
(*If he objects, the objection will be dealt with in the same manner as the former objection*)
Question to accused —What is your objection to (*the next 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 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, and an Order appointing another president [*or*, fresh officers] is read, marked and attached to the proceedings
The Court satisfy themselves with respect to such president [*or* officers] as provided by Rule of Procedure 22
[Instruction —*The procedure as to challenging a new president and 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 —

*Insert Rank, Name and Regiment

PRESIDENT

Rank	*Name*	*Regiment*

MEMBERS

Rank	*Name*	*Regiment*

App II.

B

The President, Members, and Judge-Advocate are duly sworn

The following officers under instruction are duly sworn

[Instructions —(1) *The witnesses if in Court, other than the prosecutor and the accused, should be ordered out of the Court at this stage of the proceedings*

(2) *Also any interpreter and shorthand writer should be now sworn*]

Question to accused

A

Do you object to as interpreter?

Q

A

Do you object to as shorthand 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, marked B^2, and annexed to the proceedings

---

VARIATION

If the accused has elected to be tried instead of being dealt with summarily by his commanding officer

The prosecutor informs the Court that the accused has elected to be tried by this Court instead of being dealt with summarily by his commanding officer

---

The accused is arraigned upon each charge in the above-mentioned charge-sheet

Question to accused

A

Are you guilty or not guilty of the [*first*] charge against you, which you have heard read?

[Instructions (1) —*Where there is more than one charge upon which the accused is arraigned the foregoing question will be asked after each charge (whether alternative or not) is read, the number of the charge being stated*

(2) *If the accused pleads guilty to any charge, the provisions of Rule* 35 (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 of Procedure* 32)

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 to the trial [*or*, adjourn]

AMENDMENT OF CHARGE

(*Rule of Procedure* 33 (A))

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

(*Rule of Procedure* 33 (B))

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 of Procedure* 34)

The accused pleads to the general jurisdiction of the Court on the ground that (*set out*)

Do you wish to give evidence yourself or produce any evidence in support of your plea? *Question to the accused A*

Witness is examined on oath

[Instruction —*The examination, &c., of the accused, if he wishes to give evidence, and 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]

REFUSAL TO PLEAD

(*Rule of Procedure* 35 (*A*))

As the accused does not plead intelligibly [*or* refuses to plead] to the above charge, the Court enter a plea of not guilty

INSANITY

(*Rule of Procedure* 57)

The Court find that the accused (*No. rank name regiment*) is by reason of insanity unfit to take his trial

Signed at this day of 19

(Judge-Advocate) (President)

PLEA IN BAR OF TRIAL

(*Rule of Procedure* 36)

Accused, besides the plea of guilty [*or*, not guilty], offers a plea in bar of trial, on the following grounds (*set out*)

What are the grounds of your plea? *Question to the accused. A*

Do you wish to give evidence yourself or to call any witnesses in support of your plea?

Witness is examined on oath

[Instruction —*The examination, &c., of the accused, if he wishes to give evidence, and 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*

App II

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 to 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]

The accused having pleaded guilty to the charge the provisions of Rule of Procedure 35 (B) are here complied with

---

CC

PROCEEDINGS ON PLEA OF GUILTY

**To be struck out in case no plea of "Not Guilty" has been proceeded with*

*[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]

The accused [*number , rank name , regiment*] is found guilty of the charge [*all the charges*]
or The accused [*number, &c*] 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 a 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 37 (B), *make any statement he wishes in reference to the charge*]

The summary [*or* abstract] of evidence is read, marked , signed by the president, 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*]

Question to accused

Do you wish to make any statement in mitigation of punishment?

A

The accused in mitigation of punishment says [*or if the statement is in writing,* hands in a written statement, which is read, marked , signed by the president, and attached to the proceedings]

[Instruction —*If the statement of the accused is not in writing, the material portions 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 of Procedure* 37 (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 at the foot of page "CC" of the proceedings "The Court consider that the accused does not understand the effect of his 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 on a plea of not guilty*]

WITNESSES FOR DEFENCE ON PLEA OF GUILTY

(*Rule of Procedure* 37 (F))

The Court give permission to the accused to give evidence himself and [*or*] to call witnesses to prove his above statement that [*here specify the statement which is to be proved*]

[Instruction —*The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as on a plea of not guilty*]

DD

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to accused*

[Instruction —*The examination, &c., of witnesses as to character will proceed as in the case of a witness giving evidence as to the facts of the case*] [A]

C

PROCEEDINGS ON PLEA OF NOT GUILTY

Do you wish 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 you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? *Question to accused*

[Instruction —*This question will only be asked if the accused pleads "not guilty" to one or more of the charges. If accused desires to make an application for an adjournment, the court will 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. Such statement or evidence will be recorded, together with the decision of the court on a separate sheet of paper attached to the proceedings and signed by the president of the court*]

The prosecutor makes an opening address, [*or* hands in a written address, which is read, marked , signed by the president, 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*]

App II.

The prosecutor proceeds to call witnesses

First witness for prosecution

* being duly sworn is examined by the prosecutor

*Here insert his number, rank, name, regiment and appointment (if any), or other description

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* 83 (B) *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 of Procedure* 76)

The Court, at the request of the accused, allow the cross examination of the witness to be postponed

OBJECTION TO EVIDENCE OR PROCEDURE

(*Rule of Procedure* 70)

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 re opened and the decision announced and the Court proceed with the trial

EXPLANATION OR CORRECTION OF EVIDENCE

(*Rule of Procedure* 83 (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* alteration

Examined by (*or* on behalf of) the accused as to the above explanation *or* alteration

The prosecutor and the accused (*or* counsel *or* defending officer) decline to examine him respecting the above explanation *or* correction

being duly sworn is examined by the prosecutor — *Second witness for prosecution*

(*The examination, &c , of this and every other witness proceeds as in the case of the first witness*)

VARIATIONS

EXTENDED SITTING OF COURT

(*Rule of Procedure* 64 (B))

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that (*set out*)

ADJOURNMENT

At o'clock the Court adjourn until o'clock on the .

On the of 19 , at o'clock, the Court reassemble, pursuant to adjournment, present the same members as on the of

[Instructions —(1) *If upon reassembly 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 officer*

(2) *If either the president or the Judge Advocate is absent, and cannot attend within a reasonable time, the Court will adjourn, and the president or senior member present, will thereupon report the case to the convening authority* (*See Rules of Procedure* 66 *and* 102)]

ABSENCE OF PRESIDENT OR 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

An order bearing date , appointing (*the senior member*) president of the Court martial in the place of is read, marked , signed by the president, and attached to the proceedings

The trial is proceeded with

Examination [cross-examination] of continued

D

The prosecution is closed

DEFENCE

Do you apply to give evidence yourself as a witness ? — *Question to accused*

Do you intend to call any other witness in your defence ? — *A.* *Q.* *A.*

Is he a witness as to character only ? — *Q.*

App II.

INSTRUCTIONS TO THE COURT

(I) *When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure* 40 *and* 41 *respecting the order of evidence and addresses which is applicable to the circumstances of the case*

(II) *All addresses by prosecutor, 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 Any address which the accused is entitled to make pursuant to Rules of Procedure* 40 (C) (IV) *and* 41 (A) (I) *and* (III) *will be similarly dealt with Written addresses will be read to the Court, marked and signed by the President*

[*Where any evidence is given for the defence*]

The evidence of the accused (and of the witnesses for the defence, including witnesses as to character) is recorded on a separate page (*See overleaf*)

First witness for the defence

[Instruction —*All evidence given upon oath will be recorded in the following form* —]

**Here insert his number, rank, name, regiment, and appointment (if any), or other description*

The accused* being duly sworn states (*or* being examined by counsel *or* defending officer states)

Cross-examined by the Prosecutor

Re-examined

Questioned by the Court

[Instructions —(1) *The fact that Rule* 83 (B) *has been complied with should be recorded*

(2) *If the prosecutor declines to cross examine, that fact must be recorded*]

VARIATION

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

Second witness for the defence

being duly sworn is examined by the accused (*or* counsel *or* defending officer)

Cross examined by the Prosecutor App II

Re examined

Questioned by the Court

[Instructions —(1) *The fact that Rule* 83 (B) *has been complied with should be recorded*

(2) *If the prosecutor declares 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*]

(*Where the accused does not give evidence upon oath*)

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, marked , signed by the president, 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 when he has not given evidence as a witness* (*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]

VARIATIONS

RECALLING WITNESSES

(*Rule of Procedure* 86)

(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 (*et 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, &c*),

App II

(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, &c*),

or,

(4) The Court in accordance with Rule of Procedure 86 (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 questions through the Court*]

ADJOURNMENT TO PREPARE ADDRESSES, &C

The Court, at the request of the accused, adjourn until to enable the accused 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 until to enable him to prepare his summing up

SUMMING UP

The Judge-Advocate makes the following summing up [*or, if the summing up is in writing,* hands in a written summing up, which is read, marked , signed by the President, and attached to the proceedings] ,

or,

The Judge-Advocate and the Court think a summing up unnecessary

* To be struck out except in cases where trial has taken place on a plea of "not guilty "

* FINDING

The Court is closed for the consideration of the finding
The Court find that the accused (*number, rank, name, regiment*),

(1) *Acquittal on all Charges*

is not guilty of the charge [*or,* all the charges] [and honourably acquit him of the same]

The finding[s] is [are] read in open Court and the accused is released

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]

The finding[s] of " not guilty " is [are] read in open Court

(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 of Procedure* 44 (D) *will be framed as far as possible in accordance with* (*a*) *Any special finding allowed by Section* 56 *of the Army Act, may be expressed in accordance with* (*b*)]

(5) *Reference to confirming authority*

(*Rule of Procedure*, 44 (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 Army Act legally be found guilty on the charge as laid*)] They therefore refer to the confirming authority for an opinion and adjourn

or,

(*Rule of Procedure* 44 (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 re-assembles 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 that the accused (*number—rank—name—regiment*) is (*the findings to be recorded in the usual manner*)

(6) *Insanity*

(*Rule of Procedure* 57)

The Court find that the accused (*number—rank—name—regiment*) did the act (*or* made the omission) which forms the subject of the charge[s] but was insane at the time when he did (*or* made) the same

PROCEEDINGS ON CONVICTION

Before Sentence.

* The Court being re-opened the accused is again brought before it

(*Rank—Name—Regiment*) is duly sworn

* When the Court is already open this sentence will be struck out

App II

Question by the President

Have you any evidence to produce as to the character and particulars of service of the accused ?

A I produce this statement

The witness hands in the statement, which should be in the following form

Army Form B 296 STATEMENT as to CHARACTER and PARTICULARS of SERVICE of ACCUSED

Number—Rank—Name—Regiment , [*or as the case may be*]

(1) The following is a fair and true summary of the entries in the regimental and squadron, troop, battery, or company conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with —

	Within last 12 months	Since Enlistment
For ,	times	times
For ,	times	times

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the conduct sheets of the accused

[Instruction —*If the charge is for drunkenness, the entries for drunkenness must be stated separately and dated*]

(2) The accused has not been previously convicted,

or,

The previous convictions of the accused by a court-martial or a civil court, and dispensations with trial under A A 73, are set out in the schedule annexed to this statement

(3) The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for beginning on the day of .

(4) The accused has been in confinement, awaiting trial on the present charges, for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital

(5) The present age of the accused according to his attestation paper is

(6) The date of his attestation specified in his attestation paper is

(7) The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

(8) The accused is entitled to deferred pay or gratuity in respect of service

(9) The accused is entitled to reckon service for the purpose of determining his pension, &c.

App II

(10) The accused is in possession of or entitled to no military decoration or military reward [*or* is in possession of *or* entitled to (*state any military decoration or reward*)]

(11) (*If the accused is a warrant officer*) The accused before he was made a warrant officer last held the regimental rank of

(12) (*In the case of an officer*) The accused holds in the army the rank of dated , and in his regiment [*or* corps *or* department] the rank of dated

(13) The accused has served as a non-commissioned officer continuously, without reduction, to the present date —

	Date of promotion
In the rank of ,	years
In the rank of ,	years
In the rank of ,	years

[Instruction —*If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through*]

SCHEDULE

Of convictions by a court-martial or civil court and of cases in which trial has been dispensed with of accused, *No* , *Rank* , *Name* , of regiment [*or as the case may be*]

[Instruction —*A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted*]

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody

Signed this day of

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President and annexed to the proceedings

Is the accused the person named in the statement which you have heard read ? — *Question by the President*

— *Answer by the witness*

Have you compared the contents of the above statement with the regimental books ? Q

—— A

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries ? Q

—— A

Cross-examined by the Accused [*or* by Counsel, *or* Defending Officer]

or,

The accused declines to cross examine this witness

[Instructions —(1) *If any evidence, other than documentary, is given the fact that Rule* 83 (B) *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 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 books, or in the certified copy above mentioned, 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 in a departmental corps, or otherwise, 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*]

Question to the accused Do you wish to address the Court ?

Answer

The court is closed for the consideration of the sentence

F

SENTENCE

[Instruction —*The provisions of Sections* 44, 182 *and* 183 *of the Army Act must be carefully attended to by the Court in passing sentence*]

Sentence. The Court sentence the accused (*No —Rank—Name—Regiment*)

[Instruction —*The sentence is to be marginally noted in every case*]

In the case of an officer —

Death (*a*) †to suffer death by being shot [hanged]

Penal servitude for (*b*) to suffer penal servitude for the term of years [or for life]

Imprisonment H L (or without H L) for (*c*) to be imprisoned with hard labour [without hard labour] for

[Instructions —(1) *As to the term of imprisonment see below in the case of a soldier*

(2) *A sentence of cashiering should precede a sentence of imprisonment or penal servitude*]

Cashiered (*d*) to be cashiered

Dismissed (*e*) to be dismissed from His Majesty's service

† As to communication to accused persons upon whom sentence of death has been passed see footnote (*b*) on p 762.

(*f*) [*Where the officer's army rank is superior to his regimental rank*] *Forfeiture of seniority of rank*

to take rank and precedence as in his corps as if his appointment to that corps bore date the day of , and to take rank and precedence in the Army as if his appointment as bore date the day of

or,

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, and in the rank held by him in the Army as if his name had appeared [*a specified number of*] places lower in the list of the Army

[*Or, where the officer's army and regimental rank are the same*]

to take rank and precedence in his corps and in the Army as if his appointment as bore date the day of

or,

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 and in the rank held by him in the Army as if his name had appeared [*a specified number of*] places lower in the list of the Army

[*Or, where the officer has no regimental rank*]

to take rank and precedence in the Army as if his appointment as in the Army bore date the day of

or,

to take precedence in the rank held by him, as if his name had appeared [*a specified number of*] places lower in the list of the Army

[Instruction —*In each case the form may be varied so that the Court may exercise the power under the Army Act, s* 44 (*f*), *and Rule of Procedure* 47 *of sentencing to forfeiture of seniority either in the corps, or in the Army, or in both*]

(*g*) to forfeit service for the purpose of promotion *Forfeit service for 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*]

(*h*) to be reprimanded [*or* severely reprimanded] *Reprimand or severe reprimand*

(*j*) to be put under stoppages of pay 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 , 1 value . 1 value , &c *Stoppages*

In the case of a soldier —

(*k*)† to suffer death by being shot [hanged] *Death.*

† As to communication to accused persons upon whom sentence of death has been passed see footnote (*b*) on p 76.

App. II.

Penal servitude for

(*l*) to suffer penal servitude for the term of years [*or* for life]

Impt H L (or without H L) for

(*m*) to be imprisoned with hard labour [without hard labour] for

Detention for

(*n*) to undergo detention for

Field punishment for

(*o*) to suffer field punishment for

[Instructions —(1) *If a person charged is at the time of sentence undergoing imprisonment or detention under a former sentence, a new sentence of imprisonment or detention must not exceed such a term as will make up a period of two years from the date of the former sentence*

(2) *In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of penal servitude, imprisonment, detention, or field punishment, although those sentences necessarily involve a reduction to the ranks*

Where, for any reason, a court consider that a sentence of reduction to a lower rank in the case of a N C O would be too severe a sentence, they can sentence the offender to forfeiture of seniority of rank]

Discharged with ignominy

(*p*) to be discharged with ignominy from His Majesty's service

Dismissed

(*q*) [*if belonging to the territorial army*] to be dismissed from His Majesty's service

Forfeiture of seniority, and reduction

(*r*) [*if a non-commissioned officer*] *

(1) to take rank and precedence as if his appointment to the rank of bore date *or*

(2) to be reduced to the rank of serjeant, *or*

(3) to be reduced to the rank of corporal, *or*

(4) to be reduced to the rank of bombardier, *or*

(5) to be reduced to [*a lower grade*] *or* to be reduced to the ranks *or*

(6) to be reprimanded *or* severely reprimanded

Fined £ s d

(*s*) to be fined

Stoppages

(*t*) to be put under stoppages of pay 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 , &c

Forfeiture of pay

(*u*) to forfeit all ordinary pay for a period of

(*w*) to forfeit [*state number or* all] good conduct-badge [*or* badges] with the pay attached thereto

to forfeit deferred pay in respect of [all *or* calendar months *or* years] previous service

to forfeit [all *or* years, *or* calendar months] past service for the purpose of determining pension

[Instructions —(1) *An offender may be sentenced to all or any of the above forfeitures*

* A sentence of reduction from or to an acting or lance rank is void, *e g*, a sentence on a corporal to be reduced to lance-corporal, or on a lance-corporal to be reduced to the ranks, is void See A.A. 183 (3) and note 6.

(2) *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 as relate to forfeitures, fines and stoppages, a general court-martial may use them in lieu of, or in addition to, the foregoing forms, see* A A , *s* 182 (2)]

(*x*) to be dismissed from the service,

or,

(*y*) To be reduced in the list of his rank as if his appointment thereto bore date the day of

or,

To be reduced to an inferior class of warrant officer , that is to say, to

or,

(*z*) To be reduced to [*a lower grade*] ;

or,

(*zz*) [*If he was originally enlisted as a soldier, but not otherwise*] To be reduced to the ranks,

or,

(*zzz*) To be reprimanded *or* severely reprimanded

RECOMMENDATION TO MERCY

The Court recommend the accused to mercy on the ground that (*set out*)

The Court recommend that of the service forfeited under section 79 of the Army Act shall be restored on the ground that (*set out*)

SIGNATURE.

Signed at , this day of 19 .

(*Signature*) (*Signature*)

Judge-Advocate President

REVISION

Revision

At , on the day of at o'clock, the Court re-assemble by order of for the purpose of re-considering 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, or if he is the president, 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 officer*]

The letter [order *or* memorandum] directing the re-assembly 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, and attached to the proceedings

App II — 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 and sentence the accused to

or,

(*b*) do now revoke their sentence, and now sentence the accused, &c , &c ,

or,

(*c*) do now respectfully adhere to their sentence [*or* finding and sentence]

Signed at , this day of 19

Judge-Advocate President

Confirmation

CONFIRMATION

Confirmed,

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 of Procedure* 36.**]

The finding of the Court that the plea in bar of trial is proved (*or* not proved) is confirmed (*or* not confirmed),

or,

[***Where the Court find that the accused is unfit by reason of insanity to take his trial or that he was insane at the time when he did the act or made the omission charged against him***]

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 The confirming authority will in no case comment upon a finding of "* ***not guilty,"*** *or upon the inadequacy of the sentence*]

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*]

---

(2)—FORMS OF SUMMONS TO WITNESSES

(*a*) IN THE CASE OF A SUMMARY OF EVIDENCE

Army Form A 12

To

Whereas a charge of having committed an offence triable by court-martial has been preferred before me against (*number, 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, viz).

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

Army Form A 13

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* President of the Court]

App II

(3)—FORMS OF OATHS AND DECLARATIONS.

OATHS

PRESIDENT AND MEMBERS (*a*)

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 now in force, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Army Council for the purpose of communicating the sentence to the accused, (*b*) I will not divulge the sentence of the Court until it is duly confirmed, 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 thereunto required in due course of law (*c*)

JUDGE-ADVOCATE (*d*)

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed, and 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 thereunto required in due course of law

OFFICER UNDER INSTRUCTION (*d*)

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed, and 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 thereunto required in due course of law

SHORTHAND WRITER (*d*)

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 may be required, and will, when required, deliver to the Court a true transcript of the same

INTERPRETER (*d*)

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial

---

(*a*) See A A 52 (1) and note, and R P 26

(*b*) The words "except so far as may be permitted by instructions of the Army Council for the purpose of communicating the sentence to the accused" have regard only to communication to accused persons upon whom sentence of death has been passed, and the instructions of the Army Council in the behalf stated are contained in Army Council Instruction 570 of 1918, and are as follows —

> "When a court-martial upon conviction passes a sentence of death upon any officer or soldier, at the conclusion of the trial the president will cause to be forthwith transmitted to the accused under sealed cover Army Form A 3996, duly completed and signed by himself The president will attach to the proceedings a certificate signed by himself and dated, stating that these instructions have been complied with"

For specimen form see p 795

(*c*) The qualification "unless thereunto required in due course of law" 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 it would or might, be necessary to make disclosures regarding individual votes to the court trying, members so charged

(*d*) See A.A. 52 (2) and R.P 27

WITNESS (*a*)

I swear by Almighty God that the evidence which I shall give before this Court shall be the truth, the whole truth, and nothing but the truth

MANNER OF TAKING THE OATH (*b*)

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

SOLEMN DECLARATIONS (*c*)

The form of declaration will be the same as the form of oaths except that for the words " I swear by Almighty God " will be substituted the words " I (*name in full*) do solemnly promise and declare ", and that the words " solemnly promise and declare " will be substituted for the word " swear " wherever it occurs

MEMORANDA FOR THE GUIDANCE OF OFFICERS CONCERNED WITH COURTS-MARTIAL

Memoranda

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 Appendix to the Rules of Procedure

Commanding Officers

1 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 court-martial would be made (R P 2) Should the accused remain in custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, the commanding officer will send a special report to the convening officer as above, stating the necessity for further delay A similar report will be sent every eight days until trial is ordered (A A 45, R P 1) These reports must be submitted irrespective of whether or not the delay in convening the court-martial rests with the convening officer

2 Before applying for the trial of an offender a commanding officer should satisfy himself—

(*a*) That the accused is subject to military law and is charged with an offence which is an offence against the Army Act,

(*a*) See A A 52 (3) and R P 82
(*b*) See also R P 30 as to swearing a person in the form and manner in which an oath is usually administered in Scotland, or according to the form of his religion
(*c*) See A A 52 (4) and R P 28

(*b*) That the offender is not exempt from trial under the provisions of A A 161,

(*c*) That the offence is not one of those referred to in K R 547, which he can himself dispose of without reference to superior authority, 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*) In cases of drunkenness, that A A 46 (3) and K R 575 do not require him to deal with the case himself,

(*e*) That the evidence justifies the trial of the offender on the charge,

(*f*) That the charge is properly framed under the appropriate section of the Army, or other, Act,

(*g*) That when once an accused has elected to be tried upon the charge as read out to him from the guard report, it is in no circumstances added to or increased in gravity (see K R 549 (*b*)),

(*h*) That an officer had 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 had been explained to him by that officer (see R P 14 (B))

3 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 (R P 5),

(*b*) The name of the officer to act as prosecutor must be stated on the application,

(*c*) If the accused has elected to be tried under A A 46 (8), the fact must be clearly stated on the form of application for 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 application must be signed by the officer in actual command of the offender's unit,

(*f*) 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,

(*g*) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer to be entered The place and date should be entered by the officer signing the orders (see p 714),

(*h*) 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,

(*i*) If the accused has elected to be tried instead of submitting to a summary award, it should be so stated (in red ink) at the top of the charge-sheet,

(*j*) When it is intended to prove any facts in respect of which any deduction from the ordinary pay of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge,

(*k*) When part of the evidence is documentary, the statement of the witness made on producing the documents should be included in the summary, such statement must identify the accused as the person to whom the document refers or relates,

(*l*) A statement of evidence as to facts should commence by recording the place, date, and time (if material) to which the evidence refers,

(*m*) All irrelevant, hearsay or otherwise inadmissible statements should be eliminated from the summary,

(*n*) Written statements from witnesses not actually called must be signed and certified as required by R P 4 (G),

(*o*) At the close of the evidence of each witness who is not cross-examined by the accused, it should be noted that "accused declines to cross-examine",

The evidence of each witness must be signed by him,

The record of any statement made by the accused should be prefaced by a note that he was formally "cautioned",

(*r*) A statement that the requirements of R P 4 (C), (D), (E) have been complied with should be entered at the end of the summary of evidence and signed by the officer taking the evidence The place and date should be stated,

(*s*) The convening officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial,

(*t*) Where the charge is for deficiency of kit, unless A F B 115 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 the fact that none of the articles have since been recovered, should be included in the summary of evidence Any articles recovered will, of course, be omitted from the charge,

(*u*) A F B 296, by whomsoever produced, is to be signed by the officer having the custody of the books from which it is compiled In preparing this form, minor offences may be grouped as "miscellaneous", offences of the same class as that being charged should always be shown in a separate group,

(*v*) Where A F B 115 is to be produced, it must be similarly signed. The original declaration of the court of inquiry (on A F A 2), even if in existence, is not admissible in evidence nor is A F B 115, unless the entry in A.B 161 (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's unit,

(*w*) It should be noted that a "descriptive return" (A F O 1618) is only admissible as evidence of matters therein stated as facts, *e g*, that the accused was arrested on a particular day It is not evidence of the date when his absence began, which must be proved by a witness

4 After trial has been ordered the commanding officer must satisfy himself that the following provisions have been complied with —

(*a*) The accused must be warned for trial not less than 24 hours before the court assembles,

(*b*) The accused 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 of the summary of evidence, and (if he desires it) informed of the ranks, names and corps of the officers who are to form the court as well as of any waiting members,

(*c*) 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,

(*d*) The accused must be afforded proper opportunity for preparing his defence,

(*e*) No officer of the unit to which the accused belongs may be detailed as a member of the court who is ineligible or disqualified to serve under the provisions of R P 19,

(*f*) In the 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,

(*g*) The accused must be seen by a medical officer on the morning of each day the court is ordered to sit for his trial

5 After confirmation the commanding officer must see that the following provisions are complied with —

(*a*) The proceedings, whether confirmed or not, must be promulgated as laid down in K R 668,

(*b*) The record of the promulgation must be entered on the proceedings in the form shown on p 761, and extracts recorded in the regimental books,

(*c*) The proceedings must be returned without delay to the proper authority after promulgation

Convening Officer

6 The convening officer, in addition to satisfying himself as regards paras 2 and 3 (above), will ensure —

(*a*) That in the case of all trials by general court-martial at home stations, and in all cases of fraud (except simple theft) and indecency committed at home stations, the charge-sheet and summary (or abstract) of evidence are submitted to the J A G before trial is ordered

(*b*) That he holds the necessary warrant empowering him to convene the description of court which he desires to convene;

(*c*) That the court which he has decided to convene is properly composed in accordance with the Army Act (and see R P 20–21),

(*d*) That no officer is detailed to serve on the court who is ineligible or disqualified under the Army Act (and see R P 19*),

(*e*) That at home stations application is made to the J A G for the appointment of a judge-advocate in all cases where such an appointment is legally required or is desirable It is open to him to submit with his application the name of a person whom he recommends for appointment,

(*f*) That the president is named in the convening order and that the other officers detailed to serve are stated therein either by name or by the units from which they are to be drawn,

(*g*) 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,

[N B —In the case of a field general court-martial, the convening officer must himself sign the convening order]

(*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

7 A special certificate must be inserted in the convening order in the following cases —

(*a*) Where an officer of the prescribed rank is not available as president (see A A., 48 (9)), or

(*b*) Where, for the trial of an officer, officers of equal or superior rank to the accused are not available (see R P 21 (B)), or

(*c*) Where it is not practicable for a court-martial to be composed of officers belonging to different corps (see R I 20 (A)), or

(*d*) Where the necessary number of military officers is not, or could not be made, available (see A A 48 (10)), or

(*e*) Where it is not practicable to appoint an officer of the Supplementary Reserve or of the Territorial Army to serve on a court-martial for the trial of an offender belonging to those branches of the service respectively (see R P 20 (B))

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, he will apply to the command concerned asking for the names of officers to compose the court, and these names will be inserted in the convening order The command which furnishes the officers should then insert in the command orders an order to the effect that " the undermentioned officers have been placed at

* For instance, if the accused is charged with embezzling money belonging to the officers' mess of a particular unit, he will be careful to see that no officer of that unit is detailed to sit on the court martial

the disposal of the Commander, th Brigade (or as the case may be) for duty at a court-martial to assemble at [place] on [date] "

8 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 of Procedure referred to in R P 104, he must make on A F A 49 a declaration to that effect, specifying the nature of those exigencies or necessities

9 The convening officer must ascertain whether the accused desires to have a defending officer assigned to represent him at his trial, if so, he must endeavour to meet his wishes Should no suitable officer be available, the convening officer should notify the president in writing

10 The convening officer must send to the president the convening order, charge-sheet and summary (or abstract) of evidence Except in the case of the 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

11. 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 R P 33 (A), in the charge-sheet

12 Where, in accordance with R P 71, the court is sworn at one time in 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 A F A 9 as the time at which the trial of each of the accused commences, in such cases it is desirable that the time of the arraignment of each such accused should be inserted on page B of each A F A 9 before the words " The accused is arraigned, &c "

13 The full name and description of the accused must be entered on the first page of the proceedings and in every finding and sentence

14 Care must 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 742 for form)

15 Every witness, including the officer producing A F B 296, must be sworn 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.

16 The evidence will usually be taken down in narrative form Questions and answers recorded *verbatim* will be numbered consecutively (" Q 1," " A 1," &c) throughout

17 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 K R 650

18 In accepting A Fs B 296, B 115 and O 1618, attention should be given to para 3 (*u*), (*v*), (*w*), *supra* Where A Fs B 115, O 1617 and O 1618 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

19 A certified true copy on A F B 115 of an entry in A B 161 is sufficient evidence thereof, it is not necessary for the court to compare the copy with the book

20 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 discharged with ignominy, in case the latter part of the sentence should be remitted

21 Included in A F A 9 are two sets of pages " C " and " CC " —one for proceedings on the plea of " Not guilty " and one for proceedings on the 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

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 " up to and including the finding, and then on the plea or pleas of " Guilty ", it is not necessary to insert before page " CC " a separate sheet containing the findings of the court upon the pleas of " Not guilty "

22 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 A F A 9 being adapted accordingly, and the replies of each of the accused to the questions therein set out being separately recorded Page F should be used for the finding and proceedings on conviction and page F for the sentence in each case

23 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

24 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

25 Every document attached to the proceedings should be signed by the president and marked with a reference letter, preferably not one used in A F A 9

26 In the case of a plea of "Guilty," the summary of evidence is to be annexed to the proceedings In the 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.

27 All erasures of written or printed matter, and all interlineations and corrections should be initialled by the president or judge-advocate (if any)

28 After the pages have been put together in the order prescribed, they should be numbered consecutively up to the end of the proceedings In case of revision, the later proceedings are added at the end, and the numbering of pages carried on

29 Care must be taken that the proceedings are both signed and dated by the president.

THIRD APPENDIX. App III.

FORMS OF COMMITMENT.

FORM A

Form of Order for Commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude Army Form C 383

Whereas [*No —Rank—Name*], of the regiment, was by a (*a*) court-martial, held at , convicted of the offence of (*b*), and, by a sentence signed on the day of 19 , sentenced (*c*) to suffer penal servitude for years, commencing on the aforesaid day, and such sentence has been confirmed by , as required by law *

*Add, if necessary, "with a remission of years"

**And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone , and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of awarded on the day of , 19

** This portion will only be used when a suspended sentence under Sec 57A, A A , is put into execution Strike out and initial all words not applicable

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law

And I do hereby in pursuance of the above-mentioned Acts and powers order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant

Signed this day of , 19

C D

(*a*) *Insert* "general" *or* "field general" as required

(*b*) If there are several offences, state all of them An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified, omitting the statement of particulars giving the details of time, place and circumstances

(*c*) Where the sentence was death, but has been commuted to penal servitude, *substitute* "to suffer death, and such sentence was confirmed by as required by law, and was commuted to years' penal servitude commencing on the aforesaid day"

App III. FORM B

Army Form C 384

Form of Order for commitment to prison of Military Convict sentenced in India or a Colony, or a Foreign Country, to Penal Servitude

Whereas [*No —Rank—Name*], of the regiment was by a (*a*) court-martial held at , convicted of the offence of (*b*), and by a sentence signed on the day of , 19 , sentenced (*c*) to suffer penal servitude for years, commencing on the aforesaid day, and such sentence has been confirmed by , as required by law *

*Add, if necessary, "with a remission of years"

**This portion will only be used when a suspended sentence under Sec 57A, A A, is put into execution Strike out and initial all words not applicable

**And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone, and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of , awarded on the day of , 19

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo his sentence according to law

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [*here state route*], or such other route as may be directed by competent military authority, to the port at or such other port as may be directed by competent military authority, thence to be removed by [*here state route*] to such prison as aforesaid in the United Kingdom

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned officer in charge of any detention barrack, and also the governor or chief officer of any prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably

---

(*a*) *Insert* "general" *or* "field general" as required

(*b*) If there are several offences, state all of them An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified, omitting the statement of particulars giving the details of time, place, and circumstances

(*c*) Where the sentence was death, but has been commuted to penal servitude, *substitute* "to suffer death, and such sentence was confirmed by , as required by law, and was commuted to years' penal servitude commencing on the aforesaid day"

necessary with the view to his said removal, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant App III

Signed at this day of , 19

C D

In case an Alteration of the Route above mentioned becomes necessary

(*a*) Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom, it is necessary to alter the route above mentioned, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [*here state the route so far as varied*] to , thence to be removed as directed by the said order

Signed at this day of , 19

E F

In case of need the following Order may be made

For the purpose of carrying into effect the above order, I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of prison or detention barrack at , to receive the above-named convict, and to detain him until he can be removed to , and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant

Signed at this day of , 19

G H

FORM BB

Form of Order respecting a sentence of penal servitude passed for an offence committed on active service, where part of the sentence is ordered to be served in a military prison Army Form C 384A

Whereas [*No —Rank—Name*], of the regiment, was by a (*b*) court-martial held at , convicted of the offence of (*c*) , and by a sentence signed on the day of , 19 , sentenced (*d*) to suffer penal servitude for years, commencing on the aforesaid day, and such sentence has been confirmed by , as required by law *

*Add, if necessary, "with a remission of years"

(*a*) This order can be repeated by any removing authority as often as necessary.
(*b*) *Insert* "general" *or* "field general" as required
(*c*) If there are several offences, state all of them An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified, omitting the statement of particulars containing the details of time, place, and circumstances
(*d*) Where the sentence was death but has been commuted to penal servitude, *substitute* "to suffer death, and such sentence was confirmed by as required by law, and was commuted to years' penal servitude commencing on the aforesaid day"

App III

—

**This portion will only be used when a suspended sentence under Sec 57A, A A, is put into execution Strike out and initial all words not applicable

**And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone, and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of , awarded on the day of , 19

Now, therefore, I, the undersigned, the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, committed to a military prison in which a military prisoner sentenced to imprisonment by a court-martial can for the time being be confined, either temporarily or permanently, there to undergo† , part of the said sentence, according to law

†A period not exceeding two years

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant

And I do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict shall, as soon as practicable after completion of the aforementioned part of his sentence or at such earlier date as the competent military authority may order, be transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo the remainder of his sentence according to law (*a*)

Signed at this day of 19

C D

FORM C

Army Form C 385

Form of Order for commitment to Prison, Military or Civil (or to a detention barrack), of persons subject to military law sentenced either in or out of the United Kingdom to Imprisonment

To the Governor or chief officer in charge of (*b*) prison (or detention barrack) at

Whereas [*No —Rank—Name*], of the regiment, was by a (*c*) court-martial held at , convicted of the offence of (*d*) , and by a sentence signed on the day of 19 , sentenced

(*a*) Form B should be prepared by the competent military authority for the subsequent transfer of the military convict to a prison in the United Kingdom of prison

(*d*) If there are several offences, state all of them An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified, omitting the statement of particulars containing the details of time, place, and circumstances

(*a*) to be imprisoned with *hard labour for , commencing on the aforesaid day, and such sentence has been confirmed by , as required by law (*b*)

*If the sentence does not specify hard labour *alter* 'with' into "without"

**And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone, and on the day of 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of , awarded on the day of , 19

**This portion will only be used when a suspended sentence under Sec 57A, A A, is put into execution Strike out and initial all words not applicable

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said person into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant

Signed at this day of , 19

G H

FORM D

Form of Order for commitment to a detention barrack of persons subject to military law as soldiers, sentenced either in or out of the United Kingdom to Detention

Army Form C 385A

To the commandant or chief officer in charge of the detention barrack at

Whereas [*No —Rank—Name*], of the regiment, was, by a (*c*) court-martial held at , convicted of the offence of (*d*) , and, by a sentence signed on the day of 19 , sentenced (*e*) to detention for commencing on the aforesaid day, and such sentence has been confirmed by as required by law (*f*)

(*a*) *Substitute*, where the original sentence was death or penal servitude which has been commuted to imprisonment, 'to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into imprisonment for , with * hard labour commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into imprisonment for with * hard labour, commencing on the aforesaid day"

*If the commutation does not specify hard labour *alter* "with" into "without"

(*b*) *Add*, if necessary, "with a remission of ," or "but has been mitigated by the omission of the hard labour," *or as the case may be*

(*c*) *Insert* "general," "field general" *or* "district," as required

(*d*) If there are several offences, state all of them An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified, omitting the statement of particulars containing the details of time, place, and circumstances

(*e*) *Substitute*, where the original sentence was death, penal servitude, or imprisonment, which has been commuted to detention, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into detention for , commencing on the aforesaid day," *or* "to suffer years, penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into detention for , commencing on the aforesaid day," or "to be imprisoned with (or without) hard labour for commencing on the aforesaid day, and such sentence has been commuted into detention for , commencing on the aforesaid day"

(*f*) *Add*, if necessary "with a remission of ."

App III

*This portion will only be used when a suspended sentence under Sec 57A, A A, is put into execution Strike out and initial all words not applicable

*And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone, and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of , awarded on the day of , 19

Now, therefore, I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant

Signed at this day of , 19 .
G H

FORM E

Army Form C 386

Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom

Whereas [*No —Rank—Name*], of the regiment, was by a (*a*) court-martial held at convicted of the offence of (*b*), and by a sentence signed on the day of 19 , sentenced (*c*) to be imprisoned with *hard labour for , commencing on the aforesaid day, and such sentence has been confirmed by , as required by law (*d*)

*If the sentence does not specify hard labour, *alter* "with" into "without"

**This portion will only be used when a suspended sentence under Sec 57A, A A, is put into execution Strike out and initial all words not applicable

**And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone, and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of , awarded on the day of , 19

(*a*) *Insert* "general," "field general" *or* "district," as required

(*b*) If there are several offences, state all of them An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified omitting the statement of particulars containing the details of time, place and circumstances

(*c*) *Substitute*, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into imprisonment for , with *hard labour, commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into imprisonment for , with *hard labour, commencing on the aforesaid day"

*If the commutation does not specify hard labour, *alter* "with" into "without"

(*d*) *Add*, if necessary, "with a remission of ," *or* "but has been mitigated by the omission of the hard labour," *or as the case may be*

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred to the United Kingdom and there committed to such prison or detention barrack as any other competent military authority may appoint in this behalf, there to undergo his sentence according to law App III

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison or detention barrack as aforesaid to whom the above soldier is brought, to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military custody and detained in military custody or in civil custody, so far as appears necessary or proper for effecting his transfer to the said prison or detention barrack in the United Kingdom

Signed at this day of , 19 .

H I

In case of a Committal to any intermediate Prison or Detention Barrack being necessary (a)

For the purpose of carrying into effect the above Order, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the prison or detention barrack at , to receive the said soldier and detain him until he can be transferred, in pursuance of the above order, and to deliver him when required for the purpose of such transfer, and for so doing this shall be sufficient warrant

Signed at this day of , 19

I K

Order on arrival in United Kingdom of soldier sentenced to imprisonment

I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order him to be transferred to the prison or detention barrack at to undergo his sentence according to law

And I do hereby order the governor or chief officer of that prison or detention barrack to receive him, and for so doing this shall be sufficient warrant

Signed at this day of , 19

K L

(a) This order may be repeated as often as necessary by any authority having power to make it

App III

FORM F

Army Form C 386A

Form of Order respecting detention under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom

Whereas [*No —Rank—Name*], of the regiment was by a (*a*) court-martial held at convicted of the offence of (*b*) and by a sentence signed on the day of , 19 , sentenced (*c*) to detention for commencing on the aforesaid day, and such sentence has been confirmed by as required by law (*d*)

*This portion will only be used when a suspended sentence under Sec 57A, A A, is put into execution Strike out and initial all words not applicable

*And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone, and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of , awarded on the day of , 19

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred to the United Kingdom and there committed to such detention barrack as any other competent military authority may appoint in this behalf, there to undergo his sentence according to law

And I do hereby, in pursuance of the said Acts and powers, order the commandant or chief officer of any such detention barrack as aforesaid to whom the above soldier is brought to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military custody and detained in military custody or in civil custody so far as appears necessary or proper for effecting his transfer to the said detention barrack in the United Kingdom

Signed at this day of , 19 .

E F

(*a*) *Insert* "general," "field general," *or* "district," as required

(*b*) *If* there are several offences, state all of them An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified, omitting the statement of particulars containing the details of time, place and circumstances

(*c*) *Substitute*, where the original sentence was death, penal servitude, or imprisonment which has been commuted to detention, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into detention for , commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into detention for , commencing on the aforesaid day," *or* "to be imprisoned with (or without) hard labour for commencing on the aforesaid day, and such sentence has been confirmed by , as required by law, and has been commuted into detention for , commencing on the aforesaid day"

(*d*) *Add*, if necessary, "with a remission of "

If the detention was awarded by the commanding officer, the form from "Whereas" down to "required by law," will be replaced by the corresponding provision in Form "G"

In case of a Committal to any intermediate Detention Barrack being necessary (*a*) App III

For the purpose of carrying into effect the above Order, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act and of all other Acts and powers enabling me in this behalf, order the commandant or chief officer of the detention barrack at , to receive the said soldier, and detain him until he can be transferred, in pursuance of the above Order, and to deliver him when required for the purpose of such transfer, and for so doing this shall be sufficient warrant

Signed at this day of , 19

D E

Order on Arrival of Soldier in United Kingdom

I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the said soldier to be transferred to the detention barrack at to undergo his sentence according to law

And I do hereby order the commandant or chief officer of that detention barrack to receive him, and for so doing this shall be sufficient warrant

Signed at this day of , 19

D E

FORM G

Form of Commitment to Detention Barrack on award of Detention by Commanding Officer Army Form C 388

To the commandant or officer or non-commissioned officer in charge of the detention barrack at

Whereas [*No —Rank—Name*], of the regiment, was on the day of , 19 , awarded by his commanding officer detention for for the offence of

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant

Signed at this day of , 19

(*a*) This order may be repeated as often as necessary by any authority having power to make it

App III.

FORM H

Army Form C 389 *Order for Release of Persons subject to Military Law undergoing Imprisonment*

To the governor, commandant, or chief officer of prison or detention barrack at

Whereas [*No —Rank—Name*], of the regiment, is now in your custody under a sentence of imprisonment by court-martial

I, the undersigned, being the competent military authority, lo hereby order you to release the said soldier

Signed at this day of , 19

E F

FORM I

Army Form C 389A *Order for Release of Persons subject to Military Law as Soldiers undergoing Detention*

To the commandant or chief officer of the detention barrack at

Whereas [*No —Rank—Name*], of the regiment, is now in your custody under a sentence of detention by court-martial

I, the undersigned, being the competent military authority, do hereby order you to release the said soldier

Signed at this day of , 19

E F.

FORM J

Army Form C 390 *Form of Releasing Order in case of Detention under the Award of Commanding Officer*

To the commandant or officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to release the soldier [*No —Rank—Name*], of the regiment, now in your custody undergoing his sentence pursuant to the award of his commanding officer

Signed at this day of , 19

C D

Commanding Officer of the above Soldier

FORM K

App III

Order for delivery into military custody of a Soldier undergoing Imprisonment

Army Form C 391

To the governor or chief officer of prison or detention barrack at

Whereas [*No —Rank—Name*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial

I, the undersigned, being the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to there to *

and then to return him to the above-named prison (or detention barrack), or to such other prison (or detention barrack) as may be determined by the competent military authority, and to detain him in military custody until he is so returned or is released in due course of law, and for so doing this shall be sufficient warrant

*State the purpose for which the military prisoner is required

Signed at this day of , 19

C D

If the Prison (or Detention Barrack) to which he is returned is altered

I, the undersigned, being the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to prison (*or* detention barrack) at , there to undergo the remainder of his sentence

Signed at this day of , 19

C D

FORM L

Order for delivery into military custody of a Soldier undergoing Detention

Army Form C 391A

To the commandant or chief officer of the detention barrack at

Whereas [*No —Rank—Name*], of the regiment, is now in your custody, undergoing a sentence of detention passed by court-martial (*a*) ,

(*a*) If necessary, substitute "awarded by his commanding officer"

App III

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to , there to*

*State the purpose for which the soldier is required

and then to return him to the above-named detention barrack, or to such other detention barrack as may be determined by the competent military authority, and to detain him in military custody until he is so returned, or is released in due course of law, and for so doing this shall be sufficient warrant

Signed at this day of , 19

C D

If the Detention Barrack to which he is returned is altered

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to the detention barrack at , there to undergo the remainder of his sentence

Signed at this day of , 19

C D

FORM M

Army Form K 392

Order for Removal of Soldier undergoing Imprisonment for Embarkation

To the governor or chief officer of prison (*or* detention barrack) at

Whereas [*No —Rank—Name*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment, to which he belongs is serving (*a*), and for so doing this shall be sufficient warrant

Signed at this day of , 19

J K

(*a*) If necessary, substitute "under orders to serve."

FORM N

App III

Order for Removal of Soldier undergoing Detention for Embarkation Army Form C 392A

To the commandant or chief officer of the detention barrack at

Whereas [*No —Rank—Name*], of the regiment, is now in your custody undergoing a sentence of detention passed by court-martial (*a*)

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment to which he belongs is serving (*b*) and for so doing this shall be sufficient warrant

Signed at this day of , 19

J A

FORM O

Order for Transfer of Soldier from one Prison (or Detention Barrack) to another Army Form C 393

To the governor or chief officer of prison (*or* detention barrack) at

Whereas [*No —Rank—Name*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf order you to deliver the said soldier to the officer or non-commissioned officer presenting this order

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and convey him in military custody in such manner as may be directed by military authority, to the prison (*or* detention barrack) at there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant

Signed at this day of , 19

D E

(*a*) If necessary, substitute "awarded by his commanding officer"
(*b*) If necessary, substitute "under orders to serve"

App III

FORM P

Army Form C 393A

Order for transfer of a person subject to Military Law as a Soldier undergoing Detention from one Detention Barrack to another

To the commandant or chief officer of the detention barrack at

Whereas [*No —Rank—Name*], of the regiment, is now in your custody, undergoing a sentence of detention passed by court-martial (*a*),

I, the undersigned, being the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody, and convey him in military custody in such manner as may be directed by military authority, to the detention barrack at , there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant

Signed at this day of , 19

D E

FORM Q (*b*)

Army Form C 396

Form of order for temporary custody in Prison or Lock-up

To the governor or chief officer of prison at (*c*)

Whereas [*No —Rank—Name*], of the regiment, is now a soldier in military custody

Now therefore, I, the undersigned, the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody, and detain him until you receive a further order from me, but not longer than seven days, and for so doing this shall be your warrant

Signed at this day of , 19

J K

(*a*) If necessary, substitute "awarded by his commanding officer"
(*b*) This form can be used only in the case of a soldier as defined by the Army Act
(*c*) Substitute, if necessary, "officer in charge of the police station [*or other place*] at "

FORM R

App III

Form of Commitment to Detention Barrack for safe custody while awaiting Trial by, or Sentence of, Court-Martial Army Form B 72

To the officer or non-commissioned officer in charge of the detention barrack at

Whereas [*No —Rank—Name*], of the regiment, [has been remanded for trial by court-martial] (*a*) *or* [was on the day of , 19 , tried by court-martial for the offence of], and is awaiting [trial] (*a*) *or* [the promulgation of the finding and sentence of the court]

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby, in pursuance of the King's Regulations for the Army, enabling me in this behalf, order you to receive him into your custody for safe custody, and for so doing this shall be your warrant

You will take care that the said soldier wears his regimental clothing and necessaries, that he is allowed to exercise during a reasonable portion of each day in association, if possible, but that he is kept apart from soldiers undergoing sentences, and that he receives the ordinary rations and messing of a soldier He should not be *obliged* to labour otherwise than by being employed in drill fatigue and other duties similar in kind and amount to those he might be called on to perform if not in confinement

Signed at this day of , 19

(*Signature*)

FORM S

Form of Releasing Order in case of Confinement in Detention Barrack for safe Custody while awaiting Trial by, or Sentence of, Court-Martial Army Form B 94

To the officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to deliver over the soldier [*No —Rank—Name*], of the regiment, now in your custody for safe custody, pursuant to committal by his commanding officer, to the non-commissioned officer of the escort herewith attending to receive him

Signed at this day of , 19

(*Signature*)

Commanding Officer of the above soldier

(*a*) NOTE —The forms should be altered to meet cases of confinement before and after the trial respectively by erasing the words not applicable

App III

FORM T

Army Form O 1797

Order for the Removal in Military Custody of a Deserter or Absentee without leave awaiting Escort

To the governor or chief officer of prison

Whereas [*No —Rank—Name*], of the regiment, is now in your custody as a deserter or absentee without leave awaiting escort, I, the undersigned, being do hereby order you to deliver the said prisoner to the escort producing this authority

Signed at this day of , 19

D E.

FORM U

Form of Commitment of Person guilty of Contempt of a Court-Martial under s 28 of the Army Act

To the officer or non-commissioned officer in charge of the prison [*or* detention barrack] at

Whereas a court-martial for the trial of , of which I, the undersigned, am president, was on this day sitting at and of the Battalion, Regiment, was guilty of contempt of the court by using insulting language [*or* by using threatening language], [*or* by causing an interruption in the proceedings of such court, *or as the case may be*] namely by [*here describe the act of which the offender was guilty*]

And whereas the said court did order the above-named offender to be imprisoned [*or* to undergo detention] for days

Now, therefore, the court doth order you to receive the said offender into your custody for safe custody, and for so doing this shall be your warrant

Signed at this day of 19 .

(*Signature*) A B,

President of the above Court-Martial

Rules for Field Punishment.

RULES FOR FIELD PUNISHMENT MADE UNDER SECTION 44 OF THE ARMY ACT

1 A court-martial, or a commanding officer, may award field punishment for any offence committed on active service, and may sentence an offender to such punishment for a period not exceeding, in the case of a court-martial, 3 months, and in the case of a commanding officer, 28 days F P Rules

2 Where an offender is sentenced to field punishment he may, during the continuance of his sentence, unless the court-martial or the commanding officer otherwise directs, be punished as follows —

(*a*) He may be kept in irons, *i e*, in fetters or handcuffs, or both fetters and handcuffs, and may be secured so as to prevent his escape

(*b*) Straps or ropes may be used for the purpose of these rules in lieu of irons

(*c*) He may be subjected to the like labour, employment, and restraint, and dealt with in like manner as if he were under sentence of imprisonment with hard labour

3 Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or to 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

4 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, or an assistant provost marshal the punishment will be carried out under that officer

5 When the unit to which an offender under sentence of field punishment belongs or is attached is actually on the move, such offender shall march with his unit, carry his arms and accoutrements, perform all his military duties as well as extra fatigue duties, and be treated as a defaulter

(Signed) DERBY.

The War Office,
13th October, 1923

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of Section 44 of the said Act

(Signed) H F OLIVER
A D BOYLE

Admiralty,
19th October, 1923

Forms of Court-Martial Warrants.

The following Forms are at present in use —

Warrants —

I —*Form of Warrant under the Sign-Manual empowering General Officers in command at home to convene General Courts-Martial*

(Sign-Manual)

In pursuance of the provisions of the Army Act

We hereby authorise you, from time to time as occasion may require, to convene General Courts-Martial for the trial of any persons subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against Military Discipline, whether such offence shall have been committed before or after you shall have taken upon yourself your Command The said Courts-Martial shall be constituted, and shall proceed in the trial of the offenders and in giving sentence and awarding punishment, according to the powers and directions contained in the said Act

We are further pleased to order that the proceedings of every such Court-Martial shall be transmitted to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War who will lay the same before Us for Our decision thereupon

And for so doing, this shall be, to you, and all others whom it may concern, a sufficient Warrant and Authority

Given at Our Court at this
day of 19
in the Year of Our Reign

By His Majesty's Command
(*Signature of Secretary of State*)

To

The General
or Officer Commanding the Forces (*Home*)

II —*Form of Warrant under the Sign-Manual empowering General Officers in command at home to convene and confirm General Courts-Martial*

(Sign-Manual)

In pursuance of the provisions of the Army Act

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against the said Act, whether such offence shall have been committed before or after you shall have taken upon yourself the Command, and We hereby further authorise you to confirm the proceedings of any such Courts-Martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act

Provided always, that if by the sentence of any General Court-Martial a Commissioned Officer has been sentenced to suffer death, penal servitude or imprisonment, or to be cashiered or dismissed from Our Service, or a soldier has been sentenced to suffer death or penal servitude, 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, transmit the proceedings to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us for Our decision thereupon Warrants.

And for executing the several powers, matters and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority

Given at Our Court at this
day of 19
in the Year of Our Reign

By His Majesty's Command
(*Signature of Secretary of State*)

To
The General,
or Officer Commanding-in-Chief
Command

III —*Form of Warrant under the Sign-Manual enabling Commander-in-Chief in India to convene and confirm the findings and sentences of General Courts-Martial*

(Sign-Manual)

In pursuance of the provisions of the Army Act

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your command, who shall be charged with any offence against the provisions of the said Act, and We hereby further authorise you to confirm the proceedings of any courts-martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act

And We do hereby further authorise you to direct your warrant to any Officer under your command, not under the rank of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his command, whether the offences shall have been committed before or after such Officer shall have taken upon him his command, and also to exercise in respect of the proceedings of such courts-martial the power of confirming the findings or sentences thereof in accordance with the said Act, or if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such courts-martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act.

Warrants — We also hereby authorise you in any case in which you shall think fit so to do, to transmit the proceedings of any General Court-Martial to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War who will lay the same before Us for Our decision thereupon

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a fit person from time to time for executing the office of Judge-Advocate at any Court-Martial for the more orderly proceedings of the same

And for enforcing the sentence of every such Court-Martial, We do also give you authority to appoint and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act

And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority

Given at Our Court at this
day of 19
in the Year of Our Reign

By His Majesty's Command
(*Signature of Secretary of State*)

To
The General or Officer for the time being
Commanding in Chief
The Forces in the East Indies

IV.—*Form of Warrant under the Sign Manual enabling the Officer Commanding the Forces in a Colony, or elsewhere out of the United Kingdom, except in India, to convene and confirm the finding and sentences of General Courts-Martial*

(Sign-Manual)

In pursuance of the provisions of the Army Act

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against the said Act, whether such offence shall have been committed before or after you shall have taken upon yourself the Command, and We hereby further authorise you to confirm the proceedings of any such Courts-Martial, and to

NOTE.—The warrant for the Commander in Chief on active service often follows Form III above.

cause any sentence thereof to be put in execution, according to the provisions of the said Act Warrants

And We do hereby further authorise you to direct your Warrant to any Officer under your command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial, for the trial, under the said Act, of any such persons subject to Military Law, as are for the time being under or within the territorial limits of his Command, whether the offences shall have been committed before or after such Officer shall have taken upon him his Command, and also to exercise, in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act, or, if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such Courts-Martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act

Provided always, that if by the sentence of any General Court-Martial a Commissioned Officer, other than a native Commissioned Officer, has been sentenced to suffer Death, or Penal Servitude, or to be Cashiered or dismissed from Our Service, 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, transmit the proceedings to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us, for Our decision thereupon

Provided also that if by the sentence of any General Court-Martial a native Commissioned Officer has been sentenced to suffer Death or Penal Servitude or to be Cashiered or dismissed from Our Service, you shall in such case require the proceedings to be reserved for your confirmation, or, if you shall so think fit, for transmission to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us for Our decision thereupon

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a fit person from time to time for executing the office of Judge-Advocate of any Court-Martial for the more orderly proceedings of the same

And for enforcing the sentence of any such Court-Martial, We do also give you authority to appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act

Warrants — And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority

Given at Our Court at this
day of 19
in the Year of Our Reign

By His Majesty's Command,
(*Signature of Secretary of State*)

To

The General or Officer for the time being Commanding the Forces at

V.—*Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene* [*and confirm*] *General Courts-Martial*

Army Form A 1

To

Whereas I am empowered by Warrant of His Majesty to direct my warrant to any Officer under my command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial under the Army Act, of any person under the command of such last-mentioned officer who is subject to Military Law, and also to execute (subject to the provisions of the said Warrant) in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act, or of directing him to reserve for my confirmation the proceedings of all or any such Courts-Martial

By virtue of the said Warrant, I do hereby authorise and 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 I do 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 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 of Parliament in the confirming Officer, in such manner as may be best for the good of His Majesty's Service

†Provided always that if by the sentence of any General Court-Martial a Commissioned Officer has been sentenced to suffer Death, Penal Servitude, or to be cashiered or dismissed from the Service, 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 me.

* May be omitted
† This clause to be omitted if the power of confirmation is wholly reserved

Warrants —

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, I hereby further empower you, in default of a person appointed by His Majesty, or deputed by the Judge-Advocate-General of His Majesty's Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint a fit person from time to time for executing of the office Judge-Advocate of any Court-Martial for the more orderly proceedings of the same

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 and seal at
this day of

Signature of }
General Officer }

By Command
Signature of }
Staff Officer }

VI —*Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene District Courts-Martial*

Army Form A 5

To

Whereas I am empowered by Warrant to convene General Courts-Martial, and whereas under the Army Act, any Officer or person authorised to convene General Courts-Martial may empower any person under his command not below the rank of Captain, to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Military Law

By virtue of the said Act and Warrant, I do hereby authorise and empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of] 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 empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of] 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 of Parliament in the confirming Officer, in such manner as may be best for the good of His Majesty's Service

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 and seal at
this day of

Signature of }
General Officer }

By Command
Signature of }
Staff Officer }

* May be omitted or varied in accordance with the terms of the Army Act, s 123
† This clause to be omitted if the power of confirmation is wholly reserved

Form of Application for a Court-Martial.

Army Form B 116

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
Members { } Ranks, names and corps.

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 $\frac{\text{copy}}{\text{copies}}$

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 (A F B 296) and regimental and company, &c, conduct sheets 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 [R P 14 (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, is * to undergo trial by Court-Martial

* Insert "fit" or "unfit"

Signature of the Medical Officer

(*a*) Here insert name of —
(i) Officer who investigated the charges
(ii) Company, &c, Commander who made preliminary enquiry into the case
(iii) Officer who took down the Summary of Evidence [R P 19 (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 [R P 19 (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

[If the accused has elected to be tried under A A 46 (8) the fact should be recorded at the top of this form.]

Communication to an Accused Person upon whom a Sentence of Death has been Passed by Court-Martial * Army Form A 8996.

To

The Court have found you guilty of the following charges

but not guilty of the following charges

The Court have passed a sentence of death upon you

The Court have made $\frac{a}{no}$ recommendation to mercy in the following terms

You should clearly understand —

(i) That the finding or findings and sentence are not valid until confirmed by the proper authority

(ii) That the authority having power to confirm the finding or findings and sentence may withhold confirmation of the finding or findings, or may withhold confirmation of the sentence, or may mitigate, commute or remit the sentence, or may send the finding or findings and sentence back to the Court for revision

If you do not clearly understand the foregoing you should request to see an officer, who will fully explain the matter to you

President,
Court Martial

Place
Date

Instructions regarding the Suspension and Review of Sentences Awarded by Courts-Martial †

PART I.—SUSPENSION OF SENTENCES AND REVIEW OF SUSPENDED SENTENCES

1 *Some remarks on section 57A of the Army Act.*—(*a*) Under subsection 2 (*a*) of section 57A of the Army Act, a superior military authority may issue general instructions that no soldier sentenced to penal servitude, imprisonment or detention shall be committed to prison or detention barracks until his orders have been ascertained

If such general instructions have been issued, the officer confirming a sentence of penal servitude, imprisonment or detention must defer committing the soldier to undergo his sentence until the directions of the superior military authority have been taken

(*b*) If the superior military authority has not issued any such general instructions, then under subsection (1) the confirming

* See R.P., App. II, footnote (*b*) on page 762

† Originally issued as Army Council Instruction No. 480 of 1921.

authority may exercise his discretion (except as laid down in para 5 below), and if he confirms a sentence of penal servitude, imprisonment or detention, can either (i) let the man be committed in the ordinary way to undergo his sentence, or (ii) refer the case to the superior military authority if he considers such a course desirable

(*c*) Under subsection (5) a suspended sentence must be reviewed every 3 months and may be reviewed more often

(*d*) It should be noted that, where a sentence immediately after its award is referred to a superior military authority for decision as to whether it shall be suspended or not, if the sentence is put into execution it will run as from the date of award , whilst if it is suspended no part of the sentence is deemed to have been performed (subsection (3))

Where a sentence already in suspension is put into execution, the sentence is deemed to run as from the date ordering it to be put into execution, and where a sentence in execution is remitted or suspended its currency is deemed to end on the day on which the man is actually released (subsections (4) and (6))

It is important therefore that these dates should always appear on A F A 3104

(*e*) The powers under section 57A in no way affect the powers of a confirming or reviewing authority under section 57 of the Army Act, but, by virtue of subsection (8) of section 57A, every superior military authority is a reviewing authority under section 57, whether the soldier is undergoing his sentence within his command or not

(*f*) Every superior military authority will keep a list of officers whom he appoints to be competent military authorities under section 57A, and superior military authorities in the United Kingdom will send a copy of this list and notify any alterations therein to the War Office in order that officers i/c records may be informed Appointments should be made to the holders of certain appointments and not to officers by name, *e g* , to the general or officer commanding, 1st Division, and not to Major-General Browne, Commanding 1st Division

In the United Kingdom all officers to whom the power to convene and confirm District Courts-Martial has been delegated, will be appointed competent military authorities provided their rank is not lower than that of field officer

2 *Notes for guidance of officers considering sentences under section* 57A —(*a*) 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 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 sentence 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 must be directed to the following points —

(i) The age and previous character of the soldier
(ii) Whether the offence is a first one
(iii) Whether the offence was premeditated.

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

(v) Whether the soldier was influenced by others older or of worse character than he

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 It must further be remembered that, except on active service, a sentence of penal servitude or imprisonment will usually entail discharge from the army, and that, therefore, a sentence of penal servitude or imprisonment, not on active service, should not usually be suspended unless it is commuted to detention

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

(*b*) 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 soldier 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 soldier is honestly trying his best to redeem himself and that only acts of conspicuous merit (such as bravery or devotion to duty in action or, in peace time, such conduct as is referred to in para 1630 (*b*) (xvii), King's Regulations) 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 (no partial remissions of a sentence in suspension are allowed under section 57A) 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 reports must always be obtained from the soldier's C O and attached with a copy of the soldier's company or field conduct sheet to A F A 3104 for future reference

It is desirable that some intimation of the reason actuating the superior or competent military authority in his decision upon review should, if possible, be communicated to the soldier.

Attention is drawn to para 652 (*f*), King's Regulations, a suspended sentence of imprisonment or penal servitude should not, except on active service, be put into execution without first being commuted to detention unless it is intended that the soldier should be discharged from the army for misconduct

(*c*) 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

3 *Procedure after trial when the case is referred to a superior military authority*—(*a*) A confirming authority upon receipt of the proceedings of a trial will consider whether (i) he wishes to recommend suspension of the sentence to the superior military authority, or (ii) he is bound to refer the case to the superior military authority under para 5 below or under the general instructions referred to in para 1 (*a*) above If the confirming authority decides to recommend the sentence for suspension or is bound to refer the case to the superior military authority, he will, when returning the proceedings to the unit for promulgation attach A F A 3104, having filled in para 1 as far as possible

At the same time the confirming authority will direct that the man be not committed to undergo his sentence pending further orders

The O C unit will complete paras I, VII and IX of A F A 3104 and return it with the proceedings to the confirming authority who will complete paras II and X of the form and forward it with his remarks through the usual channels to the superior military authority

(*b*) The superior military authority will telegraph his decision direct to the confirming authority who will at once take the necessary action to commit the man to undergo his sentence in the ordinary way or to release him and ensure that the necessary entries as to suspension are made in the documents referred to in para 8 (*b*)

(*c*) The superior military authority will at the same time despatch through the usual channels A F A 3104, having filled in para III, and the proceedings to the confirming authority The proceedings will subsequently be disposed of by the confirming authority in the usual way and the A F A 3104 will be passed through the O C unit to the authority directed to hold it (*see* Part III)

(*d*) A sentence of penal servitude or imprisonment coupled with discharge with ignominy cannot be suspended unless the discharge with ignominy is remitted

4 *Three-monthly review of sentences under suspension*—(*a*) Every sentence under suspension must be reviewed at intervals of not more than 3 months and may be reviewed more frequently

This review will be carried out by the competent military authority (if there is none, by the superior military authority) under whose command the man is serving, to whom A F A 3104 will be sent by the authority laid down in Part III, 14 days before the review is legally due, through the O C unit with which the man is serving, who will attach reports as to the conduct of the

man since suspension and copies of his company or field conduct sheet

(*b*) The competent military authority may himself remit the sentence or direct that it be brought forward again at a date not more than 3 months ahead, which will be entered by him in paras VI or XI of A F A 3104

He will notify his decision to the O C the unit concerned and will ensure that in the case of a remission the necessary entries are made in the documents mentioned in para 8 (*b*)

(*c*) If the competent military authority considers that the sentence should be put into execution he will submit A F A 3104 to the superior military authority, and the procedure will then be as laid down in para 3 (*b*) and (*c*) except that the place of the confirming authority will be taken by the competent military authority

(*d*) Cases may arise in which a competent military authority may desire without any delay to remit a suspended sentence on the spot for some specially meritorious act on the part of the soldier In such cases it will be sufficient if the competent military authority notifies his decision to the man and his C O and subsequently at the first opportunity secures A F A 3104 and takes the other action laid down in sub-paras (*b*) and (*e*) of this para

If on the other hand it is desired at any time before the three-monthly review to put a suspended sentence into execution the C O must at once wire for A F A 3104 and transmit it with his recommendation through the competent military authority, if one exists, for the decision of a superior military authority, who will act on the principle indicated in para 3 (*b*)

(*e*) When all action on review has been taken the competent military authority will despatch A F A 3104 (ensuring that it is correctly completed) through the C O to the authority directed to hold it in Part III If a sentence which is put into execution has been in execution before, A F A3104 will be also passed through the O C detention barracks or governor of the prison to which the soldier is committed in order to inform him of the number of marks earned towards remission (if any)

5 *Trial of a soldier already under a suspended sentence* —If a soldier under a suspended sentence is again to be tried by court-martial, the O C unit will telegraph to the authority holding A F A 3104 for its immediate despatch to him and will forward it (with application for trial if possible) to the convening authority

The convening authority will attach this form to the proceedings before returning them for promulgation

In a case such as this, reference will invariably be made to the superior military authority, whose attention is drawn to sub-section (7) of section 57A of the Army Act The procedure generally will be as laid down in para 3

If a soldier is committed to undergo a sentence, as a rule any previously suspended sentence should also be put into execution to run either concurrently or consecutively with the later sentence

6 *Removal of a soldier under suspended sentence from command of one competent military authority to that of another* —If a soldier under suspended sentence is transferred from the command of one competent military authority to that of another *just before or after* A F A 3104 has been received from the authority holding

that document, the former competent military authority will consider the man's conduct up to the date upon which he left his command and will attach his remarks to A F A 3104 which he will forward through the authority directed to hold that form to the new competent military authority who will act as directed in para 4

7 *Transfer of soldier under suspended sentence from United Kingdom to overseas and vice versa* —When a soldier under suspended sentence is transferred from the United Kingdom to a station overseas, from a station overseas to United Kingdom, or from one station overseas to another station overseas, the authority directed to hold the A F A 3104 in the old station will *at once* pass the form to the authority directed to hold it in the new station

8 *Completion of A F A* 3104 *and entries to be made in documents* (*a*) The various paras in A F A 3104 are self-explanatory, but care must be taken that they are correctly filled up in each case, the dates of entries being especially important, *see* para 1 (*d*)

Entries in A F A 3104 may generally be signed by a staff officer for the superior or competent military authority although the latter is responsible for the decision, but where the decision is to put the sentence into execution the direction to do this must be signed by the superior military authority himself The various conduct reports, &c, upon the man will be pasted to the form where marked, for reference on further reviews

(*b*) Entries will invariably be made in the following documents, giving dates and authority, whenever —

A sentence is suspended, remitted, commuted or mitigated,
A suspended sentence is remitted, or
A suspended sentence is put into execution,

as they are casualties affecting a soldier's service

On Active Service

(i) Field Conduct Sheet (*see* para 1637, King's Regulations)
(ii) A B 64, Part I, under "Miscellaneous Entries"
(iii) A F W 3011
(iv) Part II of Orders
(v) A F B 103
(vi) Statement of Service (para 1621 (xi), King's Regulations)
(vii) Regimental Conduct Sheet (*see* para 1630 (*b*) (xviii), King's Regulations)

In Peace

As in (ii), (iv), (vi) and (vii) above, and also in the company conduct sheet (*see* para 1634, King's Regulations)

9 *Miscellaneous* —(*a*) When a soldier serving at home under a suspended sentence becomes due for discharge, disembodiment, transfer or relegation to the Reserve, the O C the unit with which the man is serving is responsible for bringing the case to the notice of the superior (or competent) military authority one month before the man leaves his unit and that authority will as a general rule remit the sentence.

If, however, it is considered that in the interest of discipline the suspended sentence ought to be put into execution the case must

be referred to a superior military authority who will, if he decides to put the sentence into execution take steps to carry out his decision and to notify the War Office at once of his action, giving the date of the soldier's last trial

If a soldier under a suspended sentence serving overseas is due to be sent home for discharge or transfer to the Reserve, the O C the unit with which he is serving overseas will take steps to ensure that the case is brought to the notice of the superior (or competent) military authority for decision on the lines indicated above, one month before the soldier embarks for the United Kingdom

In the case of a soldier in hospital who is to be invalided from the service, the O C hospital, being O C the unit with which the man is serving, will be responsible for bringing to the notice of the superior (or competent) military authority the existence of any suspended sentence under which the soldier may be, before the soldier, if serving at home, is invalided, or if serving overseas, is sent home for the purpose of being invalided

Where, owing to the circumstances of the case, it is impossible to give the month's notice referred to above, the O C unit will be responsible that the longest possible notice is given and that the question of the disposal of the suspended sentence is submitted at once to the proper authority

(*b*) If a soldier is committed to prison under two sentences, a separate committal warrant will be made out in respect of each sentence

(*c*) If a soldier whilst undergoing field punishment or confinement to barracks is sentenced to penal servitude, imprisonment or detention, which sentence is suspended, the previous sentence of field punishment or confinement to barracks may be carried out and will not affect the currency of the suspended sentence

(*d*) Any consequence of a conviction or sentence and any part of a sentence which would have taken immediate effect if no part of the sentence had been suspended will take immediate effect notwithstanding suspension, *e g*, reduction to the ranks under section 183 (4) of the Army Act, fines and stoppages

10 [*Omitted*]

PART II —REVIEW OF SENTENCES IN EXECUTION

11 *Review of sentences in execution upon men not discharged from the Army*—(*a*) It has been decided that sentences in execution upon men who are not discharged from the army shall be reviewed at intervals of not more than six months and may be reviewed more frequently In the case of this six-monthly review A F A 3104 will be sent 14 days before this date arrives by the authority who is responsible (*see* Part III) for bringing the case forward for review to the competent military authority (if none, to the superior military authority) in whose command the man's unit is serving If the sentence has never been considered for suspension and therefore no A F A 3104 for the soldier exists the authority responsible for holding such form if one existed (*see* Part III) will prepare one in accordance with the note below.

NOTE —The authority directed to hold the document will prepare A F A 3104 by completing paras I and VII and cancelling paras II, III, IX and X He will initial the parts struck out, and will stamp para II with his office stamp Action on review will be recorded in para VI

If any sentence is reviewed before the expiration of six months the authority instituting the review will ask the authority holding A F A 3104 to forward it to him The competent (or superior) military authority will secure a report of the man's conduct from the governor or commandant of the place in which the sentence is being served, and from the O C the unit to which the man belongs as to the desirability or otherwise of any remission or suspension

(*b*) If, after reference by the competent military authority to the superior military authority, the sentence is suspended the competent military authority will take the necessary steps to secure the man's release and to ensure that the necessary entries in documents are made (*see* para 8 (*b*))

The competent military authority will despatch A F A 3104 duly completed to the authority directed to hold it, through the commandant or governor under whom the sentence was being served in order that the latter may enter on the form the actual date of release and the number of marks earned towards remission

(*c*) If the competent military authority considers that the residue of the sentence should be remitted, and if he is himself qualified to remit it under section 57 of the Army Act, he will remit it If the competent military authority is in doubt or is not himself qualified to remit it, he will refer it to the superior military authority with his recommendation In either case, if the sentence is remitted, the competent military authority will take the necessary action to secure the man's release and, when A F A 3104 is completed, will despatch it to the authority directed to hold it (*see* Part III) and will ensure that the necessary entries in documents are made (para 8 (*b*))

(*d*) If the competent military authority marks the sentence for further review at a later date, he will, after making an entry to this effect in A F A 3104, despatch it to the authority directed to hold it until the next review

(*e*) It must be noted that although no partial remission of a sentence *in suspension* under section 57A is allowed, yet a partial remission of a sentence *in execution* may legally be made under section 57 (2) of the Army Act

(*f*) In reviewing a sentence which is in execution the opinion of the governor or commandant of the place in which the sentence is being undergone is invariably to be obtained and his opinion as to whether the sentence should be suspended, remitted, mitigated or commuted should be carefully considered by superior or competent military authorities under section 57A or reviewing authorities under section 57 of the Army Act

In no case should the sentence be varied or suspended unless the man's conduct whilst under sentence has been satisfactory

12 *Miscellaneous*—(*a*) Whenever a soldier under sentence of penal servitude, imprisonment or detention which is in execution is discharged from the army whilst remaining under sentence, officers i/c records are *invariably at once* to notify the War Office by letter accompanied by A F A 3104 either in original or prepared under para 11 in order that any necessary review of sentence may be effected

(*b*) Whenever a soldier under sentence of penal servitude, imprisonment or detention, which is in execution, is sent from overseas to the United Kingdom to undergo his sentence the G O C of the station from which he embarks for the United Kingdom is *invariably at once* to notify the War Office in order that steps may be taken to ensure that any necessary review of sentence is effected under para 11 or 12 (*a*)

In both cases (*a*) and (*b*) above the notification referred to will contain the date of the soldier's last trial

(*c*) Sentences of men discharged from the Army, which are being served in the United Kingdom, the Channel Islands or the Isle of Man, will not be remitted by superior military authorities or by other reviewing authorities, under section 57 of the Army Act, without reference to the War Office

PART III —AUTHORITY RESPONSIBLE FOR HOLDING A F A 3104 AND BRINGING EACH CASE FORWARD FOR REVIEW EVERY THREE MONTHS OR SIX MONTHS, AS THE CASE MAY BE

13 *United Kingdom* —(*a*) Authority for holding A F A 3104 and for bringing each case forward for review as required is the officer i/c records of the corps concerned

(*b*) He will in the case of men serving under a suspended sentence forward A F A 3104 as directed in para 4 (*a*)

In the case of a man whose sentence is in execution he will forward A F A 3104 direct to the competent (or superior) military authority under whose command the man's unit is serving as directed in para 11 (*a*)

In the case of men who are in a state of desertion when their sentences become due for review, officers i/c records will make a note of such fact in that part of the form headed "action on review" and will not forward the form for review until the man is apprehended or surrenders himself, in which case he will forward A F A 3104 as directed in para 4 (*a*) pointing out that the review has been delayed by the soldier's absence

(*c*) Where a suspended sentence is remitted or a soldier has served his sentence A F A 3104 will be put away in the original attestation

14 *Stations overseas (other than India)* —The authority both for holding A F A 3104 and for bringing each case forward for review every 3 months or 6 months will be the general or other officer commanding the troops

When a suspended sentence is remitted or a soldier has served his sentence A F A 3104 will be despatched to the officer i/c records at home for retention with the man's documents

15 *India* —Subject to such regulations as may from time to time be issued by the C -in-C the authority both for holding A F A 3104 and for bringing each case forward for review every 3 months or 6 months will be the O C unit

When a suspended sentence is remitted or a soldier has served his sentence A F A 3104 will be despatched to the officer i/c records at home for retention with the man's documents

16 *An expeditionary force* —Subject to such instructions as the G O C -in-C may issue, the authority both for holding A F A

3104 and for bringing each case forward for review every 3 months or 6 months will be the officer i/c the Adjutant-General's office at the base, who will, if possible, institute a card index of all men under sentence of penal servitude, or imprisonment or detention of over 6 months, and of all men under suspended sentence of whatever length He will act as directed in para 13 (*b*)

When a suspended sentence is remitted or the soldier has served his sentence A F A 3104 will be despatched to the officer i/c records at home for retention with the man's documents

17 *Small punitive force or minor expedition* —No definite rules can be laid down as to the authority both for holding A F A 3104 and for bringing each case forward for review every 3 months or 6 months as the case may be

But the commander will be responsible through the Adjutant-General's branch of the staff for initiating a system which will ensure proper review both of sentences in suspension, and in execution on the principles laid down in Parts I and II Particular care must be taken by the commander of the force to ensure that A F A 3104 is evacuated at the same time (or as soon after as possible) and to the same destination as the man concerned

18 *Duplicate A F A* 3104 In order to avoid trouble in the case of a lost A F A 3104, the authority directed to hold this form will always prepare a duplicate of any form which he is responsible for holding

If an original form which is despatched from his office does not return in due course he will institute inquiries, and if it is found to be lost the duplicate will be taken into use and a fresh duplicate prepared

The duplicate taken into use will be headed " Duplicate, original lost " and bear the office stamp of the authority preparing it The duplicate will be disposed of as indicated in para 7 but will be despatched under separate cover

19 A copy of A F A 3104 is printed as an Appendix to these Instructions

APPENDIX

N B —*Examples of entries dealing with an imaginary sentence of one year's detention have been made in para VI*

Army Form A 3104

REVIEW OF SENTENCES AWARDED BY COURT-MARTIAL

I —Case of No . .....Unit... ....
Sentenced to. ... . on. . ..
Age on, and date of enlistment. ... . .
Term of service ....

FIRST TRIAL

II —To . . . . . Superior Military Authority

For details of offences, see paragraph VII

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place . . . . . .

Date . Confirming Authority

For C O's remarks, see paragraph IX

III —I direct that the sentence (which I hereby commute to) (of which I remit) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on . (3)

Place . .

Date . . . . . Superior Military Authority (4)

(For action on review, see paragraph VI)

SECOND TRIAL

IV —(5) To . Superior Military Authority

For details of offence, see paragraph VIII

This man was again convicted on . . . and sentenced to . , and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII

For C O's remarks, see paragraph XII

Place . . . . . .

Date . . . Confirming Authority

V —(5) I direct that the sentence (which I hereby commute to. . . . . .) (of which I remit. . .) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of. . . . . and be reviewed on . . . . . (3)

Place . . . . . .

Date . . . . Superior Military Authority (4)

(1) Erase words not required, and initial erasures

(2) A sentence of penal servitude or imprisonment, combined with discharge with ignominy, cannot be suspended unless the discharge with ignominy is remitted

(3) A suspended sentence *must* be reviewed *at least* once every three months, and a sentence put into execution should be reviewed in not more than six months

(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally

(5) This paragraph to be left unused until required If the man is convicted a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form

(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude.

VI —Action on Review

(Whether the sentence or sentences are suspended or in execution)

Any Reviewing Authority *under section* 57 *of the Army Act* may under that section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by section 57A of the Army Act A partial remission of a sentence in suspension is not legal

All recommendations, &c , considered upon review, should be pasted here.

Date	Directions	Signature and appointment of authority giving the directions	If sentence suspended, actual date of release and marks earned to count towards remission and signature of O C Prison or Detention Barracks
21/6/20	Suspended, bring forward 20/9/20	A Brown, *Maj -Gen* , Comdg 6th Div , Superior Military Authority	
21/9/20	Put into execution, bring forward 21/3/21	A Brown, *Maj Gen* , Comdg 6th Div , Superior Military Authority	
21/3/21	Suspended, bring forward 21/6/21	A Brown, *Maj -Gen* , Comdg 6th Div , Superior Military Authority	Released 22/3/21 Marks 1240 J Smith, *Major*, Comdt , Aldershot Detention Bks
21/6/21	Bring forward 21/9/21	R Little, *Col Comdt* , Comdg 16th Inf Bde Competent Military Authority	
21/9/21	Remitted	R Little, *Col Comdt* , Comdg 16th Inf Bde , Competent Military Authority	

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII —First Trial Signature of officer making entry		
If further space required, an additional slip should be pasted here VIII —Second Trial Signature of officer making entry		

IX C O's Remarks and Recommendations on First Trial.

Date		Signature

X Confirming Officer's Remarks and Recommendations on First Trial

Date.		Signature.

XI.

Space for further Review

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, date of release, No of marks earned to count towards remission, and signature of O C Prison or Detention Barracks

XII Remarks and Recommendations of C O on Second Trial

Date		Signature

XIII Remarks and Recommendations of Confirming Officer on Second Trial

Date		Signature

Disciplinary Regulations and Orders.[1]

Relations between Military and Naval Forces acting together

Naval Discipline Act, Section 90A

90A.—(1) Where an officer or non-commissioned officer, not below the rank of serjeant, is a member of a body of His Majesty's military forces acting with, or is attached to, any body of His Majesty's naval forces under such conditions as may be prescribed by regulations made by the Admiralty and Army Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's naval forces as aforesaid, be treated, and may exercise all such powers (other than powers of punishment), as if he were a naval officer or petty officer, as the case may be

(1A) (Air Force)

(2) Where any naval officer or seaman is a member of a body of His Majesty's naval forces acting with or is attached to any body of His Majesty's military forces under such conditions as may be prescribed by regulations made by the Admiralty and Army Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and non-commissioned officers, not below the rank of serjeant, of such military body shall, in relation to him, be treated, and may exercise all such powers (other than powers of punishment), as if they were naval officers and petty officers

(2A) (Air Force)

(3) The relative rank of naval and military and air-force officers, petty officers, and non-commissioned officers shall, for the purposes of this section, be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force

Conditions prescribed by the Admiralty and Army Council under the powers granted to them by Section 90A of the Naval Discipline Act and Section 184A of the Army Act

Whereas Section 90A of the Naval Discipline Act and Section 184A of the Army Act apply only when such conditions as may be prescribed by regulations made by the Admiralty and Army Council are complied with Army Order 160 of 1915

Now therefore it is hereby declared that the said sections shall apply if any of the following conditions are complied with —

1 If an Order applying the sections is made by the Admiralty and Army Council

2 If in case of emergency where two forces are acting together and reference to the Admiralty and Army Council would cause undue delay, an order in writing applying the sections is made by the officers commanding the two forces

[1] These regulations and orders are made pursuant to ss 179A and 184A of the Army Act See the notes to those sections

respectively, but in such case such officers shall communicate the fact to the Admiralty and Army Council

3 In the case of any officer or man of one service being attached to a force of the other service, if the officer under whose command such officer or man is, with the consent of the officer in command of the force to which he is attached, makes an order that the said sections shall apply

(Sd) FISHER,
(Sd) F T HAMILTON,
Two of the Lords Commissioners for executing the office of Lord High Admiral

Dated this 3rd day of April, 1915

(Sd) W GRAHAM GREENE,
Secretary

Signed on behalf of the Army Council this 31st day of March, 1915

(Sd) J WOLFF MURRAY,
Chief of the Imperial General Staff

(Sd) HENRY C SCLATER,
Adjutant-General

(Sd) R H BRADY,
Secretary

ATTACHMENT OF OFFICERS AND SOLDIERS TO THE AIR FORCE AND OF OFFICERS AND AIRMEN TO THE REGULAR FORCES

AIR FORCE ACT, SECTION 179A

(1) The Air Council may direct from time to time that any officers or airmen of the regular air force shall, under such conditions as may be prescribed by regulations made by the Air Council and the Army Council, be temporarily attached to a military force

CONDITIONS PRESCRIBED BY THE ARMY COUNCIL AND THE AIR COUNCIL UNDER THE POWERS GRANTED TO THEM BY SECTION 179A SUBSECTION (1) OF THE ARMY ACT AND SECTION 179A SUBSECTION (1) OF THE AIR FORCE ACT

Army Order 227 of 1918

WHEREAS by Sections 179A of the Army Act and 179A of the Air Force Act it is provided that under such conditions as may be prescribed by regulations made by the Army Council and the Air Council —

(*a*) Officers and soldiers of the Regular Forces may be temporarily attached to the Air Force by directions given from time to time by the Army Council, and

(*b*) Officers and airmen of the Regular Air Force may be temporarily attached to the Regular Forces by directions given from time to time by the Air Council

Now therefore it is hereby declared that the following shall be the conditions upon which officers and soldiers of the Regular Forces may be temporarily attached to the Air Force —

(*a*) If the Air Council concur in the directions for such attachment given from time to time by the Army Council, or

if such directions are given by the Army Council in pursuance of and in accordance with any order or instruction issued by the Army Council with the approval of the Air Council

And it is hereby further declared that the following shall be the conditions upon which officers and airmen of the Regular Air Force may be temporarily attached to the Regular Forces —

(*b*) If the Army Council concur in the directions for such attachment given from time to time by the Air Council, or if such directions are given by the Air Council in pursuance of and in accordance with any order or instruction issued by the Air Council with the approval of the Army Council

Signed on behalf of the Army Council,
IAN MACPHERSON,
C F N MACREADY, A G
C H HARINGTON, D C I G S
Dated this 12th day of June, 1918

Signed on behalf of the Air Council,
JOHN BAIRD,
F H SYKES, C A S
GODFREY PAINE, M G P
Dated this 12th day of June, 1918

Directions given by the Air Council with the concurrence of the Army Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council

The following officers and airmen of the Regular Air Force shall be temporarily attached to the Regular Forces, namely — Army Order 427 of 1918

(1) Every officer and airman of the Regular Air Force who is for the time being or from time to time serving in any military Command Depot in the United Kingdom, and

(2) Every officer and airman of the Regular Air Force who is for the time being or from time to time serving in any military hospital in the United Kingdom from the time of admission until discharged

An officer or airman of the Regular Air Force attached to the Regular Forces under 1 or 2 above written, shall continue attached as aforesaid only whilst serving as aforesaid

(3) Any officer or airman of the Regular Air Force, who in the case of any emergency is ordered to be attached to the Regular Forces by the Officer Commanding any portion of the Air Force serving overseas, with the assent of the General Officer Commanding that portion of the Regular Forces which is serving in the same place overseas, but in such case the officer issuing the order and the General Officer who assents thereto shall communicate the fact to the Air Council and Army Council respectively An officer or airman attached to the Regular Forces in pursuance of this clause shall continue to be so attached for so long as may be prescribed by the order by which he was attached, or until such time as an order revoking such

attachment is made by the General Officer Commanding the military forces overseas with which he is for the time being serving with the assent of the Officer Commanding any body of the Air Force serving in the same place overseas, or until such time as an order revoking such attachment is made by the Army Council with the assent of the Air Council

(4) Any officer of the Regular Air Force during such time as he may, for the purpose of instruction, be in attendance at a court-martial convened under the Army Act

Further direction given by the Air Council with the concurrence of the Army Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council

Army Order 273 of 1918

Every airman of the Regular Air Force who may for the time being be on board any vessel employed as a military transport or troopship shall be temporarily attached to the Regular Forces while on board, and during such time only as there may not be on board the same vessel an officer of the Regular Air Force or a naval or military officer attached to the Regular Air Force (other than an officer holding only an honorary commission)

Further direction given by the Air Council with the concurrence of the Army Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council

Army Order 110 of 1921

The following officers and airmen of the regular Air Force shall be temporarily attached to the Regular Forces, namely —

Any officer or airman of the regular Air Force who is instructed to serve with a unit of the Regular Forces and is taken on the strength of such unit while serving with and on the strength of any unit of the Regular Forces

Direction given by the Army Council with the concurrence of the Air Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council

Army Order 263 of 1922

The following officers and soldiers of the regular forces shall be temporarily attached to the regular Air Force, namely —

(*a*) Any officer or soldier of the regular forces who in the case of any emergency is ordered to be attached to the regular Air Force by the officer commanding any portion of the regular forces serving overseas, with the assent of the air officer commanding that portion of the air force which is serving in the same place overseas, but in such case the officer issuing the order and the air officer who assents thereto shall communicate the fact to the Army Council and Air Council respectively An officer or soldier attached to the regular Air Force, in pursuance of this clause shall continue to be so attached for so long as may be prescribed by the order by which he was attached, or until such time as an order revoking such attachment is made by the air officer commanding the Air Force overseas with which he is for the time being serving with the assent of the officer commanding any body of the regular forces serving in the same place overseas, or until such time as an order revoking such attachment is made by the Air Council with the assent of the Army Council

(*b*) Any officer or soldier of the regular forces who is instructed to serve with a unit of the regular Air Force and is taken on the strength of such unit while serving with and on the strength of any unit of the regular Air Force

Further directions given by the Army Council with the concurrence of the Air Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council

(1) Every officer of the regular forces who is ordered in writing to do duty for a period in an air force transport or freightship (men) shall be temporarily attached to the regular air force during the period specified in such order Army Order 336 of 1925

(2) A similar direction, relating to the temporary attachment of officers of the regular air force to the regular forces, has been given by the Air Council

(3) Every soldier of the regular forces who may for the time being be on board any vessel employed as an air force transport or freightship (men) shall, during such time as there may not be on board the same vessel an officer of the regular forces or an officer of the regular air force attached to the regular forces, be temporarily attached to the regular air force while on board

Army Council's instruction on the Direction given at (1) *above*

The order in writing (signed by or on behalf of the general officer commanding or officer commanding troops at the port of embarkation) should specify that the officer (named) is ordered to do duty in the (named) air force transport or freightship (men) during the period of the voyage between ports (named), and the order will be delivered to the senior air force officer on board

Relations between Military and Air Forces acting together

Air Force Act, Section 181A

(1) (Navy)

(1A) Where an officer or non-commissioned officer of the Army is a member of a body of His Majesty's military forces acting with any body of His Majesty's air force under such conditions as may be prescribed by regulations made by the Army Council and Air Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's air force as aforesaid, be treated and have all such powers (other than powers of punishment) as if he were an air-force officer or non-commissioned officer as the case may be

Provided that under regulations made by the Air Council and Army Council, the officers and soldiers of a body of His Majesty's military forces acting with any body of the air force on active service, or any of such officers or soldiers, may, in such manner and in such circumstances and subject to such conditions as may be provided by or under those regulations, be made subject to this Act, and in such case they shall be subject thereto in like manner as if they were officers and soldiers attached to the air force

(2) Where any officer or airman is a member of a body of His Majesty's air force acting with any body of His Majesty's naval

or military forces under such conditions as may be prescribed by regulations made by the Air Council, and, as the case may be, the Admiralty or the Army Council, and such officer or airman is not borne on the books of any of His Majesty's ships in commission, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and petty officers of such naval body or the officers and non-commissioned officers of such military body (as the case may be) shall, in relation to him, be treated and have all such powers (other than powers of punishment) as if they were air-force officers or non-commissioned officers

(3) The relative rank of naval and military and air-force officers, petty officers, and non-commissioned officers shall, for the purposes of this section, be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force

CONDITIONS PRESCRIBED BY THE ARMY COUNCIL AND THE AIR COUNCIL UNDER THE POWERS GRANTED TO THEM BY SECTION 184A OF THE ARMY ACT AND SECTION 184A OF THE AIR FORCE ACT

Army Order 109 of 1918

Whereas Section 184A of the Army Act and Section 184A of the Air Force Act apply only when such conditions as may be prescribed by regulations made by the Army Council and Air Council are complied with

Now therefore it is hereby declared that the said sections shall apply if any of the following conditions are complied with —

1 If an Order applying the sections is made by the Army Council and Air Council

2 If in the case of emergency where two Forces are acting together and reference to the Army Council and Air Council would cause undue delay, an order in writing applying the sections is made by the Officers Commanding the two Forces respectively, but in such case such officers shall communicate the fact to the Army Council and Air Council

It is also hereby declared that —

3 Whenever any body of the Military Police is acting in any place where there shall be present any body of His Majesty's Air Force, then for the purposes of command and discipline and for the purposes of the provisions of the Air Force Act relating to superior officers, the officers, warrant officers and non commissioned officers who are members of such body of the Military Police shall, in relation to such body of His Majesty's Air Force as aforesaid, be treated and have all such powers (other than powers of punishment) as if they were Air Force officers, warrant officers or non-commissioned officers, as the case may be

4 Whenever any body of the Air Force Police is acting in any place where there shall be present any body of His Majesty's Military Forces, then for the purposes of command and discipline and for the purposes of the provisions of the Army Act relating to superior officers, the officers, warrant officers and non-commissioned officers who are members of such body of the Air Force Police shall in relation to such body of His Majesty's Military

Forces as aforesaid be treated and have all such powers (other than powers of punishment) as if they were military officers, warrant officers or non-commissioned officers, as the case may be

Signed on behalf of the Army Council this 22nd day of March, 1918

(Sd) DERBY
(Sd) C F N MACREADY, *Adjutant-General*
(Sd) R D WHIGHAM, *Major-General, Deputy Chief of the Imperial General Staff*

Signed on behalf of the Air Council this 22nd day of March, 1918

(Sd) ROTHERMERE
(Sd) H TRENCHARD, *Major-General, Chief of the Air Staff*
(Sd) CODRINGTON PAINE, *Master-General of Personnel*

Order made on the 7th November, 1919, by the Army Council and Air Council under Clause 1 of the Conditions set out above

Whenever any body of the Military Forces which is or forms part of or is attached to an Expeditionary Force and any body of the Air Force are acting together beyond the seas Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers warrant officers, non-commissioned officers and men who are members thereof Army Order 414 of 1919

Order made on the 10th November, 1919, by the Army Council and Air Council under Clause 1 of the Conditions set out above

The proviso to Section 184A (1A) of the Army Act shall apply to and in relation to the officers and airmen of any body of the Royal Air Force acting with any body of His Majesty's Military Forces under or within the Command of the General Officer Commanding-in-Chief the British Army of the Rhine whilst on active service, and such officers and airmen of the Royal Air Force as aforesaid shall in all respects be subject to the Army Act in like manner as if they were officers and airmen attached to the Army so long as they remain under or within the Command of the General Officer Commanding-in-Chief, the British Army of the Rhine Army Order 408 of 1919

Order made on the 31st October, 1921, by the Army Council and Air Council under Clause 1 of the Conditions set out above

Whenever any body of His Majesty's Military Forces and any body of His Majesty's Air Force are acting together within the area of Aden, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof. Army Order 488 of 1921

Order made on the 19th July, 1922, by the Army Council and Air Council under Clause 1 of the Conditions set out above

Army Order 263 of 1922

Whenever any body of His Majesty's Military Forces and any body of the Royal Air Force are acting together within the area of Palestine or Transjordania, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies, and the officers, warrant officers, non-commissioned officers and men, who are members thereof

Order made on the 13th March, 1923, by the Army Council and Air Council under Clause 1 of the Conditions set out above

Army Order 144 of 1923

Whenever any body of His Majesty's Military Forces and any body of the Royal Air Force are acting together under or within the command of the Air Officer Commanding, Iraq Command, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies, and the officers, warrant officers, non-commissioned officers and men who are members thereof

Order made on the 14th March, 1923, by the Army Council and Air Council under Clause 1 of the Conditions set out above

Army Order 144 of 1923

Whenever any body of His Majesty's Military Forces and any body of the Royal Air Force are being conveyed together on board any vessel employed as a transport or troopship, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof

Order made on the 17th September, 1923, by the Army Council and Air Council under Clause 1 of the Conditions set out above

Army Order 376 of 1923

Whenever any body of His Majesty's Military Forces and any body of His Majesty's Air Force are acting together within the area of Egypt, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof

Order made on the 27th April, 1927, by the Army Council and Air Council under Clause 1 of the Conditions set out above

Army Order 218 of 1927

1 Whenever any Air Force prisoners or airmen undergoing detention are committed to any prison or detention barrack the governor, commandant, officers or staff of which are officers, warrant officers or non-commissioned officers of a body of His Majesty's Military Forces, then for the purposes of command and discipline and for the purposes of the provisions of the Air Force Act relating to superior officers, such officers, warrant

officers or non-commissioned officers of His Majesty's Military Forces shall in relation to such Air Force prisoners or airmen undergoing detention as aforesaid during the period that they are so committed as aforesaid be treated and have all such powers (other than powers of punishment) as if they were Air Force officers, warrant officers or non-commissioned officers, provided that nothing herein contained shall derogate from any powers of punishment which such officers, warrant officers or non-commissioned officers may have under or by virtue of any rules made pursuant to Section 132 of the Air Force Act or Section 132 of the Army Act

2 Whenever any military prisoners or soldiers undergoing detention are committed to any prison or detention barrack, the governor, commandant, officers or staff of which are officers, warrant officers or non-commissioned officers of a body of His Majesty's Air Force, then, for the purposes of command and discipline and for the purposes of the provisions of the Army Act relating to superior officers, such officers, warrant officers or non-commissioned officers of His Majesty's Air Force shall, in relation to such military prisoners or soldiers undergoing detention as aforesaid during the period that they are so committed as aforesaid, be treated, and have all such powers (other than powers of punishment) as if they were military officers, warrant officers or non-commissioned officers, provided that nothing herein contained shall derogate from any powers of punishment which such officers, warrant officers or non-commissioned officers may have under or by virtue of any rules made pursuant to Section 132 of the Army Act or Section 132 of the Air Force Act

Order made on the 19th December, 1927, by the Army Council and Air Council under Clause 1 of the Conditions set out above

Whenever any body of His Majesty's Military Forces and any body of His Majesty's Air Force are acting together within the area of the Sudan, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof. Army Order 5 of 1928

Order in Council

Order in Council respecting Discipline on board H M.'s Ships as amended by Order in Council dated 30th June, 1890.

At the Court at Osborne House, Isle of Wight, the 6th day of February, 1882

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 3rd of February, 1882, in the words following, viz —

"WHEREAS by the 88th section of an Act passed in the 29th and 30th years of Your Majesty's reign, chapter 109, entitled An Act to make Provision for the Discipline of the Navy, it is enacted that Your Majesty's land forces, when embarked on board any of Your Majesty's ships, shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct,

"And whereas under Articles 1172, 1173, and 1174 of the Regulations for the Government of Your Majesty's Naval Service, established under Your Majesty's Order in Council dated the 4th day of February, 1879, certain rules were laid down for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's ships,

"And whereas we, having had the said rules under our careful consideration, are humbly of opinion that it would be for the advantage of Your Majesty's Service that the said rules should be amended, we therefore beg leave to recommend that Your Majesty will be graciously pleased by Your Order in Council to direct that the said rules shall be cancelled, and that the following Regulations shall be established in lieu thereof —

"1 Whenever any of Your Majesty's land forces shall be embarked as passengers in any of Your Majesty's ships, the officers and soldiers shall, from the time of embarkation, strictly observe the laws and regulations established for the government and discipline of Your Majesty's Navy, and shall, for these purposes, be under the command of the commanding officer of the ship, as well as of the senior naval officer present, and all military officers or other persons under the equivalent rank of Captain of Your Majesty's Navy taking passages, and all military officers in actual command for the time being of any of the troops embarked, through whom orders to the troops (given by the officer of the watch) are required to pass, shall be under the command of the officer of the watch

"2 Any act against the good order and discipline of the ship shall be deemed an act to the prejudice of good order and military discipline under the 40th section of the Army Act, 1881, unless the breach of discipline constitutes some other military offence for which provision is otherwise made in the said Act

"3 Whenever an officer or soldier commits any act against the good order and discipline of the ship, the commanding officer of the ship may, by his own authority, and without reference to any other person, cause him to be put under arrest or confined as a close prisoner, and may, if he thinks the case requires it, order the prisoner to be disembarked at the first convenient opportunity, transmitting a report in writing, through the senior naval officer present, to the senior military officer in command of the land forces, in order that the offender may be brought before a military court-martial Order in Council

"4 The commanding officer of the ship shall have full power, on his own authority to order an offender, whether officer or soldier, to be placed in either naval or military custody, as he shall consider most desirable, observing that in all cases where an offender is to be disembarked for trial by military authority, he must be placed in military custody on board the ship

"5 If any officer or soldier commits any act which, in the opinion of the commanding officer of the troops, can only be adequately dealt with by a general or district court-martial the offender shall, with the concurrence of the commanding officer of the ship, be disembarked on the first opportunity for the purpose of being proceeded against according to military law

"6 If any private soldier shall commit any act against the good order and discipline of the ship, which in the opinion of the commanding officer of the ship requires the infliction of any summary punishment for which a warrant is required by the Summary Punishment Table attached hereto, and which he is hereby authorised to award, the commanding officer of the ship shall confer with the commanding officer of the troops as to the nature and amount of such punishment, if any, to be inflicted, and on their concurrence the commanding officer of the ship shall, by warrant under his hand, which should also bear the signature of the officer commanding the troops in concurring, sentence the offender to suffer such punishment accordingly In the event of the commanding officer of the troops not concurring with the commanding officer of the ship, the commanding officer of the ship is to cause the offender to be placed under arrest or confined as a close prisoner, until the case can be referred to superior military authority"

7 *Cancelled by Order in Council dated 4th May*, 1923 (*See* p 822)

"8 The commanding officer of the troops, on his taking command of the troops embarked, will receive from the captain of the ship authority under his hand, and in the established form, to award such summary punishments as are specified in the Summary Punishment Table for the military, but such authority will not deprive the captain of his right to withdraw the original authority given, in the latter case, however, he should report to the Admiralty the circumstances which induced him to deviate from the general rule

"9 All orders to the troops are, so far as may be practicable, to be given through their own officers and non-commissioned officers, and the commanding officer of the ship is to bear in mind that

Order in Council

although the discipline of all on board is under his entire control, he is nevertheless to leave the troops to the management of their own officers, so far as may be consistent with the order and discipline of the ship

" 10 In special and exceptional cases, where the commanding officer of the ship may deem it necessary for the good order or discipline of the ship to give such orders as may interfere with existing regulations, or may affect the internal economy and discipline of the troops embarked, he is to make a special report of the circumstances to the Admiralty

" 11 When any soldiers of Your Majesty's land forces are embarked as passengers in any of Your Majesty's ships, and there is no commissioned officer of the land forces on board, the commanding officer of the ship shall possess and may exercise in regard to any such soldiers all the powers conferred upon him by Article 6 in the case of private soldiers without conferring with or obtaining the concurrence or signature of any officer of Your Majesty's land forces

" 12 All summary punishments for soldiers embarked on board Your Majesty's ships shall be in strict accordance with the Summary Punishment Table appended to this Order in Council [1]

" 13 Military convicts and military prisoners when embarked on board Your Majesty's ships for passage shall be kept in military custody

" Your Majesty's Secretary of State for War and his Royal Highness the Field Marshal Commanding-in-Chief have signified to us their concurrence in these proposals "

SUMMARY PUNISHMENT TABLE [1]

* * * * *

HER MAJESTY, having taken the said Memorial into consideration, was pleased, by and with the advice of Her Privy Council, to approve of what is therein proposed And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly

C L PEEL

1 This table, as amended, is set out in the Schedule to the Order of 1923 below

Order in Council amending the above Order.

Order in Council

At the Court at Buckingham Palace, the 13th day of February, 1912

PRESENT

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 8th day of February, 1912, in the words following, viz –

"WHEREAS by Section 88 of the Naval Discipline Act it is enacted that Your Majesty's land forces when embarked on any of Your Majesty's Ships shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct

"And whereas by Orders in Council bearing date the 6th day of February, 1882, and the 30th day of June, 1890, certain regulations were established for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's Ships together with tables of summary punishments for private soldiers and of punishments for non-commissioned officers who may commit any act against the good order and discipline of the ship in which they are embarked

"And whereas the punishment of detention may now be inflicted in Your Majesty's Navy

"We beg leave humbly to recommend that Your Majesty may be graciously pleased by Your Order in Council to sanction the inclusion of this punishment in the aforesaid table of summary punishments for private soldiers embarked in Your Majesty's Ships as shown in the annexed schedule

"The Army Council have signified their concurrence in this proposal"

SUMMARY PUNISHMENT TABLE.[1]

* * * * *

HIS MAJESTY, having taken the said Memorial into consideration, was pleased, by and with the advice of His Privy Council, to approve of what is therein proposed And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly

ALMERIC FITZROY

1 This table, as amended, is set out in the Schedule to the Order of 1923 below

Order in Council

Further Order in Council amending the above Orders.

At the Court at Buckingham Palace, the 4th day of May, 1923

PRESENT

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 14th day of April, 1923 (N L 1852/23), in the words following, viz —

"Whereas by Section 88 of the Naval Discipline Act it is enacted that Your Majesty's Land and Air Forces, when embarked on board any of Your Majesty's ships, shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct

"And whereas by Orders in Council bearing date the 6th day of February, 1882, and the 30th day of June 1890, and the 13th day of February, 1912, certain regulations were established for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's ships together with tables of summary punishments for private soldiers and of punishments for non-commissioned officers who may commit any act against the good order and discipline of the ship in which they are embarked

"And whereas regimental courts-martial are no longer assembled for the trial of non-commissioned officers and private soldiers of Your Majesty's land forces

"We beg leave humbly to recommend that Your Majesty may be graciously pleased, by Your Order in Council, to direct that Clause 7 of the regulations established by Your Majesty's Order in Council aforesaid, bearing date the 6th day of February, 1882, shall cease to have effect, and that the summary punishment table appended to Your Majesty's Order in Council aforesaid bearing date the 13th day of February, 1912, shall be cancelled, and that the table of summary punishments annexed hereto shall be substituted for it

"The Army Council have signified to us their concurrence in this proposal"

"DESCRIPTION OF SUMMARY PUNISHMENTS TO BE AWARDED TO PRIVATE SOLDIERS WHEN EMBARKED IN HIS MAJESTY'S SHIPS.

	No of troop punishments	Authorised summary punishments for private soldiers	By whom to be awarded	If warrant required	Military equivalent	Remarks
	1	Imprisonment with or without hard labour (not to exceed 42 days)	Captain	Yes .	Imprisonment with or without hard labour, day for day	The offender loses a badge for any imprisonment or detention
	1A	Detention (not to exceed 42 days)	Ditto	Yes	Detention, day for day	
	2	Confinement in a cell (not to exceed 14 days)	Ditto	Yes .		
	3	Stoppages in conformity with Army Act, s 138 (3), and Army Act, s 138 (4), in cases referred by Officer Commanding the Troops	Ditto	Yes .	Conviction by Court Martial	Loss of a badge
	3A	Stoppages in conformity with Army Act, s 138 (4)	Officer Commanding the Troops	No ..	Regimental entry if a summary punishment equivalent to more than 7 days confinement to barracks is awarded in addition to stoppages, otherwise a company entry	Loss of a badge if a regimental entry
Minor Summary Punishments.	4	Stoppages of smoking Eating meals under sentry's charge Half an-hour to dinner Not exceeding 3 hours' pack drill if weather permits, if not, to parade without packs To stand for 2 hours on deck from 6 to 8 p m Answer roll call every bell between morning parade and 6 p m — 14 days	Ditto	No ..	Confinement to barracks, day for day	If confined for more than 7 days he loses a badge
	5	Stoppage of smoking Answer roll call every bell from morning parade till 6 p m — 7 days	Ditto ..	No	Company entry	
	6	Stoppage of smoking not to exceed 28 days Answer roll call four times daily	Ditto	No ..	Regimental entry if exceeding 7 days, otherwise company entry	If exceeding 7 days entails loss of badge
	7	Fines for drunkenness, as provided for in King's Regulations and Orders for the Army	Ditto ..	No ..	Regimental entry	
	8	Extra guards for slackness, inattention on guard, as in King's Regulations for the Army	Ditto	No	Company entry	

NOTE —A private soldier may be admonished and a non-commissioned officer admonished, reprimanded, or severely reprimanded by the Officer Commanding the Troops "

Order in Council

His Majesty, having taken the said memorial into consideration, was pleased, by and with the advice of His Privy Council, to approve of what is therein proposed

And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly

ALMERIC FITZROY.

PART III.

MISCELLANEOUS ENACTMENTS AND REGULATIONS.

Part III contains the whole or parts of —

The Railway Regulation Act, 1842
" " " 1844
The Regulation of the Forces Act, 1871
The Cheap Trains Act, 1883
The National Defence Act, 1888
The Railways Act, 1921
The Reserve Forces Act, 1882
" " " 1890
The Reserve Forces and Militia Act, 1898
The Reserve Forces Act, 1899
" " " 1900
" " " 1906
The Territorial and Reserve Forces Act 1907
The Territorial Army and Militia Act, 1921
The Auxiliary Air Force and Air Force Reserve Act, 1924
The Officers' Commissions Act 1862
The Local Government Act, 1888
The Regimental Debts Act, 1893
The Regimental Debts (Deposit of Wills) (Scotland) Act, 1919
Regulations under the Act of 1893
Royal Warrant Soldiers' Effects Fund
The Friendly Societies Act 1896
The Official Secrets Act, 1911
The Official Secrets Act, 1920
The Emergency Powers Act 1920

[NOTE.—Where any of these enactments have been amended by subsequent enactments they are printed as so amended except where otherwise stated.]

The Railway Regulation Act, 1842

[5 & 6 VICT., c. 55.]

Extract from

An Act for the better Regulation of Railways, and for the Conveyance of Troops [30th July, 1842.]

Railway companies shall convey military and police forces at prices to be settled.

20 Whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines or the police force by any railway the directors

thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities [1]

The Railway Regulation Act, 1844.

[7 & 8 Vict, c 85]

Extract from

An act to attach certain Conditions to the Construction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament, and for other purposes in relation to Railways [9th August, 1844]

Certain companies to convey military and police forces at certain charges, 5 & 6 Vict c 55

12 And whereas by the Railway Regulation Act 1842, it was among other things enacted, that whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities And whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway or any railway obtaining new powers from Parliament, Be it enacted, that all railway companies which have been or shall be incorporated by any Act of the present or any future session, or which by any Act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous Acts or any of them, or have been or shall be authorised to do any act unauthorised by the provisions of such previous Acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the police force, and also for each wife, widow, or child above twelve years of age of a soldier entitled by Act of Parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken

1 This section was superseded in Gt Britain by the Cheap Trains Act (*see* p 828), but still applies to Northern Ireland The section has been applied to the Territorial Army by T R F Act, 1907, and Order in Council dated 19th March, 1908

free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult, and such soldiers, marines, and privates of the police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather, provided that every officer conveyed shall be entitled to take with him one hundredweight of personal luggage without extra charge, and every soldier, marine, private wife, or widow shall be entitled to take with him or her half a hundredweight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessaries and things, (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the Secretary at War and the Company), shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods [1]

The Regulation of the Forces Act, 1871.

[34 & 35 Vict., c 86]

Extract from

An act for the better Regulation of the Regular and Auxiliary Land Forces of the Crown, and for other purposes relating thereto

[17th August, 1871]

PART IV.—Miscellaneous and Definitions

Power of Government on occasion of emergency to take possession of rail roads

16 When Her Majesty, by Order in Council, declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State may, by warrant under his hand, empower any person or persons named in such warrant to take possession in the name or on behalf of Her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for Her Majesty's service at such times and in such manner as the Secretary of State may direct, and the directors, officers, and servants of any such railroad shall obey the directions of the Secretary of State as to the user of such railroad or plant as aforesaid for Her Majesty's service

Any warrant granted by the said Secretary of State in pursuance of this section shall remain in force for one week only, but may

1 This section was superseded in Gt Britain by the Cheap Trains Act (*see* p 828), but still applies to Northern Ireland The section has been applied to the Territorial Army by T R F Act, 1907, and Order in Council dated 19th March, 1908

be renewed from week to week so long as, in the opinion of the said Secretary of State, the emergency continues

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the Secretary of State under this section as may be agreed upon between the said Secretary of State and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by " The Lands Clauses Consolidation Act, 1845 "

Where any railroad or plant is taken possession of in the name or on behalf of Her Majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of and the directors, officers, and servants of such person or body of persons, or between such person or body of persons and any other person, in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against Her Majesty

For the purposes of this section " railroad " shall include any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and any stations, works, or accommodation belonging to or required for the working of such railroad or tramway

" Plant " shall include any engines, rolling stock, horses or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word " railroad "

Cheap Trains Act, 1883.

[46 & 47 Vict , c 34]

Extract from

An Act to amend the Law relating to Railway Passenger Duty, and to amend and consolidate the Law relating to the conveyance of the Queen's Forces by Railway [20th August, 1883]

Conveyance of the Queen's forces at reduced rates

6 —(1) For the purpose of moving by railway on any occasion of the public service—

(*a*) any of the officers or men in or belonging to Her Majesty's navy, or royal naval volunteers, and any other officers or men under the command or government of the Admiralty, and

44 & 45 Vict c 58

(*b*) any of the officers or soldiers in Her Majesty's regular reserve or auxiliary forces (within the meaning of the Army Act, 1881, or any Act amending the same) for the time being subject to military law, and

(*c*) any officers or men of any police force,

(all and any of which officers, soldiers, and men are in this Act called "the forces"),

every railway company shall, on the production of a route duly signed for the conveyance of the forces, provide conveyance for them and their personal luggage, and also for any public baggage, stores, arms, ammunition, and other necessaries and things, whether actually accompanying the forces or not, at all usual times at which passengers are conveyed by the company, on such terms as may be agreed on between the railway company and the Secretary of State, Admiralty or police authority, and subject to or in default of agreement on the following terms —

(i) The passenger carriages provided shall be of such classes in use on the railway and in such proportions, as specified in the route, all carriages being protected from the weather and having proper accommodation

(ii) The fares shall not exceed the following proportions of the fares charged to private passengers for the single journey by ordinary train in the respective classes of carriages specified in the route, that is to say if the number of persons conveyed is less than one hundred and fifty, three-fourths and if the number is one hundred and fifty or more, then for the first one hundred and fifty three-fourths as for four officers and one hundred and forty-six soldiers or other persons, and for the numbers in excess of the said one hundred and fifty, one half

(iii) This section shall apply to such wives, widows, and children of members of the forces as are entitled to be conveyed at the public expense, in like manner as if they were part of the forces, but children less than three years old shall be conveyed free of charge, and the fare for a child more than three and less than twelve years old shall be half the fare payable under this section for an adult

(iv) One hundredweight of personal luggage shall be conveyed by the railway company free of charge for every one conveyed under this section who is required by the route to be conveyed first-class, and half a hundredweight for every other person conveyed, and any excess of weight shall be conveyed at not more than two-thirds of the rate charged to the public for excess luggage

(v) The said public baggage, stores, arms, ammunition, necessaries, and things shall be carried at rates not exceeding twopence per ton per mile, the assistance of the forces to be given when available in loading and unloading the same [1]

(vi) Provided that the company shall not be bound under this section to carry gunpowder or other explosive or combustible matters except on terms agreed upon between the company and the Admiralty or one of Her Majesty's Principal Secretaries of State, as the case may be

---

[1] *See also* Railways Act, 1921, s 34 (2)

(2) For the purposes of this section a route duly signed shall be deemed to be a route issued and signed in accordance with section one hundred and three of the Army Act, 1881, or an order signed by a person authorised in this behalf by one of Her Majesty's Principal Secretaries of State, or a route or order signed by a person authorised in this behalf by the Admiralty, or, as regards the police, a route or order signed by a person authorised in this behalf by the police authority

(3) Fares payable under this section shall be exempt from passenger duty

(4) Where a company has by refusal or neglect to comply with an order of the Minister of Transport or the Railway Commissioners lost the benefit of this Act, that company shall, until its compliance is certified as in this Act provided, be exempt from the provisions of this section, but shall be bound to convey all such persons and things as mentioned in this section on the same terms as if this Act had not been passed

11 This Act shall not extend to Ireland [1]

National Defence Act, 1888.

[51 & 52 VICT., c. 31.]

Extract from

An Act to make better provision respecting National Defence.

[13th August, 1888.]

Power of Government, on occasion of national danger, or great emergency, to have precedence in traffic of railway

4.—(1) Whenever an order for the embodiment of the Militia[2] is in force, it shall be lawful for Her Majesty the Queen, by order signified under the hand of a Secretary of State, to declare that it is expedient for the public service that traffic for naval and military purposes shall have on the railways in the United Kingdom, or such of them as is mentioned in the order, precedence over other traffic

(2) When any such order is in force as respects a railway, an officer of any part of Her Majesty's naval or military forces acting under the authority of a Secretary of State or the Admiralty may, by warrant under his hand addressed to the railway company working that railway, require that such traffic as may be specified in the warrant shall be received and forwarded on the railway in priority to any other traffic, and the company shall comply with such warrant, and shall, so far as may be necessary, suspend the receiving and forwarding of all other traffic on such railway

(3) If a director of or person employed by a railway company refuses or fails to comply with the exigency of the warrant, or obstructs the carrying thereof into effect, he shall be liable on

[1] As to Northern Ireland, see the Railway Regulation Acts, 1842 and 1844, *supra*

[2] This is applied to the Territorial Army by the T.R.F. Act, 1907, and Order in Council, dated March 19, 1908.

summary conviction to a fine not exceeding fifty pounds, and any such officer as aforesaid may take such means as seem to him necessary for carrying (and if need be, by force) the warrant into effect

(4) A warrant issued in pursuance of this section shall not be in force for more than one month after the date thereof unless renewed

(5) An order made by Her Majesty in pursuance of this section may be revoked by Her Majesty at any time, and upon the Militia being ordered to be disembodied shall cease to operate

(6) There shall be paid, out of moneys provided by Parliament, to a railway company required to receive and forward traffic in pursuance of this section, such reasonable remuneration as may be agreed upon, or in default of agreement may be determined by arbitration

(7) If any person suffers any loss by reason of anything done under the authority of a Secretary of State or the Admiralty in pursuance of this section, he may petition the Secretary of State or the Admiralty for compensation, and the Secretary of State or Admiralty may pay out of moneys provided by Parliament such reasonable compensation as may seem just, but no such compensation shall be paid in respect of any loss arising under a contract which was made subsequently to the date of an order under this section, or which, though made before, might have been determined subsequently to that date

(8) For the purposes of this section—

The expression "railway" includes any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and

The expression "person" includes any person or body of persons, corporate or unincorporate, and

The expression "railway company" means any person as above defined who as owner or lessee of a railway or otherwise is actually engaged in working a railway, and

The expression "traffic" includes persons, animals, goods, and things of every description which are ordinarily carried, or are required by virtue of this Act to be received and forwarded, on a railway

The Railways Act, 1921.

[11 & 12 Geo V, c 55]

Extract from

An Act to provide for the reorganisation and further regulation of Railways and the discharge of liabilities arising in connection with the possession of Railways, and otherwise to amend the Law relating to Railways, and to extend the duration of the Rates Advisory Committee [19th August, 1921]

34.—(1) As from the appointed day all statutory provisions, and the provisions of all agreements with respect to classification of merchandise and with respect to charges for or in connection

Repeal of existing provisions.

with the carriage of merchandise or passengers by any railway which becomes a railway of an amalgamated company, or of a railway company to which a schedule of standard charges is applied, shall to the extent to which those provisions relate to the matters aforesaid be repealed and cease to be operative, except so far as any statutory provision authorises for the purpose of calculation of distance a special mileage to be allotted in respect of any portion of a railway, and except so far as, in the case of any such agreement or in the case of a statutory provision fixing a special charge, it may be continued under the provisions of this Part of this Act or by an order of the rates tribunal

Provided that nothing in this Act shall, except as otherwise expressly provided, affect the provisions of section six of the Cheap Trains Act, 1883 (which relates to the conveyance of His Majesty's forces and matters connected therewith)

46 & 47 Vict c 34.

Reserve Forces Act, 1882

[45 & 46 Vict, c 48]

An Act to consolidate the Acts relating to the Reserve Forces
[18th August, 1882]

PART I —ARMY RESERVE

3 It shall be lawful for Her Majesty to keep up a force in the United Kingdom, called the army reserve, to consist of two classes, as follows —

Class I —The first class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve either in the United Kingdom or elsewhere, and shall consist of men who, having served in any of Her Majesty's regular forces, may either be transferred to the reserve in pursuance of the Army Act, 1881, or be enlisted or re-engaged in pursuance of this Act

For the purpose of establishing a supplemental reserve it shall be lawful for Her Majesty to direct that the first class of the army reserve shall consist of two divisions,

Class II —The second class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve in the United Kingdom only, and shall consist of men who—

(*a*) being out-pensioners of Chelsea Hospital, or (on account of service in the Royal Marines) out-pensioners of Greenwich Hospital, or

(*b*) having served in any of Her Majesty's regular forces for not less than the full term of their original enlistment,

may be enlisted or re-engaged in pursuance of this Act

4. Every man who enters the army reserve—

(*a*) If he enters otherwise than by transfer to the reserve in pursuance of the Army Act, 1881, shall be enlisted, and

(*b*) If he is re-engaged in the army reserve, shall be re-engaged, in such manner, and for a term of such length, and to begin at such date, as may be prescribed

Calling out army reserve in aid of the civil power

5.—(1) It shall be lawful for a Secretary of State, at any time when occasion appears to require, to call out the whole or so many as he thinks necessary of the men belonging to the army reserve, to aid the civil power in the preservation of the public peace

(2) It shall be lawful for any officer commanding Her Majesty's forces in any town or district, on the requisition in writing of any justice of the peace, to call out for the purpose aforesaid the men belonging to the army reserve who are resident in such town or district, or such of them as he may think necessary

(3) Any power by this section vested in a Secretary of State may as regards men resident in Ireland be exercised also by the Lord Lieutenant

Punishment of certain offences by army reserve men

6.—(1) Where a man belonging to the army reserve—

(*a*) Fails without reasonable excuse on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve, or

(*b*) When required by or in pursuance of the orders or regulations in force under this Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement, or

(*c*) Uses threatening or insulting language, or behaves in an insubordinate manner, to any officer or warrant or non-commissioned officer who in pursuance of the orders or regulations in force under this Act is acting in the execution of his office, and who would be the superior officer of such man if such man were subject to military law, or

(*d*) By any fraudulent means obtains or is accessory to the obtaining of any pay or other sum contrary to the orders or regulations in force under this Act, or

(*e*) Fails without reasonable excuse to comply with the orders or regulations in force under this Act,

he shall be guilty of an offence

(2) A man belonging to the army reserve who commits an offence under this section, whether otherwise subject to military law or not shall be liable as follows, that is to say,

(*a*) be liable to be tried by court-martial, and on conviction to suffer imprisonment, or such less punishment as in the Army Act, 1881, mentioned, or

(*b*) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine,

and may in any case be taken into military custody

(3) Where a man belonging to the army reserve commits in the presence of any officer any offence under this section, or any offence under subsection two or subsection three of section one hundred and forty-two of the Army Act, 1881 (relating to the punishment of personation), that officer may, if he thinks fit, order such man, in lieu of being taken into military custody, to be taken into custody

by any constable, and brought before a court of summary jurisdiction for the purpose of being dealt with by that court

(4) A certificate purporting to be signed by an officer who is therein mentioned as an officer appointed to pay a man belonging to the army reserve, and stating that such man has failed on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve, shall, without proof of the signature or appointment of such officer, be evidence of such failure

(5) Where a man belonging to the army reserve is required by or in pursuance of the orders or regulations in force under this Act to attend at any place, a certificate purporting to be signed by an officer or person who is mentioned in such certificate as appointed to be present at such place for the purpose of inspecting men belonging to the army reserve, or for any other purpose connected with such reserve, and stating that the man failed to attend in accordance with the said requirement, shall, without proof of the signature or appointment of such officer or person, be evidence of such failure

Men exempt from parish offices, &c

7. A man belonging to the army reserve shall not be liable to serve the office of constable, or any other parochial, township, or borough office

PART II.—MILITIA RESERVE

PART III.—GENERAL

Annual Training and Calling out on Permanent Service of Reserves

Annual training of reserve forces

11.—(1) All or any of the men belonging to the army reserve may be called out for annual training at such time or times, and at such place or places within the United Kingdom, and for such period or periods, as may be prescribed, not exceeding in any one year twelve days or twenty drills

(2) Every man so called out may during his annual training be attached to and trained with a body of the regular or auxiliary forces

(3)

Calling out reserve forces on permanent service

12.—(1) In case of imminent national danger or of great emergency, it shall be lawful for Her Majesty in Council by proclamation, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the proclamation, if Parliament be not then sitting, to order that the army reserve shall be called out on permanent service

(2) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for calling out the force mentioned in the proclamation, or all or any of the men belonging thereto

(3) Every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted in this Act, and every man for the time being called out by such directions shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be called out on permanent service

(4) A proclamation under this section shall for the purposes of the Army Act, 1881, be deemed to be a proclamation requiring soldiers in the reserve to re-enter upon army service

Assembly of Parliament when reserve forces ordered to be called out on permanent service

13 Whenever Her Majesty orders the army reserve to be called out on permanent service, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day

Service of reserve men called out

14 —(1) A man belonging to the reserve forces when called out on permanent service shall be liable to serve until Her Majesty no longer requires his services, so, however, that he shall not be required to serve for a period exceeding in the whole the remainder unexpired of his term of service in the reserve force to which he belongs, and any further period not exceeding twelve months during which as a soldier of the regular forces he can, under section eighty-seven of the Army Act, 1881, be detained in service after the time at which he would otherwise be entitled to be discharged

(2) A man called out on permanent service shall during his service form part of the regular forces, and be subject to the Army Act, 1881, accordingly, and the competent military authority within the meaning of Part Two of that Act may, if it seems proper, appoint him to any corps as a soldier of the regular forces, and the competent military authority within the meaning of the said Part Two may within three months after such appointment transfer him to any other corps

(3) Nothing in this section shall render a man in the second class of the army reserve liable to serve out of the United Kingdom, and such man may from time to time be transferred from one corps to another for the purpose of securing his non-liability to service out of the United Kingdom

Punishment for non attendance for annual training or permanent service, &c

15.—(1) When a man belonging to the army reserve is called out for annual training or on permanent service, or when a man belonging to the army reserve is called out in aid of the civil power, and such man, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at any time and place at which he is required upon such calling out to attend, he shall—

(*a*) If called out on permanent service, or in aid of the civil power, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act, 1881 , and

(*b*) If called out for annual training, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881

(2) A man belonging to the army reserve who commits an offence under this section, or under section twelve or section

fifteen of the Army Act, 1881, whether otherwise subject to military law or not, shall be liable as follows, that is to say,

(*a*) be liable to be tried by court-martial, and convicted and punished accordingly, or

(*b*) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine,

and may in any case be taken into military custody

Supplemental provisions as to deserters and absentees

16.—(1) Section one hundred and fifty-four of the Army Act, 1881, shall apply to a man who is a deserter or absentee without leave from the army reserve within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act

(2) Any person who falsely represents himself to be a deserter or absentee without leave from the army reserve shall be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months

Punishment for inducing reserve man to desert or absent himself

17.—(1) Any person who by any means whatsoever—

(*a*) Procures or persuades any man belonging to the army reserve to commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any man belonging to the army reserve to commit such offence, or

(*b*) Knowing that a man belonging to the army reserve is about to commit an offence of absence without leave within the meaning of this Act, aids or assists him in so doing, or

(*c*) Knowing any man belonging to the army reserve to be an absentee without leave within the meaning of this Act, conceals such man, or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue,

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds

(2) Section one hundred and fifty-three of the Army Act, 1881, shall apply as if a man belonging to the army reserve were a soldier, and as if the word "desert" and other words referring to desertion included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act, 1881, and any person who, knowing any man belonging to the army reserve to be a deserter within the meaning of this Act or of the Army Act, 1881, employs or continues to employ such man, shall be deemed to aid him in concealing himself within the meaning of the said section

Supplemental

Attestation of men enlisting in reserve forces

18.—(1) Subject to the provisions of this Act, and save as is otherwise prescribed, a man enlisting in the army reserve shall be attested in the same manner as a recruit in the regular forces, and the following sections of the Army Act, 1881, (that is to say)—

Section eighty (relating to the mode of enlistment and attestation),

Section ninety-eight (imposing a fine for unlawful recruiting),

Section ninety-nine (making recruits punishable for false answers),

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement),

Section one hundred and one (relating to the competent military authority), and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence,

shall apply in like manner as if they were herein re-enacted, with the substitution—

(*a*) Of "man," or, if the context so requires, "reserve man," for "soldier," and of "army reserve " for "regular forces", and

(*b*)

(2) A man so enlisting may be attested by a regular officer, and the sections of the Army Act, 1881, in this section mentioned, and also section thirty-three of the same Act, shall, as applied to the army reserve, be construed as if a justice of the peace in those sections included such an officer

Record of illegal absence of reserve man

19.—(1) Where a man belonging to the army reserve is subject to military law, and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act, 1881, may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days, and the record mentioned in that section may be entered in manner thereby provided, or in such regimental books and by such officer as may be prescribed

(2) Where a man belonging to the army reserve fails to appear at the time and place at which he is required upon being called out for annual training or on permanent service to attend, and his absence continues for not less than fourteen days, an entry of such absence shall be made by the prescribed officer in the prescribed manner and in the prescribed regimental books, and such entry shall be conclusive evidence of the fact of such absence

Orders and regulations as to reserve forces

20.—(1) Subject to the provisions of this Act, it shall be lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the army reserve and with respect to other matters and things relating to the army reserve . . including any

matter by this Act authorised to be prescribed, or expressed to be subject to orders or regulations

(2) Subject to the provisions of any such order, a Secretary of State may from time to time make, and when made revoke and vary, general or special regulations with respect to any matter with respect to which Her Majesty may make orders under this section

(3) Where a man entered the army reserve before the date of any order or regulation made under this Act, nothing in such order or regulation shall render such man liable, without his consent, to be appointed, transferred, or attached to any military body to which he could not, without his consent, have been appointed, transferred, or attached if the said order or regulation had not been made

(4) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament

Exercise of powers vested in holder of military office

21 —(1) 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 in relation to the reserve forces 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

(2) Where by this Act, or by any order or regulation in force under this Act, any order is authorised to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised

Pensions of army reserve men

22. Where, either before or after the passing of this Act, a man in the army reserve has been called out on permanent service, and at the termination of such service has been returned to the army reserve, and has become entitled to pension under any order or regulation in force under this Act (whether made before or after such calling out or return), the Commissioners of Chelsea Hospital shall have the same power to award and pay the said pension, and otherwise in relation to the said pension, as they would have if such man had been discharged from the army on reduction

Application to reserve forces of enactments respecting exemptions from tolls and conveyance of regular forces

23 —(1) For the purpose of section one hundred and forty-three of the Army Act, 1881, and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the army reserve, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of Her Majesty's regular forces on duty

(2) All enactments for the time being in force concerning the conveyance by railway or otherwise of any part of the regular forces, and their baggage, stores, arms, ammunition, and other necessaries and things, shall apply as if the army reserve were such part of the regular forces

Notices

24. With respect to notices required in pursuance of the orders

or regulations in force under this Act to be given to men belonging to the army reserve, the following provisions shall have effect

(1) A notice may be served on any such man either by being sent by post to his last registered place of abode, or by being served in the prescribed manner,

(2) Evidence of the delivery at the last registered place of abode of a man belonging to the army reserve of a notice, or of a letter addressed to such man and containing a notice, shall be evidence that such notice was brought to the knowledge of such man,

(3) The publication of a notice in the prescribed manner in the parish in which the last registered place of abode of a man belonging to the army reserve is situate shall be sufficient notice to such man notwithstanding that a copy of such notice is not served on him,

(4) Every constable, overseer of the poor, and inspector of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds

Trial of offences

25.—(1) Any offence which under this Act is punishable on conviction by court-martial shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed

(2) Any offence which under this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered, in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to this Act

(3) Save as provided by the said section one hundred and sixty-six, the minimum fixed by this Act for the amount of any fine or for the term of any imprisonment shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything contained in any other Act, not be reduced by way of mitigation or otherwise

(4) For all purposes in relation to the arrest, trial, and punishment of a person for any offence punishable under this Act, including the summary dealing with the case by the commanding officer, this Act shall apply to the Channel Islands and the Isle of Man

Provisions as to offences triable both by court-martial and by court of summary jurisdiction.

26. With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognizable both by a court-martial and by a court of summary jurisdiction, the following provisions shall have effect —

(1) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but

may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act [1]

(2) Proceedings against an alleged offender, before either a court-martial or his commanding officer or a court of summary jurisdiction, may be instituted whether the term of his reserve service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to an officer who under the orders or regulations in force under this Act has power to direct the offender to be tried by a court-martial or by a court of summary jurisdiction, if the offender is apprehended at that time, or if he is not apprehended at that time, then within two months after the time at which he is apprehended, whether such apprehension is by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceedings so instituted

(3) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer"

Evidence

27 —(1) Section one hundred and sixty-four of the Army Act, 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law) shall apply to a man belonging to the army reserve who is tried by a civil court, whether he is or is not at the time of such trial subject to military law

(2) Section one hundred and sixty-three of the Army Act, 1881 (relating to evidence) shall apply to all proceedings under this Act

Definitions

28 In this Act, unless the context otherwise requires—

The expression "man" includes a warrant officer not holding an honorary commission, and a non-commissioned officer

The expression "out-pensioners of Chelsea Hospital" includes all persons whose claims for prospective or deferred pension have been registered in virtue of any warrant of Her Majesty

The expression 'prescribed" means prescribed by orders or regulations in force under this Act

Other expressions have the same meaning as they have in the Army Act, 1881

In the Army Act, 1881, the expression "army reserve force" shall mean the army reserve under this Act

Repeal of Acts

29.

(2) All orders, warrants, regulations, and directions in relation to the army reserve force which exist at the commencement of this Act shall, so far as consistent with the tenor thereof, be of the same effect as if they were orders or regulations under this Act, and may be revoked or altered accordingly

(3) [*spent*]

(4) [*spent*]

1 He is not to be tried by a court of summary jurisdiction without written sanction of an officer who has power to direct his trial by court martial or some authority superior to that officer K R 449

Reserve Forces Act, 1890.

[53 & 54 Vict., c. 42.]

Extract from

An Act to remove certain doubts which have arisen under the Reserve Forces Act, 1882, and for other purposes connected therewith

[14th August, 1890.]

Whereas certain men engaged in railway, post office, or telegraph service, and being volunteers, have been enlisted in Her Majesty's regular forces, and immediately upon such enlistment been transferred, under the Army Act, 1881, to the reserve, and have been attached as supernumeraries to a volunteer corps, and doubts have arisen as to whether such enlistment, transfer, and attachment are authorised by law, and it is expedient to remove such doubts

Be it enacted as follows —

Authority to transfer men to reserve immediately on enlistment

1 It is hereby declared that regulations of a Secretary of State under the Army Act can authorise any man having the special qualifications prescribed by those regulations to be enlisted in any of Her Majesty's regular forces, and immediately upon such enlistment to enter the reserve

[ss. 2 and 3 are omitted as obsolete.]

Reserve Forces and Militia Act, 1898.

61 & 62 Vict., c. 9.]

An Act to amend the Law relating to the Reserve Forces and Militia

[1st July, 1898.]

Liability of members of the Army Reserve to be called out on permanent service 45 & 46 Vict. c. 48

1 Any man belonging to the first class of the army reserve, whose character on transfer to the army reserve is good, shall, if he so agrees in writing, be liable during the first twelve months[1] of his service in that reserve to be called out on permanent service without such proclamation or communication to Parliament as is mentioned in section twelve of the Reserve Forces Act, 1882, and the calling out of men under this Act shall not involve the meeting of Parliament as required by section thirteen of that Act

Provided as follows —

(*a*) The number of the men so liable shall not at any one time exceed five thousand,[2]

(*b*) The power of calling out men under this section shall not be exercised except when they are required for service

---

1 See s. 32 (2) T.R.F. Act, 1907, which extends this period to the first two years' service in the first class of the army reserve.

2 See s. 32 (2) of the T.R.F. Act, 1907, which raised the number from 5,000 to 6,000.

outside the United Kingdom when warlike operations are in preparation or in progress,

(*c*) A man called out under this section shall not be liable to serve for more than twelve months,

(*d*) Any agreement under this section may be revoked by three months' notice in writing, and

(*e*) Any exercise of the power of calling out men under this section shall be reported to Parliament as soon as may be

Provision as to numbers authorised by Army Act

3. The number of men for the time being employed under this Act shall not be reckoned in the number of the forces authorised by the Army Act for the time being in force

Reserve Forces Act, 1899.

[62 & 63 VICT, c 40]

An Act to amend the Law relating to the Reserve Forces

[9th August, 1899]

Permission to army reserve men to reside out of United Kingdom

1. Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving out of the United Kingdom, he may, at his own request, be transferred to the reserve without being required to return to the United Kingdom, but subject to such conditions as to residence, as to liability to be called out for annual training or on permanent service or in aid of the civil power, or as to any other matters, as may be prescribed by regulations under section twenty of the Reserve Forces Act, 1882, and thereupon the provisions of that Act, and of the Acts amending that Act, shall apply in the case of the soldiers so transferred with such adaptations as may be made by those regulations

45 & 46 Vict c 48.

Reserve Forces Act, 1900.

[63 & 64 VICT, c 42]

Extract from

An Act to amend the Reserve Forces Act, 1882

[6th August, 1900]

Amendment of 45 & 46 Vict c 48, s 3, as to calling out on permanent service

1. Men in the second division of the first class of the army reserve shall be liable to be called out on permanent service, notwithstanding that directions have not been given for calling out the whole of the first division on such service . . . . . .

. . . . . .

Reserve Forces Act, 1906.

[6 Edw 7, c 11]

An Act to amend the Law relating to the Reserve Forces

[20th July, 1906]

Extension of Reserve Forces Acts to men when outside the United Kingdom

1.—(1) Notwithstanding anything in the Reserve Forces Acts, a man belonging to the Army Reserve may, if so authorised by or under the directions of the Secretary of State[1], reside in any British protectorate or in any part of His Majesty's dominions outside the United Kingdom, and men may be enlisted into the Army Reserve in any British protectorate or in any part of His Majesty's dominions outside the United Kingdom except in a colony possessing responsible government, and those Acts shall, subject to such adaptations as may be made under this section, apply to such men whilst so residing and to such enlistment

(2) Regulations made under section twenty of the Reserve Forces Act, 1882, may prescribe the conditions under which men belonging to the Army Reserve may, if so authorised, reside outside the United Kingdom, and the conditions under which men may be enlisted into the Army Reserve outside the United Kingdom, and may make such adaptations in the Reserve Forces Acts as may be necessary for the purpose of adapting those Acts to the circumstances of the several parts of His Majesty's dominions outside the United Kingdom or of British protectorates

45 & 46 Vict c 48

(3) In this section the expression "Reserve Forces Acts" means the Reserve Forces Act, 1882, as amended by any subsequent enactment, and includes any enactment applied by that Act as so amended, and the expression "colony possessing responsible government" means any colony which is specified in the Schedule to this Act, or which may hereafter on the grant to the colony of responsible government be added to that Schedule by Order in Council.

SCHEDULE

LIST OF COLONIES

The Dominion of Canada
The Commonwealth of Australia.
New Zealand
Cape Colony [2]
Natal [2]
Newfoundland.

1 See K R 456, *et seq*

2. Now included in the Union of South Africa

Territorial and Reserve Forces Act, 1907.

ARRANGEMENT OF SECTIONS

PART I —COUNTY ASSOCIATIONS.

Section
1 Establishment of associations
2 Powers and duties of associations
3 Expenses of association
4 Regulations
5 Joint committees of associations

PART II —TERRITORIAL FORCE

Raising and Maintenance of Force

6 Raising and number of Territorial Force

Government, Discipline, and Pay

7 Government, discipline, and pay of Territorial Force
8 First appointments to lowest rank of officers of the Territorial Force

Enlistment, Service, Discharge

9 Enlistment, term of service, and discharge
10 Application of certain sections of the Army Act
11 Enlistment of men discharged with disgrace from Army or Navy, or contrary to rules
12 Enlistment into army reserve
13 Area of service of Territorial Force

Training

14 Preliminary training of recruits of Territorial Force
15 Annual training
16 Laying of draft Orders in Council relating to training before Parliament

Embodiment

17 Embodiment of Territorial Force
18 Disembodying of Territorial Force

Notices

Section
19 Service and publication of notices

Offences

20 Punishment for failure to attend on embodiment
21 Punishment for failure to fulfil training conditions
22 Wrongful sale, &c , of public property

Civil Rights and Exemptions

23 Civil rights and exemptions

Legal Proceedings

24 Trial of offences and application of penalties
25 Supplemental provisions as to trial of offences
26 Evidence

Miscellaneous

27 Exercise of powers vested in holder of military office
28 Application of enactments

Transitory

29. Transitory provisions

PART III —RESERVE FORCES

30 Enlistment and terms of service of special reservists
31 Agreements as to extension of service
32 Liability of reservists to be called out
33 Power to form battalions, &c , of reservists.
34 Transfer of Militia battalions to reserve
35 Amendment of 45 & 46 Vict , c 48, s 6 (4)
36. Commissions in reserve of Officers not to vacate seat in Parliament

PART IV —SUPPLEMENTAL

37. Provisions as to orders, schemes, and regulations.
38 Definitions
39 Special provisions as to special places
40 Application to Scotland and the Isle of Man
41 Short title
SCHEDULES

Territorial and Reserve Forces Act, 1907.

7 Edw 7, c 9]

NOTE —All references in this Act to the "Territorial Force" are to be construed as references to the "Territorial Army" (See 1 & 2 and Militia Act, 1921, s 1 (on p 867))

An Act to provide for the reorganisation of His Majesty's Military Forces and for that purpose to authorise the establishment of County Associations, and the raising and maintenance of a Territorial Force, and for amending the Acts relating to the Reserve Forces [2nd August, 1907]

PART I

COUNTY ASSOCIATIONS [1]

Establishment of associations

1.—(1) For the purposes of the reorganisation under this Act of His Majesty's military forces other than the regulars and their reserves, and of the administration of those forces when so reorganised, and for such other purposes as are mentioned in this Act, an association may be established for any county in the United Kingdom, with such powers and duties in connection with the purposes aforesaid as may be conferred on it by or under this Act

(2) Associations shall be constituted, and the members thereof shall be appointed and hold office in accordance with schemes to be made by the Army Council

(3) Every such scheme shall provide—

(*a*) For the date of the establishment of the association

(*b*) For the incorporation of the association by an appropriate name, with power to hold land for the purposes of this Act without licence in mortmain

(*c*) For constituting the lieutenant of the county, or failing him such other person as the Army Council may think fit, president of the association

(*d*) For the appointment of such number of officers representative of all arms and branches of the Territorial Force raised under this Act within the county (not being less than one half of the whole number of the association) as may be specified in the scheme

(*e*) For the appointment by the Army Council, where it appears desirable, and after consultation with and on the recommendation of, the authorities to be represented, of representatives of county and county borough councils and universities wholly or partly within the county

(*f*) For the appointment of such number of co-opted members as the scheme may prescribe, including, if thought desirable, representatives of the interests of employers and workmen

---

1 For modification as respects county joint associations see 14 & 15 Geo V c 15, s. 1 (p 868)

(*g*) For the appointment by the Army Council during the first three years after the passing of this Act, and subsequently for the election of a chairman and vice-chairman by the association, and for defining their powers and duties

(*h*) For the mode of appointment, term of office, and rotation of members of the association, and the filling of casual vacancies

(*i*) For the appointment by the association, subject to the approval of the Army Council, of a secretary and other officers of the association, and the accountability of such officers, and for the provision of offices

(*j*) For the procedure to be adopted, including the appointment of committees and the delegation to committees of any of the powers or duties of the association.

(*k*) For enabling such general officers of any part of His Majesty's forces, and not being members of the association, as may be specified in the scheme, or officers deputed by them, to attend the meetings of the association and to speak, but not to vote

(*l*) For dividing the county, where on account of its size or population it seems desirable to do so, into two or more parts, and for constituting sub-associations for the several parts, and for apportioning amongst the several sub-associations all or any of the powers and duties of the association, and regulating the relations of sub-associations to the association and to one another

(4) A scheme may contain any consequential, supplemental, or transitory provisions which may appear to be necessary or proper for the purposes of the scheme, and also as respects any matter for which provision may be made by regulations under this Act and for which it appears desirable to make special provision affecting the association established by the scheme

(5) All schemes made in pursuance of this Part of this Act shall be laid before both Houses of Parliament

. . .

(6) [Repealed]

Powers and duties of associations.

2.—(1) It shall be the duty of an association when constituted to make itself acquainted with and conform to the plan of the Army Council for the organisation of the Territorial Force within the county, and to ascertain the military resources and capabilities of the county and to render advice and assistance to the Army Council and to such officers as the Army Council may direct, and an association shall have, exercise, and discharge such powers and duties connected with the organisation and administration of His Majesty's military forces as may for the time being be transferred or assigned to it by order of His Majesty signified under the hand of a Secretary of State or, subject thereto, by regulations under this Act, but an association shall not have any powers of command or training over any part of His Majesty's military forces

(2) The powers and duties so transferred or assigned may include any powers conferred on or vested in His Majesty, and any powers or duties conferred or imposed on the Army Council or a Secretary

of State, by statute or otherwise, and in particular respecting the following matters —

(*a*) The organisation of the units of the Territorial Force and their administration (including maintenance) at all times other than when they are called out for training or actual military service, or when embodied

(*b*) The recruiting for the Territorial Force both in peace and in war, and defining the limits of recruiting areas

(*c*) The provision and maintenance of rifle ranges, buildings, magazines, and sites of camps for the Territorial Force

(*d*) Facilitating the provision of areas to be used for manœuvres

(*e*) Arranging with employers of labour as to holidays for training, and ascertaining the times of training best suited to the circumstances of civil life

(*f*) Establishing or assisting cadet battalions and corps and also rifle clubs, provided that no financial assistance out of money voted by Parliament shall be given by an association in respect of any person in a battalion or corps in a school in receipt of a parliamentary grant until such person has attained the age of sixteen

(*g*) The provision of horses for the peace requirements of the Territorial Force

(*h*) Providing accommodation for the safe custody of arms and equipment

(*i*) The supply of the requirements on mobilisation of the units of the Territorial Force within the county, in so far as those requirements are directed by the Army Council to be met locally, such requirements where practicable to be embodied in regulations which shall be issued to county associations from time to time, and on the first occasion not later than the first day of January one thousand nine hundred and nine

(*j*) The payment of separation and other allowances to the families of men of the Territorial Force when embodied or called out on actual military service

(*k*) The registration in conjunction with the military authorities of horses for any of His Majesty's forces

(*l*) The care of reservists and discharged soldiers

Expenses of association

3.—(1) The Army Council shall pay to an association, out of money voted by Parliament for army services, such sums as, in the opinion of the Army Council, are required to meet the necessary expenditure connected with the exercise and discharge by the association of its powers and duties

(2) An association shall submit to the Army Council annually, at the prescribed time, and may submit at any other time for any special purpose, in the prescribed form and manner, a statement of its necessary requirements, and all payments to an association by the Army Council shall be made upon the basis of such statements in so far as they are approved by the Army Council

(3) Subject to regulations under this Act, all money so paid to an association shall be applicable to any of the purposes specified in the approved statements in accordance with which the money has been granted, but not otherwise except with the written consent of the Army Council.

Provided that nothing in this section shall be construed as enabling the Army Council to give their consent to the application of money to any purpose to which, apart from this section, it could not lawfully be applied, or to give their consent, without the authority of the Treasury, in any case in which, apart from this section, the authority of the Treasury would be required

(4) All other money received by an association (except such money, if any, as may be received by it for specified purposes) shall be available for the purposes of any of its powers and duties

(5) An association shall cause its accounts to be made up annually and audited in such manner as may be prescribed, and shall send copies of its accounts as audited, together with any report of the auditors thereon, to the Army Council

(6) Regulations made for the purposes of this section shall be subject to the consent of the Treasury

(7) The members of an association shall not be under any pecuniary liability for any act done by them in their capacity as members of such association in carrying out the provisions of this Act

Regulations

4.—(1) Subject to the provisions of this Act, the Army Council may make regulations for carrying this Part of this Act into effect, and may by those regulations, amongst other things, provide for the following matters —

(*a*) For regulating the manner in which powers are to be exercised and duties performed by associations, and for specifying the services to which money paid by the Army Council is to be applicable

(*b*) For authorising and regulating the acquisition by or on behalf of an association of land for the purposes of this Act and the disposal of any land so acquired

(*c*) For authorising and regulating the borrowing of money by an association

(*d*) For authorising the acceptance of any money or other property, and the taking over of any liability, by an association and for regulating the administration of any money or property so acquired and the discharge of any liability so taken over

(*e*) For facilitating the co-operation of an association with any other association, or with any local authority or other body, and for providing by the constitution of joint committees or otherwise for co-operative action in the organisation and administration of divisions, brigades, and other military bodies, and for the provision of assistance by one association to another

(*f*) For affiliating cadet corps and battalions, rifle clubs, and other bodies to the Territorial Force or any part thereof

(*g*) For or in respect of anything by this Part of this Act directed or authorised to be done or provided by regulations or to be done in the prescribed manner

(*h*) For the application for the purposes of this Part of this Act, as respects any matters to be dealt with by regulations, of any provision in any Act of Parliament dealing with the like matters, with the necessary modifications or adapta-

tions, and in particular of any provisions as to the acquisition of land by or on behalf of volunteer corps

(2) All regulations made in pursuance of this Part of this Act shall be applicable to all associations, except in so far as may be otherwise provided by the regulations or by any scheme made under this Part of this Act

(3) All regulations made under this Part of this Act shall be laid before both Houses of Parliament as soon as may be after they are made

Joint committees of associations

5 —(1) Any county associations may from time to time join in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested

(2) Any association appointing a joint committee under this subsection may delegate to it any power which such association might exercise for the purpose for which the committee is appointed

(3) Subject to the terms of delegation any such joint committee shall in respect of any matter delegated to it have the same power in all respects as the associations appointing it

(4) The costs of a joint committee shall be defrayed by the associations by whom it has been appointed, in such proportion as may be agreed between them, and the accounts of such joint committees and their officers shall for the purposes of the provisions of this Act be deemed to be accounts of the associations appointing them and of their officers

PART II

TERRITORIAL FORCE

Raising and Maintenance of Force

Raising and number of Territorial Force

6 It shall be lawful for His Majesty to raise and maintain a force, to be called the "Territorial Force,"[1] consisting of such number of men as may from time to time be provided by Parliament

Government, Discipline and Pay

Government, discipline, and pay of Territorial Force

7 —(1) Subject to the provisions of this Part of this Act, it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, to make orders with respect to the government, discipline, and pay and allowances of the Territorial Force, and with respect to all other matters and things relating to the Territorial Force, including any matter by this Part of this Act authorised to be prescribed or expressed to be subject to orders or regulations[2]

(2) The said orders may provide for the formation of men of the Territorial Force into regiments, battalions, or other military bodies, and for appointing, transferring, or attaching men of the Territorial Force to corps, and for posting, attaching, or otherwise dealing with such men within the corps,

1 Amended to "Territorial Army" by 11 & 12 Geo V, c 37, s 1 (*See* note on p 846)

2 See Order by His Majesty on p 17 of T A Regs

and may provide for the constitution of a permanent staff, including adjutants and staff serjeants who shall, except in special circumstances certified by the general officer commanding, be members of His Majesty's regular forces, and may regulate the appointment, rank, duties, and numbers of the officers and non-commissioned officers of the Territorial Force

(3) Subject to the provisions of any such order the Army Council may make general or special regulations with respect to any matter with respect to which His Majesty may make orders under this section

(4) Provided that the said orders or regulations shall not—

(*a*) affect or extend the term for which, or the area within which, a man of the Territorial Force is liable under this Part of this Act to serve, or

(*b*) authorise a man of the Territorial Force when belonging to one corps to be transferred without his consent to another corps, or

(*c*) when the corps of a man of the Territorial Force includes more than one unit, authorise him when not embodied to be posted, without his consent, to any unit other than that to which he was posted on enlistment, or

(*d*) when a corps of a man of the Territorial Force includes any battalion or other body of the regular forces, authorise him to be posted without his consent to that battalion or body

(5) Where a man of the Territorial Force was enlisted or re-engaged before the date of any order or regulation under this Part of this Act, nothing in such order or regulation shall render him liable without his consent to be appointed, transferred, or attached to any military body to which he could not without his consent have been appointed, transferred, or attached if the said order or regulation had not been made

(6) Orders and regulations under this section may provide for the formation of a reserve division of the Territorial Force, and may relax or dispense with any of the provisions of this Act relating to the training of the men of the Territorial Force so far as regards their application to men in the reserve division, and may, notwithstanding anything in this section, authorise a man in the reserve division to be transferred from one corps to another, so, however, that a man in the reserve division shall not, without his consent, be transferred to a corps of another arm

(7) All orders and general regulations made under this section shall be laid before both Houses of Parliament as soon as may be after they are made

First appointments to lowest rank of officers of the Territorial Force.

8 Subject to any directions which may be given by His Majesty, first appointments to the lowest rank of officer in any unit of the Territorial Force shall be given to persons recommended by the president of the association for the county, if a person approved by His Majesty is recommended by the president for any such appointment within thirty days after notice of a vacancy for the appointment has been given to the president in the prescribed manner, provided he fulfils all the prescribed conditions as to age, physical fitness, and educational qualifications, and, where a unit comprises

men of the Territorial Force or two or more counties, the recommendations for such appointments shall be made by the presidents of the associations for the respective counties in such rotation or otherwise as may be prescribed

Enlistment, Service, Discharge

Enlistment, term of service, and discharge

9.—(1) Subject to the provisions of this Part of this Act, all men of the Territorial Force shall be enlisted by such persons and in such manner and subject to such regulations as may be prescribed

Provided that every man enlisted under this Part of this Act—

(*a*) Shall be enlisted for a county for which an association has been established under this Act and shall be appointed to serve in such corps for that county or for an area comprising the whole or part of that county as he may select, and, if that corps comprises more than one unit within the county, shall be posted to such one of those units as he may select

(*b*) Shall be enlisted to serve for such a period as may be prescribed, not exceeding four years, reckoned from the date of his attestation

(*c*) May be re-engaged within twelve months before the end of his current term of service for such a period as may be prescribed not exceeding four years from the end of that term, and on re-engagement shall make the prescribed declaration before a justice of the peace or an officer, and so from time to time

(2) A man enlisted in the Territorial Force, until duly discharged in the prescribed manner, shall remain subject to this Part of this Act as a man of the Territorial Force

(3) Any man of the Territorial Force shall, except when a proclamation ordering the Army Reserve to be called out on permanent service is in force be entitled to be discharged before the end of his current term of service on complying with the following conditions —

(i) Giving to his commanding officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged , and

(ii) Paying for the use of the association for the county for which he was enlisted such sum as may be prescribed not exceeding five pounds , and

(iii) Delivering up in good order, fair wear and tear only excepted, all arms, clothing, and appointments, being public property, issued to him, or, in cases where for any good and sufficient cause the delivery of the property aforesaid is impossible, on paying the value thereof

Provided that it shall be lawful for the association for the county, or for any officer authorised by the association, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, to dispense either wholly or in part with all or any of the above conditions

(4) A man of the Territorial Force may be discharged by his commanding officer for disobedience to orders by him while doing any military duty, or for neglect of duty, or for misconduct by him

as a man of the Territorial Force, or for other sufficient cause, the existence and sufficiency of such cause to be judged of by the commanding officer

Provided that any man so discharged shall be entitled to appeal to the Army Council who may give such directions in any such case as they may think just and proper

(5) Where the time at which a man of the Territorial Force would otherwise be entitled to be discharged occurs while a proclamation ordering the Army Reserve to be called out on permanent service is in force, he may be required to prolong his service for such further period, not exceeding twelve months, as the competent military authority may order

Application of certain sections of the Army Act

10.—(1) The following sections of the Army Act shall apply to the Territorial Force (that is to say) —

Section eighty (relating to the mode of enlistment and attestation),

Section ninety-six (relating to the claims of masters to apprentices), 44 & 45 Vict c 58

Section ninety-eight (imposing a fine for unlawful recruiting),

Section ninety-nine (making recruits punishable for false answers),

So much of section one hundred as relates to the validity of attestation and enlistment or re-engagement,

Section one hundred and one (relating to the competent military authority), and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence

And the said sections shall apply in like manner as if they were herein re-enacted, with the substitution—

(*a*) Of " Territorial Force " for " regular forces," and of " man of the Territorial Force " for " soldier ", and

(*b*) (In section one hundred) of " has not within three months claimed his discharge on any ground on which he is entitled under this subsection to do so " for " has received pay as a soldier of the regular forces during three months "

(2) A recruit may be attested by any lieutenant or deputy-lieutenant of any county in the United Kingdom, or by an officer of the regular or Territorial forces, and the sections of the Army Act in this section mentioned, and also section thirty-three of the same Act, shall as applied to the Territorial Force be construed as if a justice of the peace in those sections included such lieutenant, deputy lieutenant, or officer

Enlistment of men discharged with disgrace from Army or Navy, or contrary to rules

11.—(1) If a person—

(*a*) Having been discharged with disgrace from any part of His Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the Territorial Force without declaring the circumstances of his discharge or dismissal, or

(*b*) Is concerned when subject to military law in the enlistment for service in the Territorial Force of any man, when he knows or has reasonable cause to believe such man to be

so circumstanced that by enlisting he commits an offence against the Army Act or this Act, or

(*c*) Wilfully contravenes when subject to military law any enactments, orders, or regulations which relate to the enlistment or attestation of men in the Territorial Force,

he shall be guilty of an offence, and shall, whether otherwise subject to military law or not, be liable to be tried by court-martial, and on conviction to suffer such punishment as is imposed for the like offence by section thirty-two or thirty-four of the Army Act, as the case may be, and may be taken into military custody

(2) For the purpose of this section the expression "discharged with disgrace" means discharged with ignominy, discharged as incorrigible and worthless, or discharged for misconduct, or discharged on account of a conviction for felony or a sentence of penal servitude

Enlistment into army reserve

12 If a man of the Territorial Force enlists into the army reserve without being discharged from the Territorial Force, the terms and conditions of his service whilst he remains in the army reserve shall be those applicable to him as a man belonging to the army reserve, and not those applicable to him as a man of the Territorial Force

Area of service of Territorial Force

13 —(1) Any part of the Territorial Force shall be liable to serve in any part of the United Kingdom, but no part of the Territorial Force shall be carried or ordered to go out of the United Kingdom

(2) Provided that it shall be lawful for His Majesty, if he thinks fit, to accept the offer of any part or men of the Territorial Force, signified through their commanding officer, to subject themselves to the liability—

(*a*) to serve in any place outside the United Kingdom, or

(*b*) to be called out for actual military service for purposes of defence at such places in the United Kingdom as may be specified in their agreement, whether the Territorial Force is embodied or not,

and, upon any such offer being accepted, they shall be liable, whenever required during the period to which the offer extends, to serve or be called out accordingly

(3) A person shall not be compelled to make such an offer, or be subjected to such liability as aforesaid, except by his own consent, and a commanding officer shall not certify any voluntary offer previously to his having explained to every person making the offer that the offer is to be purely voluntary on his part

Training

Preliminary training of recruits of Territorial Force

14.—(1) Every man of the Territorial Force shall, by way of preliminary training, during the first year of his original enlistment—

(*a*) If so provided by Order in Council[1], be trained at such places within the United Kingdom, at such times, and for such periods, not exceeding in the whole the number of

1 No Order in Council has up to the present been issued under this section

days specified by the Order in Council, as may be prescribed, and may for that purpose be called out once or oftener, and

(*b*) Whether such an Order in Council has been made or not, attend the number of drills and fulfil the other conditions prescribed for a recruit of his arm or branch of the service

(2) The requirement to attend training and drills, and to fulfil conditions under this section, shall be in addition to the requirement to attend training and drills and to fulfil conditions for the purpose of annual training

Annual training

15.—(1) Subject to the provisions of this section, every man of the Territorial Force shall, by way of annual training—

(*a*) Be trained for not less than eight nor more than fifteen, or in the case of the mounted branch eighteen, days in every year at such times and at such places in any part of the United Kingdom as may be prescribed, and may for that purpose be called out once or oftener in every year

(*b*) Attend the number of drills and fulfil the other conditions relating to training prescribed for his arm or branch of the service

Provided that the requirements of this section may be dispensed with in whole or in part—

(i) as respects any unit, by the prescribed general officer, and

(ii) as respects an individual man, by his commanding officer subject to any general directions by the prescribed general officer

(2) His Majesty in Council may—

(*a*) Order that the period of annual training in any year of all or any part of the Territorial Force be extended, but so that the whole period of annual training be not more than thirty days in any year, or

(*b*) Order that the period of annual training in any year of all or any part of the Territorial Force be reduced to such time as to His Majesty may seem fit, or

(*c*) Order that in any year the annual training of all or any part of the Territorial Force be dispensed with

(3) Nothing in this section shall be construed as preventing a man, with his own consent, in addition to annual training, being called up for the purpose of duty or instruction in accordance with orders and regulations under this Part of this Act

Laying of draft Orders in Council relating to training before Parliament

16 Before any Order in Council is made under this Act providing for preliminary training or extending the period of annual training the draft thereof shall be laid before each House of Parliament for a period of not less than forty days during the Session of Parliament, and, if either of those Houses before the expiration of those forty days presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken, without prejudice to the making of a new draft Order

Embodiment

Embodiment of Territorial Force.

17.—(1) Immediately upon and by virtue of the issue of a proclamation ordering the Army Reserve to be called out on permanent service, it shall be lawful for His Majesty to order the

Army Council from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for embodying all or any part of the Territorial Force, and in particular to make such special arrangements as they think proper with regard to units or individuals whose services may be required in other than a military capacity

Provided that, where under any such proclamation directions have been issued for calling out all the men belonging to the first class of the Army Reserve, the Army Council shall, within one month after such directions have been issued, issue directions for embodying all the men belonging to the Territorial Force, unless an address has been presented to His Majesty by both Houses of Parliament praying that such directions as last aforesaid be not issued, and such directions shall not, unless the emergency so requires, be given until Parliament has had an opportunity of presenting such an address

(2) Whenever, in consequence of the calling out of the whole of the first class of the Army Reserve, directions are required under this section to be given for embodying the Territorial Force, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day

(3) Every order and all directions given under this section shall be obeyed as if enacted in this Act, and, where such directions for the time being direct the embodiment of any part of the Territorial Force, every officer and man belonging to that part shall attend at the place and time fixed by those directions, and after that time shall be deemed to be embodied, and such officers and men are in this Act referred to as embodied or as the embodied part or parts of the Territorial Force

Disembodying of Territorial Force.

18.—(1) It shall be lawful for His Majesty by proclamation to order that the Territorial Force be disembodied, and thereupon the Army Council shall give such directions as may seem necessary or proper for carrying the said proclamation into effect

(2) Until any such proclamation of His Majesty has been issued the Army Council may from time to time, as they may think expedient for the public service, give such directions as may seem necessary or proper for disembodying any embodied part of the Territorial Force, and for embodying any part of the Territorial Force not embodied, whether previously disembodied or otherwise

(3) After the date fixed by the directions for the disembodiment of any part of the Territorial Force, the officers and men belonging to that part shall be in the position of officers and men of the Territorial Force not embodied

Notices

Service and publication of notices.

19. Notices required in pursuance of this Part of this Act or of the orders and regulations in force thereunder to be given to men of the Territorial Force shall be served or published in such manner as may be prescribed, and, if so served or published, shall

be deemed to be sufficient notice, and every constable and overseer shall, when so required by or on behalf of the Army Council, conform with the orders and regulations for the time being in force under this Part of this Act with respect to the publication and service of notices, and in default shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds

Offences

Punishment for failure to attend on embodiment

20.—(1) Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembling on embodiment, shall be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act, and shall, whether otherwise subject to military law or not, be liable to be tried by court-martial, and convicted and punished accordingly, and may be taken into military custody

(2) Sections one hundred and fifty-three and one hundred and fifty-four of the Army Act shall apply with respect to deserters and desertion within the meaning of this section in like manner as they apply with respect to deserters and desertion within the meaning of those sections, and any person who, knowing any man of the Territorial Force to be a deserter within the meaning of this section or of the Army Act, employs or continues to employ him, shall be deemed to aid him in concealing himself within the meaning of the first-mentioned section

(3) Where a man of the Territorial Force commits the offence of desertion under this section the time which elapsed between the time of his committing the offence and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of discharge

Punishment for failure to fulfil training conditions

21 Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for preliminary training, or for annual training, or fails to attend the number of drills and fulfil the other conditions relating to preliminary or annual training prescribed for his arm or branch of the service, shall be liable to forfeit to His Majesty a sum of money not exceeding five pounds recoverable on complaint to a court of summary jurisdiction by the prescribed officer, and any sums recovered by such officer shall be accounted for by him in the prescribed manner

Wrongful sale, &c., of public property

22. If any person designedly makes away with, sells, or pawns, or wrongfully destroys or damages, or negligently loses anything issued to him as an officer or man of the Territorial Force, or wrongfully refuses or neglects to deliver up on demand anything issued to him as an officer or man of the Territorial Force, the value thereof shall be recoverable from him on complaint to a court of summary jurisdiction by the county association, and he shall also, for any such offence of designedly making away with selling or pawning, or wrongfully destroying as aforesaid, be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds

Civil Rights and Exemptions

Civil rights and exemptions

23 —(1) The acceptance of a commission as an officer of the Territorial Force shall not vacate the seat of any member returned to serve in Parliament

(2) An officer or man of the Territorial Force shall not be liable to any penalty or punishment for or on account of his absence during the time he is voting at any election of a member to serve in Parliament, or during the time he is going to or returning from such voting

(3) If a sheriff is an officer of the Territorial Force, then during embodiment he shall be discharged from personally performing the office of sheriff, and the under sheriff shall be answerable for the execution of the said office in the name of the high sheriff, and the security given by the under sheriff and his pledges to the high sheriff shall stand as a security to the King and to all persons whomsoever for the due performance of the office of sheriff during such time

(4) An officer or man of the Territorial Force shall not be compelled to serve as a peace officer or parish officer, and shall be exempt from serving on any jury, and a field officer of the Territorial Army shall not be required to serve in the office of high sheriff

Legal Proceedings

24 —(1) Any offence under this Part of this Act, and any offence under the Army Act if committed by a man of the Territorial Force when not embodied, which is cognizable by a court-martial shall also be cognizable by a court of summary jurisdiction, and on conviction by such a court shall be punishable with imprisonment for a term not exceeding three months or with a fine not exceeding twenty pounds, or with both such imprisonment and fine, but nothing in this provision shall affect the liability of a person charged with any such offence to be taken into military custody

(2) Any offence which under this Part of this Act is punishable on conviction by court-martial, shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, with this modification, that any reference in that Act to forfeiture and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed

(3) Any offence which under this Part of this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered, in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, in like manner as if those sections were herein re-enacted and in terms made applicable to this Part of this Act, subject to the following modification (namely)—

Every fine imposed under this Part of this Act on a man of the Territorial Force, or recovered on a prosecution instituted under this Part of this Act, shall, notwithstanding anything in any Act or charter or in the said sections to the contrary,

be paid to the association of the county for which the man was enlisted

(4) Where a man of the Territorial Force is subject to military law and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which he was subject to military law is less than twenty-one days or has expired before the expiration of twenty-one days

Supplemental provisions as to trial of offences.

25.—(1) A person charged with an offence which under this Part of this Act is cognizable both by a court-martial and by a court of summary jurisdiction shall not be liable to be tried both by a court-martial and by a court of summary jurisdiction, but may be tried by either of them, as may be prescribed

Provided that a man who has been dealt with summarily by his commanding officer shall be deemed to have been tried by court-martial

(2) Proceedings against an offender before either a court-martial or his commanding officer, or a court of summary jurisdiction, in respect of an offence punishable under this Part of this Act, and alleged to have been committed by him when a man of the Territorial Force, may be instituted whether the term of his service in the Territorial Force has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to his commanding officer if the alleged offender is then apprehended, or, if he is not then apprehended, then within two months after the time at which he is apprehended

(3) Where an offender has on several occasions been guilty of desertion, fraudulent enlistment, or making a false answer, he may for the purposes of any proceedings against him be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs, and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, whether they are offences within the meaning of the Army Act or offences within the meaning of this Part of this Act, and to give evidence of such offences against him, and, if he has been convicted of more than one offence, to punish him accordingly as if he had been previously convicted of any such offence

Evidence.

26.—(1) Section one hundred and sixty-four of the Army Act (which relates to evidence of the civil conviction or acquittal of a person subject to military law) shall apply to a man of the Territorial Force who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

(2) Section one hundred and sixty-three of the Army Act (relating to evidence) shall apply to all proceedings under this Part of this Act.

Miscellaneous

27 —(1) Any power or jurisdiction given to, and act or thing to be done by, to, or before any person holding any military office may, in relation to the Territorial Force, 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

(2) Where by this Part of this Act, or by any order or regulation in force under this Part of this Act, any order is authorised to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised

28 —[Subs (1), applying the Army Act to the Territorial Force in like manner as that Act applied to the militia, virtually repealed on repeal of militia enactments by 11 & 12 Geo V, c 37 see now ss 175 (3A) and 176 (6A) of Army Act]

(2) For the purpose of section one hundred and forty-three of the Army Act and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the Territorial Force, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of the regular forces on duty

(3) His Majesty may by Order in Council apply, with the necessary adaptations, to the Territorial Force or the officers or men belonging to that force any enactment relating to the Militia, Yeomanry, or Volunteers, or officers or men of the Militia, Yeomanry, or Volunteers, other than enactments with respect to the raising, service, pay, discipline, or government of the Militia, Yeomanry, or Volunteers, and every such Order in Council shall be laid before both Houses of Parliament[1]

Transitory

29 —(1) Where an association has been established under this Act for any county His Majesty may by Order in Council transfer to the Territorial Force such units of the Yeomanry and Volunteers or part thereof raised in the county as may be specified in the Order, and every such unit or part thereof shall from the date mentioned in the Order be deemed to have been lawfully formed under this Part of this Act as an unit of the Territorial Force as provided by the Order, and the provisions of this Part of this Act shall apply to it accordingly

(2) Every officer and man of an unit or part thereof mentioned in any such Order shall, from the date mentioned in that Order, be deemed to be an officer or man of the Territorial Force Provided that nothing in this section or in any Order made thereunder

1 The following enactments relating to the Militia and Volunteers were applied by an Order in Council dated 19th March, 1908 to the Territorial Force —The Railway Act, 1842 (5 & 6 Vict c 55) s 20, the Railway Act, 1844 (7 & 8 Vict, c 85), s 12, the National Defence Act, 1888 (51 & 52 Vict, c 41), s 52, the Friendly Societies Act, 1896 (59 & 60 Vict, c 25) s 43 the Officers Commissions Act, 1862 (25 & 26 Vict, c 4), the Regulation of the Forces Act, 1871 (34 & 35 Vict, c 86), part of s 6

shall, without his consent, affect the conditions or area of service of any person commissioned, enlisted, or enrolled before the passing of this Act

(3) An Order in Council under this section may provide—

(*a*) For the application to officers and men who become subject thereto of the provisions of this Act as to conditions and area of service, and for the continuance of the application to officers and men who remain subject thereto of the provisions as to conditions and area of service previously in force as respects those officers and men

(*b*) For transferring to the association any property vested in a Secretary of State for the purposes of any unit to which the Order relates

(*c*) For transferring to the association any property belonging to or held for the benefit of any such unit so however that all property so transferred shall as from the date of the transfer be held by the association for the benefit in like manner of the corresponding unit of the Territorial Force or for such other purposes as the association, with the consent of such corresponding unit, to be ascertained in the prescribed manner, shall direct, and any question which may arise as to whether any property is transferred to an association, or as to the trusts or purposes upon or for which it is or ought to be held, shall be referred for the decision of a Secretary of State whose decision shall be final The corresponding unit of the Territorial Force shall, in the event of any such transfer, become entitled, notwithstanding the terms of any trust, limitation, or condition affecting the property so transferred to the estate or interest in such property of the unit to the property of which the order relates, but, subject to this provision, the interest of any beneficiary other than such unit shall not, without the consent of such beneficiary, be affected The order may, if it be deemed proper, having regard to the special circumstances of any case, provide for the appointment of special trustees to act together with or to the exclusion of the association in regard to any such property and such special trustees may be the existing trustees of such property

(*d*) For transferring to the association any liabilities of any such unit which the association is willing to assume, and providing for the discharge of any such liabilities which are not so transferred

(*e*) For transferring to the association any land or interest in land acquired by the council of a county or borough on behalf of any volunteer corps to which the order relates, and any outstanding liabilities of the council incurred in respect thereof, if the council and the association consent

and may contain such supplemental, consequential, and incidental provisions as may appear necessary or proper for the purposes of the Order

(4) Every Order in Council made under this section shall be laid before both Houses of Parliament

PART III —RESERVE FORCES

Enlistment and terms of service of special reservists, 45 & 46 Vict c 48;

30 —(1) The power of enlisting men into the first class of the army reserve under the Reserve Forces Act, 1882, shall extend to the enlistment of men who have not served[1] in His Majesty's regular forces, and men so enlisted who have not served in the regular forces are in this Part of this Act referred to as special reservists[2], and a special reservist may be re-engaged, and when re-engaged shall continue subject to the terms of service applicable to special reservists

(2) A special reservist may, in addition to being called out for annual training, be called out for a special course or special courses of training at such place or places within the United Kingdom at such time or times and for such period or periods, not exceeding in the whole six months, as may be prescribed, in like manner and subject to the like conditions as he may be called out for annual training, and may during any such course be attached to or trained with any body of His Majesty's forces

(3) Notwithstanding the provisions of section eleven of the Reserve Forces Act, 1882, any special reservists may be called out for annual training for such period or periods as may be prescribed by any order or regulations under the Reserve Forces Act, 1882

(4) Provided that where one of the conditions on which a man was enlisted or re-engaged is that he shall not be called out for training, whether special or annual, for a longer period than the period specified in his attestation paper, he shall not be liable under this section to be called out for any longer period

(5) Where a proclamation ordering the army reserve to be called out on permanent service has been issued, it shall be lawful for His Majesty at any time thereafter by proclamation to order that all special reservists shall cease to be so called out, and thereupon a Secretary of State shall give such directions as may seem necessary or proper for carrying the said proclamation into effect

(6) A special reservist who enlists into the regular forces shall upon such enlistment be deemed to be discharged from the army reserve

Agreements as to extension of service

31. A Secretary of State may, by regulations under the Reserve Forces Act, 1882, authorise any special reservist[2] having the qualifications prescribed by those regulations to agree in writing that, if the time when he would otherwise be entitled to be discharged occurs whilst he is called out on permanent service, he will continue to serve until the expiration of a period, whether definite or indefinite, specified in the agreement, and, if any man who enters into such an agreement is so called out, he shall be liable to be detained in service for the period specified in his agreement in the same manner in all respects as if his term of service were still unexpired

---

1 See also A A 92 (3), as to men discharged from the regular forces

2 "Special reserve" and "special reservist" were altered to "militia" and "militiaman" respectively, by 11 & 12 Geo V, c 37, s 2 (see p 867)

Liability of reservists to be called out

32.—(1) A special reservist[1] shall, if he so agrees in writing, be liable during the whole of his service in the army reserve, or during such part of that service as he so agrees, to be called out on permanent service without such proclamation or communication to Parliament as is mentioned in section twelve of the Reserve Forces Act, 1882, and the calling out of men under this section shall not involve the meeting of Parliament as required by section thirteen of that Act

Provided that—

(*a*) The number of men so liable shall not at any one time exceed four thousand

(*b*) The power of calling out of men under this section shall not be exercised except when they are required for service outside the United Kingdom when warlike operations are in preparation or in progress

(*c*) Any agreement under this section may provide for the revocation thereof by such notice in writing as may be therein stated

(*d*) Any exercise of the power of calling out men under this section shall be reported to Parliament as soon as may be

(*e*) The number of men for the time being called out under this section shall not be reckoned in the number of the forces authorised by the Annual Army Act for the time being in force

61 & 62 Vict c 9

(2) Six thousand shall be substituted for five thousand as the maximum number of men liable to be called out under section one of the Reserve Forces and Militia Act, 1898, and the liability to be called out under that section may, if so agreed, extend to the first two years of a man's service in the first class of the army reserve

(3) [Repealed]

Power to form battalions, &c, of reservists

33. Orders and regulations under the Reserve Forces Act, 1882, may provide for the formation of special reservists[1] into regiments, battalions, or other military bodies and for appointing, transferring, or attaching special reservists to corps, and for posting, attaching, or otherwise dealing with special reservists within corps

34.—[Repealed]

Amendment of 45 & 46 Vict c 48, s 6 (4)

35 Subsection (4) of section six of the Reserve Forces Act, 1882, which makes a certificate purporting to be signed by an officer appointed to pay men belonging to the army reserve evidence in certain cases, shall, where a person other than an officer is appointed to pay men belonging to the army reserve, apply to certificates purporting to be signed by such person

Commissions in reserve of officers not to vacate seat in Parliament

36 The acceptance of a commission as an officer in the reserve of officers shall not vacate the seat of any member returned to serve in Parliament.

---

1 "Special reserve" and "special reservist" were altered to "militia" and "militia man" respectively, by 11 & 12 Geo V, c 37, s 2 (see p 867)

PART IV —SUPPLEMENTAL

Provisions as to orders, schemes, and regulations

37.—(1) Every Order in Council or scheme required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or, if not, within forty days after the commencement of the then next ensuing session, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days, praying that any such order or scheme may be annulled, His Majesty may thereupon by Order in Council annul the same, and the order or scheme so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same

(2) All Orders in Council, orders, schemes, and regulations made under this Act may be varied or revoked by subsequent Orders in Council, orders, schemes, and regulations made in the like manner and subject to the like conditions

Definitions

38. In this Act, unless the context otherwise requires,—

The expression "county" means a county or riding of a county for which a lieutenant is appointed, and includes the City of London, and each county of a city or county of a town mentioned in the first column of the Second Schedule to this Act shall be deemed to form part of the county set opposite thereto in the second column of that schedule,

The expression "man of the Territorial Force" includes a non-commissioned officer,

The expression "prescribed" means prescribed by orders or regulations,

Other expressions have the same meaning as in the Army Act

Special provisions as to special places

39—(1) The Lord Warden of the Cinque Ports may ex-officio be a member of the association of the county of Kent or of the county of Sussex, or of both, as may be provided by schemes under this Act

(2) The Warden of the Stannaries may ex-officio be a member of the association of the county of Cornwall or of the county of Devon, or of both, as may be provided by schemes under this Act

(3) The Lord Mayor of the City of London shall ex-officio be president of the association of the City of London

(4) The Governor or Deputy Governor of the Isle of Wight shall ex-officio be a member of the association of the county of Southampton

(5) Nothing in this Act shall affect the raising and levying of the Trophy Tax as heretofore in the City of London, but the proceeds of the Tax so levied may be applied by His Majesty's Commissioners of Lieutenancy for the City of London, if the Royal London Militia Battalion is re-constituted as a battalion of the Army Reserve, for any purposes connected with that battalion, and may also, if His Majesty's Commissioners of Lieutenancy for the City of London in their discretion see fit, be applied for the purposes of any of the powers and duties of the association of the City of London under this Act.

40.—(1) In the application of this Act to Scotland the following modifications shall be made — Application to Scotland and the Isle of Man.

(*a*) This Act shall apply to a county of a city in like manner as to any other county Provided that on the representation or with the consent of the corporation of any county of a city it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, at any time after the passing of this Act, to declare that such county of a city shall for the purposes of this Act be deemed to form part of the county set opposite thereto in the second column of the Third Schedule to this Act, and to provide for all matters which may appear necessary or proper for giving full effect to the order,

(*b*) The expression "county borough council" means the town council of a royal, parliamentary, or police burgh with a population of or exceeding twenty thousand according to the census for the time being last taken,

(*c*) The expression "land" includes heritages,

(*d*) The expression "overseer" means an inspector of poor

(2) This Act shall apply to the Isle of Man as if it formed part of, and were included in the expression, the United Kingdom, subject to the following modifications —

(*a*) The Isle of Man shall be deemed to be a separate county,

(*b*) References to the Governor of the Island shall be substituted for references to the lieutenant of a county,

(*c*) References to a High Bailiff or two justices of the peace and to conviction by such a Bailiff or justices shall be substituted for references to a court of summary jurisdiction and to conviction under the Summary Jurisdiction Acts,

(*d*) References to the Tynwald Court shall be substituted for references to Parliament in the section of this Act relating to civil rights and exemptions

41. This Act may be cited as the Territorial and Reserve Forces Act, 1907, and so far as it relates to the reserve forces may be cited with the Reserve Forces Acts, 1882 to 1906, as the Reserve Forces Acts, 1882 to 1907 Short title

---

SCHEDULES

FIRST SCHEDULE.

[*The schedule specified in Section* 28 (1) *now virtually repealed*] Section 28

Section 38.

SECOND SCHEDULE

Names of Cities and Towns	County
ENGLAND	
County of the city of Chester	Chester
County of the city of Exeter	Devon
County of the town of Poole	Dorset
County of the city of Gloucester	Gloucester
County of the city of Bristol	Gloucester
County of the city of Canterbury	Kent
County of the city of Lincoln	Lincoln
County of the city of Norwich	Norfolk
County of the town of Newcastle upon Tyne	Northumberland
Borough and town of Berwick upon Tweed	Northumberland
County of the town of Nottingham	Nottingham
County of the town of Southampton	Southampton
County of the city of Lichfield	Stafford
County of the city of Worcester	Worcester
County of the city of York	West Riding of York
County of the town of Kingston upon Hull	East Riding of York
County of the town of Carmarthen	Carmarthen
County of the town of Haverfordwest	Pembroke
IRELAND	
County of the city of Waterford	Waterford
County of the town of Londonderry	Londonderry

Section 40

THIRD SCHEDULE

SCOTLAND

Name of County of City	County
County of the city of Edinburgh	Edinburgh
County of the city of Glasgow	Lanark
County of the city of Dundee	Forfar
County of the city of Aberdeen	Aberdeen

Territorial Army and Militia Act, 1921.

[11 & 12 Geo 5, c 37]

An Act to provide for the application of new designations to the Territorial Force and the Special Reserve, and to repeal enactments relating to the Militia and Yeomanry, and for purposes in connection therewith [17th August, 1921]

New designation for the territorial force

1. The territorial force which His Majesty is empowered to raise and maintain under Part II of the Territorial and Reserve Forces Act, 1907, shall be called the territorial army, and accordingly that Act and any other enactment, Royal warrant, proclamation, order, regulation, or document applying to the territorial force shall have effect as though references therein to the territorial army were substituted for references to the territorial force

7 Edw 7 c 9

New designation for the special reserve

2. That portion of the army reserve which has hitherto been known as "the special reserve" shall be called "the militia," and accordingly sections thirty to thirty-three of the Territorial and Reserve Forces Act, 1907, and any other enactment, Royal warrant, proclamation, order, regulation, or document applying to the special reserve shall have effect as though references therein to the militia were substituted for references therein to the special reserve, and as though references therein to a militiaman and to militiamen were substituted for references therein to a special reservist and to special reservists

Amendments of the Army Act

3. The sections of the Army Act specified in the First Schedule to this Act shall be amended in the manner shown in the second column of that schedule [1]

Abolition of existing militia and yeomanry

4.—(1) The power to raise and maintain a militia force or a yeomanry force under any of the enactments set out in the Second Schedule to this Act shall cease, and those enactments shall be repealed to the extent specified in the third column of that schedule[2]

Provided that, notwithstanding anything in this section, any enactment repealed by this Act which relates to militia storehouses shall continue to apply in relation to militia storehouses provided before the commencement of this Act, as though this Act had not been passed

(2) In this section the expression "militia storehouses" means any buildings or premises provided for the purpose of keeping therein the arms, accoutrements, clothing, and other stores belonging to any regiment, battalion or corps of militia, when not embodied

1 These amendments are incorporated in the Army Act as printed in Part II of this Manual

2 The enactments mentioned were the old Militia Acts and Yeomanry Acts.

Auxiliary Air Force and Air Force Reserve Act, 1924.

[14 & 15 Geo 5, c 15]

Extract from

An Act to make further provision as to the organisation and conditions of service of the Auxiliary Air Force and Air Force Reserve, and for purposes connected therewith

[14th July, 1924]

Constitution of county joint associations and auxiliary air force associations
7 & 8 Geo 5 c 51
7 Edw 7 c 9

1 The power of His Majesty under section six of the Air Force (Constitution) Act, 1917 (in this Act referred to as "the principal Act"), to apply by Order in Council to the auxiliary air force or to the officers and men of that force any of the enactments relating to the territorial army or the officers and men of that army, shall be extended so as to include power to apply Part I of the Territorial and Reserve Forces Act, 1907, to the auxiliary air force and to the officers and men of that force and also to the territorial army and to the officers and men of that army with such modifications as may be necessary—

(1)—(*a*) to provide for the establishment and constitution of a county joint association under the said Part I, which shall, as respects the county, exercise the powers and perform the duties of an association under the said Part in relation both to the territorial army and to the auxiliary air force, and to provide for the application of the provisions of that Part with respect to the Army Council, to army services and to the territorial army, to the Army Council and Air Council or either of them, to army and air force services or either of them and to the territorial army and the auxiliary air force, or either of them, respectively,

(*b*) to define the relations and responsibilities of any such county joint association to the Army Council and the Air Council respectively, and

(2) to provide for the establishment and constitution for any areas which in the opinion of the Air Council cannot suitably be administered through county joint associations constituted under the preceding paragraph, of auxiliary air force associations, and

(3) to provide for the termination of county joint associations either generally or in special cases, and on such termination for the establishment of associations constituted under the Territorial and Reserve Forces Act, 1907, or of auxiliary air force associations, and

(4) to provide for the transfer and adjustment of any powers, duties, assets and liabilities on the establishment or termination of county joint associations

Power to make supplemental modifications

4 An Order in Council made in pursuance of any of the foregoing provisions of this Act may make such supplemental and consequential modifications (if any) of the provisions of the Reserve Forces Acts, 1882 to 1907, and the Territorial and Reserve

Forces Act, 1907, including the provisions as to the service and publication of notices, and contain such supplemental and consequential provisions, as may appear to His Majesty in Council to be necessary or expedient

* * * * * * *

Short title, savings, and interpretation.

6.—(1) This Act may be cited as the Auxiliary Air Force and Air Force Reserve Act, 1924

* * * * * * *

(4) In this Act—

* * * * * * *

45 & 46 Vict. c. 48

(ii) references to the Reserve Forces Act, 1882, and to the Territorial and Reserve Forces Act, 1907, shall be construed as references to those Acts as amended by any subsequent enactment

The Officers' Commissions Act, 1862.[1]

[25 & 26 Vict., c. 4]

An Act to enable Her Majesty to issue commissions to the officers of Her Majesty's Land Forces and Marines . . without affixing Her Royal Sign Manual thereto

[11th April, 1862]

Officers' commissions in the army, &c., may be issued without Her Majesty's Royal Sign Manual being affixed thereto

1. It shall be lawful for Her Majesty, by Order in Council, from time to time, as occasion may require, to direct that all or any commissions for officers prepared or to be prepared under the authority of Her Majesty's Royal Sign Manual may be afterwards issued without Her Royal Sign Manual, but having thereon, in the case of Her Majesty's land forces,[2] except as hereinafter mentioned, the signatures of the commander-in-chief or the general commanding-in-chief, and of one of Her Majesty's Principal Secretaries of State, and in the case of the Royal Marines, of the Lords Commissioners of the Admiralty, and in the case of military chaplains, commissariat and store officers, and of adjutants and quartermasters in the volunteer forces, of one of Her Majesty's said Principal Secretaries, and every such commission issued and signed in pursuance of such Order in Council shall be conclusive evidence that the officer named in any such commission has been appointed or promoted by Her Majesty to the rank or office named therein

Act not to affect Her Majesty's right to sign commissions

2 Nothing herein contained shall be construed to prevent Her Majesty from signing any commission, or to prevent any commission so signed from having the same validity and effect as if this Act had not passed

1 This Act has been applied to the Territorial Army by O. in C. dated 19th March, 1908

2 By s. 6 of the Regulation of the Forces Act, 1871, as applied to the Territorial Army by the T. R. F. Act, 1907, and Order in Council of 19th March, 1908, the preparation, authentication, and issue of commissions in the Territorial Army are governed by the same rules as the preparation, authentication and issue of commissions in the land forces

The Local Government Act, 1888.

[51 & 52 Vict, c 41]

Extract from

An Act to amend the Laws relating to Local Government in England and Wales and for other purposes connected therewith

[13th August, 1888]

Supplemental provision as to alteration of area

59.—(1) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient

(2) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned form part of that county for all purposes, whether sheriff, lieutenant, custos rotulorum, justices, [1] coroner, or other

Provided that—

(*a*) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act, and

(*b*) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, [1] justices, or coroner, but, if any county borough is, at the passing of this Act, a part of any county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose, and

(*c*) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rentcharge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction

(3) For the purposes of parliamentary elections, and of the registration of voters for such elections, the sheriff, clerk of the peace, and council of the county in which any place is comprised at the passing of this Act for the purpose of parliamentary elections shall, save as otherwise provided by the scheme or order, or by the County Electors Act, 1888, or this Act, continue to have the same powers, duties, and liabilities as they would have had if no alteration of boundary had taken place

(4) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,—

(*a*) May provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and

1. This section has been applied to Territorial Army by O in C, dated 19th March, 1908.

duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area , and

(*b*) May make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers , and

(*c*) May provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer , and

(*d*) May provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order , and

(*e*) May adjust any property, debts, and liabilities affected by the scheme or order

(5) Where an alteration of boundaries of a county is made by this Act an order for any of the above-mentioned matters may, if it appears to the Local Government Board[1] desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament

(6) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament, either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act

1. Powers of L G B transferred to Ministry of Health by 9 & 10 Geo V , c 21, s 3 (1) (*a*)

Regimental Debts Act, 1893.

[56 Vict , c 5]

An Act to consolidate and amend the Law relating to the Payment of Regimental Debts, and the Collection and Disposal of the Effects of Officers and Soldiers in case of Death, Desertion, Insanity, and other cases [29th April, 1893]

Collection of Effects and Payment of Preferential Charges

On death of person subject to military

1. On the death of a person while subject to military law the prescribed committee of adjustment shall, as soon as may be, in accordance with the prescribed regulations[1] and subject to any exceptions made thereby,

(1) secure and make an inventory of all such of the effects of the deceased as are in camp or quarters, and, if the death occurs out of the United Kingdom, are within the prescribed area whether station, colony, or command, or other, (which area is in this Act referred to as the regulation area) , and

(2) ascertain the amount and provide for the payment of the preferential charges on the property of the deceased

Preferential charges

2. The following shall be the preferential charges on the property of a person dying while subject to military law, and shall, except so far as other provision may be made for them or any of them, be payable in preference to all other debts and liabilities, and, as among themselves, in the following order —

(1) Expenses of last illness and funeral ,

(2) 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 six months' pay of the deceased, and having become due within eighteen months before his death ,

to which shall be added, where the death occurs out of the United Kingdom,—

(3) Servants' wages, not exceeding two months' wages to each servant , and

(4) Household expenses incurred within a month before the death, or after the last issue of pay to the deceased whichever is the shorter period

Surplus only of personal estate to be deemed personal estate.

3. So much only of the personal property of a person dying while subject to military law as remains after payment of the preferential charges shall be considered personal estate of the deceased with reference to the calculation of probate duty, or of any other duty, tax, or percentage, or for any of the purposes of administration

1. See p 881, *et seq.*

4. If in any case a doubt or difference arises in relation to any preferential charge or the payment thereof, the decision of the Secretary of State, or of such officer or person as the Secretary of State deputes by writing to act in this behalf, shall be final, and shall be binding on all persons for all purposes

Decision of questions as to preferential charges

5. Subject to the prescribed regulations, if any person pays or secures the payment of the preferential charges in full, the committee of adjustment shall not further interfere in relation to the property, except so far as they may be requested so to do by or on behalf of that person

Payment of preferential charges by representatives or other persons

6.—(1) If within one month after the death or such further time not exceeding the prescribed time as the committee of adjustment allow, the preferential charges are not paid or secured to their satisfaction, the committee shall proceed to pay those charges

Powers and duties of committee where preferential charges are not paid

(2) If the death occurs out of the United Kingdom, the committee of adjustment, save as may be prescribed, shall, if it appears to them necessary for the payment of the preferential charges, and in any case may, collect all the personal property of the deceased in the regulation area

(3) The committee, save as may be prescribed, shall, for the purpose of paying the preferential charges and their expenses, and in any case may, at such time as, subject to the prescribed regulations, they think expedient, sell and convert into money such of the personal property of the deceased as does not consist of money

(4) If the death occurs out of the United Kingdom they may also, save as otherwise prescribed, pay all debts which appear to them to be legally payable out of the personal estate of the deceased

(5) For the purpose of the exercise of their duties the committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if they had taken out representation to the deceased, and also if in a colony the powers which any official administrator has by the law of that colony, and any receipt given by the committee shall have the like effect as if it had been given by the legal personal representative of the deceased

(6) The committee of adjustment shall lodge the surplus remaining in their hands after payment of the said charges and expenses and debts with such person (in this Act referred to as the paymaster), at such times, in such manner, and together with such inventory, accounts, vouchers, and information, as may be prescribed

Disposal of Surplus and Residue

7. The paymaster shall pay the surplus in the prescribed manner, and subject to the prescribed provisions and exceptions, as follows —

Disposal of surplus by paymaster

(1) If out of the United Kingdom he may pay thereout any expenses which under the prescribed regulations are chargeable against the surplus, and any debts which are legally payable out of the personal estate of the deceased,

(2) If he knows of a representative of the deceased in the same part of Her Majesty's dominions, he shall pay the surplus to that representative,

(3) If he does not know of such a representative as above mentioned, and the amount does not exceed one hundred pounds, he may pay or apply all or any part thereof to or for the benefit of such persons in the same part of Her Majesty's dominions as he knows of and appear to be beneficially entitled to the personal estate of the deceased, or to or for the benefit of any of such persons ,

(4) He shall remit the surplus or so much thereof as is not paid or applied in pursuance of this section to the Secretary of State

Disposal of residue by Secretary of State

8. The Secretary of State, on being informed of the death of a person subject to military law, shall proceed with all reasonable speed as follows —

(1) He shall cause to be ascertained the total amount to the credit of the deceased, including any surplus or part of a surplus remitted by a paymaster as mentioned in this Act, and all arrears of pay, batta grants, and other allowances in the nature thereof, which total amount so ascertained is in this Act referred to as the residue ,

(2) If he has notice of a representative of the deceased, he shall pay the residue to that representative ,

(3) He may, and if it is so prescribed shall, before such payment, publish the prescribed notice stating the amount of the residue and such other particulars respecting the deceased and his property as may seem fit, and also the mode in which any application respecting the residue is to be made to the Secretary of State Provided that the Secretary of State may pay out of any money in his hands to the credit of the deceased any preferential charges appearing to him to have been left unpaid by the committee of adjustment

Disposal by Secretary of State of residue where residue does not exceed one hundred pounds, and no representation.

9. Where the residue does not exceed one hundred pounds, the Secretary of State may, if he thinks fit, require representation to be taken out , but if he does not, and has no notice of a representative of the deceased, then, after the expiration of the prescribed time and the publication of the prescribed notice (if any), the residue shall be disposed of as follows —

(1) The Secretary of State may, if he thinks fit, pay or apply the residue or any part thereof, in accordance with the prescribed regulations to or for the benefit of any of the persons appearing to be beneficially entitled to the personal estate of the deceased, or any of them, and may for that purpose invest the same by deposit in a military or other savings bank or otherwise, and, if necessary, in the name or names of a trustee or trustees for any such person

(2) Any part thereof remaining in the hands of the Secretary of State, and not irrevocably appropriated, shall be applied in paying any debt of the deceased which—

(*a*) accrued due within three years before the death , and

(*b*) is claimed from the Secretary of State within two years after the death , and

(*c*) is proved by the claimant to the satisfaction of the Secretary of State

(3) Except as above in this section provided, a person shall not be entitled to obtain payment out of any residue in the hands of the Secretary of State of any sum due from the deceased

Application of residue undisposed of

10 —(1) Where any residue or any part thereof remains undisposed of and unappropriated, the prescribed notice thereof shall be published, and during six years next after the publication of that notice the like notice with any necessary modifications shall be annually published

(2) So much of the residue as remains undisposed of and unappropriated for six months after the publication of the last of such notices shall, together with any income or accumulations of income accrued therefrom, be applied in the prescribed manner in or towards the creation or maintenance of such compassionate or other fund for the benefit of widows and children, or other near relatives, of soldiers dying on service or within six months after discharge, as may be prescribed

(3) Provided that the application under this section of any residue, or part of a residue, shall not bar any claim of any person to the same, or any part thereof

Supplemental Provisions

Disposal of medals and decorations

11 Medals and decorations shall not be considered to be comprised in the personal estate of the deceased with reference to the claims of creditors or for any of the purposes of administration under this Act or otherwise, and, notwithstanding anything in this or any other Act, the same, when secured by the committee of adjustment, shall be held and disposed of according to regulations laid down by royal warrant

Disposal of effects not money

12. Where any part of the personal estate of the deceased consists of effects, securities, or other property not converted into money, the provisions of this Act with respect to paying or remitting the surplus shall, save as may be prescribed, extend to the delivery, transmission, or transfer of such effects, securities, or property, and the paymaster and Secretary of State shall respectively have the same power of converting the same into money as the representative of the deceased

Regulations by royal warrant

13.—(1) Her Majesty the Queen may, by warrant under the Royal Sign Manual, make regulations for all such things as are by this Act directed or authorised to be prescribed or made subject to regulations, and also such regulations as may seem fit for the better execution of this Act, or any part thereof, and may by such regulations make different provisions to meet different cases or different circumstances

(2) Every royal warrant made under this Act shall be printed by the Queen's printer, and published under the authority of Her Majesty's Stationery Office, and laid before both Houses of Parliament as soon as may be after the making thereof.

Restriction on interposition of official administrators

14 —(1) An official administrator, notwithstanding any law regulating his office independently of this Act, shall not interpose in any manner in relation to any property of a person dying while subject to military law, except in the prescribed cases, or except when and so far as he is expressly required to do so by a committee of adjustment, or paymaster, or Secretary of State

(2) The committee of adjustment in such cases, under such circumstances, and at such times as may be prescribed, may request an official administrator, to exercise his official powers either on behalf of the committee or otherwise, and the administrator shall comply with the request The committee may also lodge any property secured or collected by them with any official administrator

(3) Where under this Act any property comes to the hands of any official administrator, he shall administer the same as regards preferential charges and otherwise in accordance with this Act, and, subject thereto, according to the law regulating his office independently of this Act

(4) The official administrator shall remit any surplus remaining in his hands after discharge of all debts and his charges to the Secretary of State at such time and in such manner as may be prescribed, to be disposed of according to the provisions of this Act as if remitted by a paymaster

(5) An official administrator shall not take a percentage on the property exceeding three per cent on the gross amount coming to or remaining in his hands after payment of preferential charges

Money remitted not to be assets in place where remitted to

15. Any property coming under this Act to the hands of any committee of adjustment or paymaster shall not, by reason of so coming, be deemed assets or effects at the place in which that committee or paymaster is stationed or resides, and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place

Duty and representation where sums under one hundred pounds

16 Where any surplus or residue, as the case may be, does not exceed one hundred pounds, no duty shall be payable in the United Kingdom or India in respect thereof, and it shall not be necessary that representation to any deceased person be taken out for the purpose of obtaining payment thereof or of any part thereof under this Act from a paymaster or a Secretary of State, except in any prescribed case, or in any case where the Secretary of State requires it

Discharge of paymaster and Secretary of State

17. Compliance with the regulations under this Act with respect to the mode of payment of any surplus or residue or any part thereof to any person (whether by transmission or remission to another place or person or otherwise) shall discharge the Secretary of State or paymaster or other person complying with the regulations, and he shall not be liable by reason of the surplus or residue or part which may be in his hands having been paid, transmitted, remitted, or otherwise dealt with in accordance with the regulations.

Validity of payments, sales, &c, under this Act

18. Every payment, application, sale, or other disposition of property made by the Secretary of State, or by any committee of adjustment, or by any paymaster, when acting in execution or supposed execution of this Act, or of any royal warrant for carrying this Act into effect, shall be valid as against all persons whom-

soever, and the Secretary of State, and every officer belonging to any such committee, and every such paymaster as aforesaid shall, by virtue of this Act, be absolutely discharged from all liability in respect of the property so paid, applied, sold, or disposed of

Saving for rights of representative

19. After the committee of adjustment have lodged with the paymaster the surplus of the property of any deceased person, any representative of that person and any official administrator shall, as regards any property of a deceased person not collected by the committee of adjustment and not forming part of the surplus or residue in this Act mentioned, have the same rights and duties as if this Act had not passed

Creditor administering not entitled to claim property

20. A creditor, as such, shall not be deemed a person entitled to take out representation to the deceased within the meaning of this Act or to pay or secure the preferential charges, nor shall a creditor taking out representation be entitled as representative of the deceased to claim from a paymaster or the Secretary of State any part of the property of the deceased

Deposit in court of probate, &c., of original wills in hands of Secretary of State, and declaration of intestacy

21.—(1) Where any original will of a person dying while subject to military law, whether he died before or after the commencement of this Act, comes to the hands of a Secretary of State, and representation under the same is not taken out, then the Secretary of State may cause the same to be deposited as follows —

(*a*) Where the domicile of the testator appears to the Secretary of State to have been in Scotland, then in the office of the commissary clerk of the commissary court of the county of Edinburgh

(*b*) Where the domicile of the testator appears to the Secretary of State to have been in Ireland,[1] then in the place for the time being appointed in Dublin[2] for the deposit of original wills brought into the High Court in Ireland [3]

(*c*) In any other case, in the place for the time being appointed in London for the deposit of original wills brought into the High Court in England

(2) Where a person dies while subject to military law intestate, and under this Act any residue of his property comes to the hands of the Secretary of State, and representation to the deceased is not taken out, then the Secretary of State may, if it seems fit, cause a declaration of his intestacy to be deposited in the place or office where his original will (if any) would be deposited as aforesaid

(3) In every such case the Secretary of State may cause to be deposited, together with the original will or declaration of intestacy an inventory showing the personal property of the deceased, and the application thereof, as far as the same is known

(4) Every such original will, declaration of intestacy, and inventory shall be preserved and dealt with, and may be inspected, subject and according to the same rules or orders and on payment of the same fees as any other like documents deposited in that office or place, or subject and according to such other rules or orders

1 In its application to Northern Ireland, the reference to Ireland is to be construed as Northern Ireland See S R & O 1922 (No 183)
2 In application to N Ireland "Belfast" (see note 1)
3 In application to N Ireland, "High Court of Justice in Northern Ireland" (see note 1)

and on payment of such other fees, as may be made or fixed in that behalf by the court, judge, or other authority empowered to make rules or orders in relation to other documents deposited in the same place or office [1]

Application of Act to special Cases

Special provision as to an army paymaster

22. In the application of this Act to an army paymaster, the following modifications shall be made —

(1) The powers and duties of the committee of adjustment shall arise immediately on his death, and shall continue notwithstanding that the professional[2] charges are paid or secured

(2) Money in the possession or under the control of an army paymaster at his death shall not be considered to be comprised in his effects for the purposes of this Act

(3) The surplus in the hands of the committee of adjustment and the residue in the hands of a Secretary of State shall be dealt with and disposed of as may be prescribed and not according to the foregoing provisions of this Act

Application of Act to deserters, felons, &c

23. Where a person subject to military law deserts, or is absent without leave for twenty-one days, or is convicted by a civil court of any offence which by the law of England is felony, or is delivered up as an apprentice, whether in pursuance of an order of a court, or otherwise, the provisions of this Act shall apply as if the person were dead, subject to the following modifications —

(1) The powers of the committee of adjustment shall arise and continue notwithstanding that the preferential charges are paid or secured

(2) The committee of adjustment shall dispose of the surplus in the prescribed manner, and the same when so disposed of shall be free from all claim on the part of the said person or any one claiming through him

Application of Act to case of insanity

24. Where a person subject to military law is ascertained in the prescribed manner to be insane, the provisions of this Act shall apply as if he had died at the time of his insanity being so ascertained, subject nevertheless to the prescribed exceptions, and to the following modifications

(*a*) The preferential charges may be paid by the wife of the insane person, or by any person who, subject to the prescribed regulations, appears to be a relative of or person undertaking the care of the insane person or of his property

(*b*) The committee of adjustment shall dispose of the surplus in the prescribed manner with a view to its being applied for the benefit of the insane person

Application of Act to India

General application of Act to India

25. This Act shall apply to India as if it were a colony, subject to the modifications in this Act mentioned, and to this exception, that it shall not, save so far as may be prescribed, apply to any native of India within the meaning of Indian military law

---

1 See also the Regimental Debts (Deposit of Wills) (Scotland) Act, 1919 (9 & 10 Geo V c. 89)

2 Sic presumably "preferential" was intended

26. In the case of the death of a person who dies while in India or while on service with any force under the command of the commander-in-chief in India, or of any provincial commander-in-chief in India, and who is not a soldier of Her Majesty's regular forces, this Act shall apply with the following modifications — Provision where death occurs in India, the deceased not being a soldier

(1) The paymaster shall after the prescribed notice pay all debts of which he has notice within the prescribed time, and which appear to him to be lawfully payable out of the estate of the deceased Provided that if under the special circumstances of the case of the deceased it appears to the paymaster inexpedient or unjust to pay any claims out of the estate, or if the claims lodged exceed in the whole the prescribed amount, the paymaster shall, without discharging those claims, or any of them, transfer the surplus aforesaid to the official administrator

(2) Where the paymaster does not so transfer the surplus, he shall dispose thereof, or of so much thereof as remains after the discharge of any claims, in manner directed by this Act

(3) The foregoing provisions of this section shall not apply to an army paymaster

(4) The secretary to the Government of India in the military department shall have the same power as the Secretary of State to decide any doubt or difference as to preferential charges, and his decision shall have the same effect as if it were given by the Secretary of State

27. Nothing in this Act shall prevent the Secretary of State from deducting in the pay office from any arrears of pay due to the deceased the amount of any arrears of subscription due by the deceased to the Indian military and orphan funds, or either of them Deduction of arrears of subscription to military and orphan funds

28. Anything authorised or required by this Act to be done by, to, or before a Secretary of State may, in the prescribed cases, be done by, to, or before the Secretary of State in Council of India Provision as to Secretary of State for India

Definitions, Extent, Commencement, Repeal, Short Title

29 In this Act, unless the context otherwise requires,— Definitions

The expression "officer" includes a warrant officer, although not holding an honorary commission

The expression "representation" includes probate and letters of administration, with or without will annexed, and in Scotland confirmation, and in India or a colony the corresponding documents in use according to the law of India or the colony

The expression "representative" means any person taking out representation, but does not include an official administrator

The expression "official administrator" means in India the administrator-general of any presidency or province, and in a colony means any public officer who has by law any powers or duties in relation to the collection or distribution of the estate of any deceased person.

The expression "prescribed" means prescribed by Royal Warrant

Save as aforesaid expressions in this Act have the same meaning as in the Army Act

Extent of Act.

30.—(1) This Act shall apply to all persons subject to military law, whether within or without Her Majesty's dominions

(2) This Act shall be registered by the Royal Courts of the Channel Islands, and shall apply to those Islands and to the Isle of Man as if they were parts of the United Kingdom

53 & 54 Vict c 37

(3) This Act shall apply to a place in which Her Majesty exercises jurisdiction under the Foreign Jurisdiction Act, 1890, as if that place were a colony

Regimental Debts (Deposit of Wills) (Scotland) Act, 1919.

[9 & 10 Geo 5, c 89]

An Act to make provision with regard to wills deposited under section twenty-one of the Regimental Debts Act, 1893, with the Commissary Clerk of the County of Edinburgh, and required for the purpose of confirmation as executor or of completing a title to heritable estate in Scotland [23rd December, 1919]

56 & 57 Vict c 5

1.—(1) Where the will of any person has been or shall hereafter be deposited, under section twenty-one of the Regimental Debts Act, 1893, in the office of the Commissary Clerk of the Commissary Court of the county of Edinburgh, and an application for delivery of such will is presented to the Commissary Clerk either by a sheriff clerk stating that the same is required for the purpose of the confirmation of an executor of such person, or by a law-agent (within the meaning of the Law Agents (Scotland)

36 & 37 Vict c 63

Act, 1873), who shall send with his application a declaration signed by himself that the will is required on behalf of a client therein named, and designed for the purpose of completing a title to heritable estate in Scotland, the Commissary Clerk shall, notwithstanding anything contained in the said section, deliver the said will to such sheriff clerk or to such law-agent, as the case may be, on receiving a receipt therefor from such sheriff clerk or law-agent, which receipt shall be preserved and dealt with by the Commissary Clerk in like manner as a will deposited in pursuance of the said section

(2) The power of the Court of Session under subsection (4) of the said section to make rules or orders and to fix fees, shall include power to make rules or orders and to fix fees with regard to the delivery of wills by the Commissary Clerk and to the receipts granted therefor in pursuance of the foregoing subsection

Royal Warrant—Regulations under the Regimental Debts Act, 1893.

VICTORIA R I

WHEREAS by Our Warrant of 22nd April, 1881, We were pleased to make the Regulations thereunto annexed, being regulations under the Regimental Debts Act, 1863, and Whereas by the Regimental Debts Act, 1893, which will come into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed, and Whereas We deem it expedient to make Regulations under the Regimental Debts Act, 1893, to take effect as from the 1st October, 1893, in lieu of the Regulations annexed to Our said Warrant of the 22nd April, 1881,

OUR WILL AND PLEASURE IS that our said Warrant of 22nd April, 1881, and the Regulations thereunto annexed, shall be and are hereby cancelled as from the 1st October, 1893, and this Our Warrant and Regulations which shall be administered, construed, and interpreted by Our Secretary of State for War, and Our Secretary of State in Council of India, as the case may require, shall, on and after the 1st October, 1893, subject to and in conjunction with the Regimental Debts Act, 1893, be the sole outstanding authority on the matters therein treated of,

PROVIDED ALWAYS that where and so far as the Regimental Debts Act, 1893, the Army Act, or this Our Warrant and the Regulations thereunto annexed do not particularly prescribe the manner in which any sum of money is to be disposed of or invested, then and in every such case, until by further Warrant under Our Royal Sign Manual we otherwise direct, the same shall be disposed of or invested as the same would have been disposed of or invested if the Acts above quoted had not been passed

Given at Our Court at Balmoral, this 30th day of August, 1893, in the 57th year of Our Reign

By Her Majesty's Command,

H CAMPBELL-BANNERMAN

REGULATIONS

(Section 1 of the Act)

1. The committee of adjustment will consist of three officers. When practicable, the president should not be below the rank of captain, or, if the deceased was an officer, below that of major

2. The committee will be appointed by the following officers —

If the deceased was serving with his unit, by the commanding officer

If the death occurred at sea, by the officer commanding the troops on board ship

In all other cases, except as provided in paragraph 5 (*b*) by the officer in immediate command.

3. If the death occurs at sea, and a committee cannot be assembled on board 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 paragraphs 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 the United Kingdom 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 the United Kingdom 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

5A Where the deceased was an officer in receipt of regimental or other pay issued in advance, the committee of adjustment will ascertain from the agent or paymaster who issued the pay whether any sum is due to the public in respect of any issue beyond the date of the officer's death, and will, before paying any private bills or handing over any sum to the next of kin or legal representative, provide for the refund of any such over-issue of pay out of the assets in the hands of the committee

6 The committee of adjustment will in all cases, except as provided in paragraph 8, as soon as practicable after the death, make an inventory of the property, and an account of the debts and credits of the deceased

7 The inventory and account will be prepared in duplicate, on the forms supplied, and both the original and the duplicate will be certified by the committee of adjustment

The original will be dealt with as hereafter directed in these regulations

The duplicate will be disposed of as follows —

(*a*) Where the deceased, not having been at the time of his death a member of the Indian Services, has died elsewhere than in India, it will be kept with the regimental or other proper records

(*b*) Where the deceased was a member of the Indian Services at the time of his death or has died in India, it will, if he was an officer, be sent to the Secretary to the Government of India in the Military Department, and if he was a non-commissioned officer or man of His Majesty's British Forces, it will be kept with the regimental records, unless a surplus is transferred to the Administrator-General of the Presidency, or Province, under Section 26 (1) of the Act, in which case it will be sent to him It will also accompany the remittance of a surplus under Section 26 (2) of the Act.

8. Where payment of the preferential charges is secured under Section 5 of the Act, the committee of adjustment may abstain from securing and making an inventory of the effects, if so requested by the person paying or securing payment of the preferential charges

9 The effects secured will be kept in a place of security until duly sold or otherwise disposed of

10. The expression " regulation area" means the station, colony, or command, or such other area as may, in case of doubt, be determined by the Secretary of State

(Section 2 of the Act, § (1))

11. The actual and necessary expenses of the funeral, in the United Kingdom or the colonies, of a warrant officer, non-commissioned officer, or man, will be borne by the public to such extent as may be provided for in the allowance regulations

(Section 5 of the Act)

12. The expression " any person ' means the representative of the deceased, the widow (if any), or one of the next of kin

13. Where the committee of adjustment withdraw from interference in relation to property of the deceased in consequence of the representative of the deceased, or his widow, or one of his next of kin, paying in full the preferential charges, the committee will forthwith forward, together with the inventory (if made) and account, a report of the facts and circumstances as follows —

Where the deceased, not having been at the time of his death a non-commissioned officer or man of His Majesty's British Forces, has died in India or was a member of the Indian Services, to the Secretary to the Government of India in the Military Department

In other cases to the Secretary of the War Office

(Section 6 of the Act, § (1), (2), (3))

14. A committee of adjustment assembled out of the United Kingdom may, if it thinks fit, postpone any sale of the effects until such time as the next of kin of the deceased have had an opportunity of notifying their wishes regarding the sale, or the withholding from sale of any portion of the effects

15. The effects to be sold will be disposed of in the most advantageous manner either by private sale or by fair and open auction Such auction will be held in the presence of a member of the committee of adjustment

16. Such of the effects as the committee of adjustment do not sell by auction may be sent by them to the representative or next of kin of the deceased , but where it appears desirable to do so, the committee may annex any securities, share certificates, life assurance or other policies, bank deposit receipts or other documents of value to the original inventory and account for transmission to the War Office or India Office, as the case may be

17. The practice of employing a non-commissioned officer in selling by auction such of the effects of a deceased officer or soldier

as are not otherwise disposed of, will be adopted only in cases in which it appears to be most advantageous for the estate of the deceased When much trouble and responsibility are thrown upon the non-commissioned officer by his being so employed, a commission, payable out of the effects, at a rate varying from two to five per cent on the amount of the produce of the sale, according to the greater or less degree of trouble and responsibility thereby caused, may be paid to him, and charged in the statement of the accounts of the deceased, the man's receipt for the amount being annexed thereto, together with the certificate of the commanding officer that his employment as auctioneer was most advantageous for the estate, and that the duties performed by him justify the remuneration charged

(Section 6 of the Act, § (4))

18. The committee of adjustment will discharge all debts that have accrued in the same station, colony, or command which are proved to their satisfaction, except where the death occurs in India, and the deceased is not a soldier of His Majesty's British forces, in which case their discharge is provided for in Section 26 of the Act and paragraph 54 of these regulations

(Section 6 of the Act, § (6))

19. Where the deceased was an officer, not having been at the time of his death a member of the Indian services, and has died elsewhere than in India, the committee of adjustment assembled elsewhere than in India will lodge the surplus in the hands of the district paymaster for credit in his next account, taking a receipt for the amount This receipt, together with the inventory and the account of debts and credits, will be transmitted by the committee to the Secretary of the War Office, through the officer commanding at the station Any committee of adjustment assembled under paragraph 5 to deal with the affairs of the deceased, if any, in India, will lodge any surplus in the hands of the Controller of Military Accounts for remittance to the War Office, forwarding a report of the action taken and the inventory and account of debts and credits to the Secretary of the War Office as above

20. Where the deceased was a non-commissioned officer or man serving in His Majesty's British forces, and was in the pay of the Indian Government, the committee of adjustment will lodge the surplus in the hands of the officer paying the corps, who will credit the amount in the next casualty return Where the deceased was not in the pay of the Indian Government, the surplus will be credited in the pay list of the troop, squadron, battery, or company to which the deceased belonged

21. In cases where the deceased not having been at the time of his death a non-commissioned officer or man of His Majesty's British forces has died in India, or was at the time of his death a member of the Indian Services, the committee of adjustment will remit the surplus to the secretary to the Government of India in the Military Department

22. Whenever a committee of adjustment remit or lodge a

surplus they will send or lodge therewith the original inventory and account, except as provided in paragraph 19

23. In every case the officer present at the sale of effects will furnish a certified statement of the particulars thereof, which will be attached to the original inventory and account, and he will cause the amount produced by such sale to be carried to the credit of the account

24. In cases in which paragraph 20 applies, the paymaster or other officer paying the corps will ascertain that all the articles reported in the inventory furnished to him as forthcoming are accounted for in the particulars of the sale, and will annex the inventory and account, and the particulars of the sale, to the current account or casualty return rendered by him, and will state therein the balance, debtor or creditor In cases in which paragraph 21 applies, the military secretary will have the inventory and account, and the statement of the particulars of the sale, compared and examined

25. Where a regiment of His Majesty's British forces is stationed in India, monthly casualty returns, made up according to the printed form, will be transmitted to the Secretary of State for War through the controller of military accounts in the Presidency, and sums therein mentioned will be stated in sterling money

With respect to His Majesty's Indian forces, similar returns will be transmitted to the Secretary of State in Council of India

26. Casualty returns from India will specify in each case whether the deceased was known to be possessed of property of any description whatever besides that stated in the casualty return, but not actually realised when the return is made If any such other property is known, a statement of the particulars thereof, made out in duplicate, will be forwarded with the casualty return, and a memorandum will be annexed thereto of the steps that have been taken for recovering or realising the same under the Act If no such other property is known, a memorandum to that effect will be made on the casualty return

27. Where a deceased officer, warrant officer, non-commissioned officer, or man leaves a will, then, if representation is not taken out, the original will, and, if representation is taken out, a complete and authenticated copy of the will, will be sent, along with the inventory, account and other papers, by the committee of adjustment, and will be transmitted to the Secretary of State for War, or the Secretary of State in Council of India, as the case may require Where the original will is sent, a complete and authenticated copy of it will be first made under the direction of the committee of adjustment, and will be kept with the regimental or other proper records.

(Section 7 of the Act)

28. Payments to the next of kin, or legal representatives of deceased soldiers of His Majesty's British forces will be made in accordance with the directions on this point in the Financial Instructions As regards deceased officers, where representation is not taken out, the surplus will be disposed of as directed in

paragraph 19 If, however, the death occurs in India, or the deceased was at the time of his death a member of the Indian Services, the surplus will be remitted by the Secretary to the Government of India in the Military Department, as directed in paragraph 55

(Section 9 of the Act)

29.[1] In cases in which representation is not taken out, payment may be made to or for the benefit of each of the persons appearing to be beneficially entitled to the estate, or, where it appears desirable, payment of the whole or a portion or portions of the residue may be made to one or more of the persons beneficially entitled for their own benefit or for distribution between themselves and the other persons entitled to the amount so paid, or the whole or part of the residue may be invested as authorised by Section 9 of the Act for the persons beneficially entitled or any of them Payments may be made by crediting the payee's account, whether private, regimental or other, or by handing to the payee or posting to his last known address a cheque, draft, postal order, money order or other similar instrument

(Section 10 of the Act)

30. The notice under Section 10 of the Act will be published in the London Gazette as soon as may be convenient, and will, with such variations as circumstances require, specify the name, rank, and regiment of the deceased, and the amount of the residue

(Section 11 of the Act)

30A[2] The medals of an officer or soldier dying in the service whether issued before or after his death will be disposed of as follows —

(1) If there is a will the medals will be sent to the person who, in the opinion of the Secretary of State, is named in the will as being intended to receive them or any articles which would in the opinion of the Secretary of State include them, or as being a general or residuary legatee of the estate

(2) In default of and subject to any such testamentary disposition the medals will be sent to the next of kin, in the following order of relationship —widow, eldest surviving son, eldest surviving daughter, father, mother, eldest surviving brother, eldest surviving sister, eldest surviving half-brother, eldest surviving half-sister

(3) In the case of a universal or residuary bequest to more than one person either in common or jointly or where medals cannot be disposed of as in (1) or (2) above, they may be sent to any relative or other interested party, who, in the opinion of the Army Council, will preserve them with due care as a memorial of the deceased

1, New regulation dated 24th July, 1917.
2, New regulation dated 11th May, 1917.

30B [1] In the case of orders and decorations, other than medals, issued after the death of the officer or soldier, the same procedure will be followed as in the case of medals, as laid down in paragraph 30A

(Section 14 of the Act)

31 The committee of adjustment (in India) will deliver over the effects secured by them to the Administrator-General only in case they apprehend that considerable difficulty or delay may arise in or about the collection or realisation of the effects and credits of the deceased, 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 of the deceased, or in case there is some other peculiar circumstance connected with the property making it, in the judgment of the committee, expedient to take that course

32 Where the committee of adjustment deliver over effects to an Administrator-General, they will do so as soon as practicable after they have determined to take that course

33 Where the committee of adjustment deliver over effects to an Administrator-General, they will forthwith forward, together with the inventory and account, a report of the facts and circumstances, as follows --

Where the deceased was a non-commissioned officer or man of His Majesty's British forces, to the Secretary of the War Office, in other cases, to the Secretary to the Government of India in the Military Department

34. The Administrator-General will remit to the Secretary of State for India the balance of the estate as soon as possible after the discharge of all debts and liabilities, and after the payment to any persons resident in India of the share or shares to which they may be legally entitled He will further submit to the Government of India for transmission to the India Office, a half-yearly return of these estates and the manner in which they have been disposed of

(Section 22 of the Act)

35 In the case of an army paymaster, the committee of adjustment will, if possible, comprise a member of the Army Pay Department

The committee of adjustment are to forthwith remit the surplus to the Secretary of State for War, through the district account or casualty return (see paragraphs 19 and 20), and the residue will then be applied in discharge of any preferential claims that may remain unsettled, or of any claims in respect of public accounts for which the deceased was responsible Any portion of the residue then remaining will be paid or applied in accordance with Section 9 of the Act

(Section 23 of the Act)

36. In all cases of desertion, absence without leave for 21 days, and of a soldier being delivered up as an apprentice, or being

1 New regulation dated 30th May, 1918

convicted of felony by the civil power, the committee of adjustment will be composed in like manner as in the respective cases of death, and the foregoing regulations relative to the respective cases of death will be applied as far as the difference of the circumstances will admit

37. The kit of an apprentice will be disposed of as provided in the Clothing Regulations, and should he be in possession of any plain clothes when claimed by his master, such clothes will not be sold but returned to the man

38. In the case of the desertion of a soldier the effects (other than the free kit of necessaries) will be sold as soon as may be convenient after he has been declared a deserter, or been absent without leave for 21 days (but within three months from the date of desertion) His necessaries will be retained in store for six months as laid down in the Clothing Regulations for re-issue to him in the event of his rejoining After six months the articles will be available for issue to any rejoined deserter, the value of the necessaries so issued being credited to the non-effective account of the original owner If, however, the deserter should rejoin while any articles of his necessaries remain unsold, and if he should require such articles for his military purposes, the articles will be returned to him, and he will not be subject to forfeiture in respect thereof

39 The proceeds of the sale of the effects will be credited in a statement of the deserter's accounts (his " non-effective account "), exhibiting his assets and such of his liabilities as would, under the Act, be preferential charges against the estate Any sum deposited by the soldier in the regimental savings bank will also be credited in the non-effective account

40. The balance on the non-effective account shall be applied, so far as it will extend, for the purposes and in the order following, that is to say—

(*a*) In payment of any debts due to the public on account of articles of public property made away with, or otherwise lost on desertion, and of any other debts that may be due to the public

(*b*) In payment or satisfaction of such other debts or liabilities of or claims against the soldier, as the Secretary of State for War or the Secretary of State in Council of India shall think fit to allow, including herein claims by reason of any criminal or wrongful act of the soldier

41. Should any balance then remain the amount will be credited in the accounts of the Paymaster or other accountant in whose accounts the pay of the man to the date of desertion is charged

42. If the soldier shall rejoin or be recovered to the service within three years from the date of desertion, or, in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraph 40, may be applied in payment of any debts due on account of articles of necessaries issued to the soldier on his rejoining, or of any debts due on account of his re-equipment

43. If the soldier shall rejoin, or be recovered to the service

within one year from the date of desertion, or in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42 may be repaid to the soldier himself

44. Any balance remaining after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42, shall, at the expiration of three years from the date of desertion, be considered as forfeited, and will be disposed of as the Secretary of State for War or the Secretary of State in Council of India respectively may determine

45. Any articles of private property which may be in the possession of the deserter on his apprehension, or on his rejoining from desertion, shall be sold, and the proceeds, together with any money of which he may be similarly in possession, shall be applied in payment of the debt (if any) on his non-effective account, and any surplus shall be disposed of as provided in paragraphs 40, 42, and 43 If, however, the deserter be not retained in the service, but discharged, any plain clothes of which he may be in possession shall not be sold, but be utilised in accordance with the provisions of the clothing regulations

46 Should there be reason to believe that any property or money left behind by the soldier on his desertion, or subsequently found in his possession, has been obtained by theft or fraud, the Secretary of State shall be empowered, at his discretion, to restore such property, or to apply the amount realised by the sale thereof, or the amount of such money towards making good the loss caused by the theft or fraud

47 In the case of a soldier being delivered up as an apprentice, or convicted of felony by the civil power, the surplus remaining in the hands of the committee of adjustment, together with any balance of pay that may be due, will be applied in all respects in the same manner as mentioned in paragraphs 40, 42, and 43, except that no payment of the residue, under paragraph 43, shall be made to any soldier convicted of felony until he shall have undergone such punishment as he may have been sentenced to for the same

(Section 24 of the Act)

48. The manner in which it shall be ascertained that a person subject to military law is insane shall be by the finding of a Board of Officers of the Army Medical Service, or Indian Medical Service, jointly or severally, or by the finding of the Director-General of the Army Medical Service or the Director of Medical Services, India

49. In cases of insanity the committee of adjustment will be composed in like manner as in the respective cases of death

50. The foregoing regulations relative to the respective cases of death will be applied in a case of insanity, as far as the difference of the circumstances will admit, except that whenever possible the sale of effects will be deferred until, in the case of an officer, he is removed from the active list, and in the case of a soldier until he is discharged, and further that the committee of adjustment will forthwith remit or lodge the money remaining in their hands to or in the hands of the army paymaster, military secretary, or other officer or person to whom or in whose hands they are to remit or lodge the surplus in the respective cases of death, and he will forthwith transmit the same to the Secretary of State for War, or the Secretary of State in Council of India, as the case may require

51. The same will be then, with all convenient speed, applied for the benefit of the officer or soldier to whom it belongs, in such manner as the Secretary of State for War or the Secretary of State in Council of India (as the case may be) in his discretion thinks fit

(Section 26 of the Act, § (1))

52. As soon as possible after receiving the surplus from the committee of adjustment, the Secretary to the Government of India in the Military Department will cause the notice under Section 26 (1) of the Act to be published by advertisement in the Government Gazette of the Presidency in which the deceased was last quartered

53. The notice will be in the following form, with such variations as circumstances require —

The Regimental Debts Act, 1893, *Section* 26, § (1)

Notice is hereby given

First That information has been received by me of the deaths of the Officers, Warrant Officers, non-commissioned officers, and soldiers named and described in the subjoined table

Secondly That there have been received by me, as the surplus of their respective properties, the amount set opposite their respective names in the same table

Thirdly That all claims by creditors against the respective properties of the deceased are to be lodged with me within two calendar months from the date of this notice

(Signed) A B

Military Secretary.

Calcutta day of

THE TABLE BEFORE REFERRED TO.

Number	Christian name and surname in full of Officer, Warrant Officer, non commissioned officer, or soldier deceased	Branch of Service to which deceased belonged	No of regiment	Rank of deceased.	Place of death	Date of death	Amount of surplus	Whether deceased is known to have left a will or not	Other particulars respecting deceased and his property and remarks	Number
1										1
2										2
3										3
4										4

54 At the expiration of two months from the date of the first publication of the notice the military secretary will, in the following cases, proceed to discharge demands of such claimants as lodge claims with him —

(1) If the surplus does not exceed 1,000 rupees, and the claims lodged do not exceed in the whole 10 per cent on the amount of the surplus

(2) If the surplus exceeds 1,000 rupees, and the claims lodged do not exceed in the whole the sum of 100 rupees

(Section 26 of the Act, § (2))

55 In those cases in which, after the discharge of claims under paragraph 54 of these regulations, the military secretary does not dispose of the surplus locally under Section 7 of the Act, he will, as soon as possible after two months, and within six months after the first publication of the notice, remit the surplus as follows —

In the case of members of the Indian Services[1], to the Secretary of State in Council of India

In other cases to the Secretary of State for War

1 The term ' Indian Services " in these regulations comprises officers of His Majesty's Indian Army and His Majesty's Indian Medical Service and officers and warrant officers of departments under the Government of India and the Commander in Chief in India

Additional (Active Service) Regulations, dated 10th April, 1915 (as amended 12th May, 1919).

ROYAL WARRANT.

Regulations under the Regimental Debts Act, 1893

GEORGE R I

WHEREAS WE deem it expedient to make Regulations under the Regimental Debts Act, 1893, to meet the special circumstances of active service

OUR WILL AND PLEASURE IS that, notwithstanding anything contained in the Regulations made under the Warrant of Her late Majesty Queen Victoria, dated the 30th day of August, 1893, as amended by subsequent Warrants, the following Regulations shall have effect until Our further Will and Pleasure is made known —

1 In the case of active service the Commander-in-Chief of Our Forces in any area of operations may appoint a standing Committee of Adjustment at the Base or other convenient locality within the area of operations to deal with the local affairs of any or all persons dying in or through the campaign while subject to military law, in lieu of any Committee of Adjustment already provided by the Regulations

2 The operations of such a Committee may include any of the duties already imposed upon Committees of Adjustment by the Regulations or may be limited to—

(*a*) Securing the effects of the deceased in the said area ,
(*b*) Ascertaining the amount of the preferential charges on the property of the deceased ,
(*c*) Paying the preferential charges or local debts as far as practicable out of any cash belonging to the deceased's estate ,
(*d*) Transmitting any balance of cash to the Paymaster ,
(*e*) Transmitting any articles of personal property for custody to such place as the Secretary of State may approve or direct ,
(*f*) Rendering a report to the Secretary of State through the Paymaster showing what action has been taken by them and what preferential charges or debts known to them have been paid or left unpaid, with a view to payment being made or secured if necessary

The operations of the Committee may be still further limited if necessary

3 In such a case the Paymaster may pay out of any sums coming into his hands or under his control due to the deceased's estate any preferential charges or local debts left unpaid by the Committee, and shall remit or credit any balance remaining to or as directed by the Secretary of State for War, the Secretary of State for India in Council, the Secretary of State for the Colonies, or the Secretary to the Government of India in the Army Department, as the case may require or as may be directed, and shall

at the same time render a statement of the transactions which have taken place in the case and forward the report of the Committee of Adjustment

4 The power of appointing a standing Committee given by these Regulations shall not affect the power of appointing Committees of Adjustment in accordance with the former Regulations where thought fit

5 Any standing Committee appointed under these Regulations may at any time be dissolved by the Commander-in-Chief, and the nature of its operations may from time to time be altered or defined by him, or it may be removed to and act in the United Kingdom, or elsewhere outside the area of operations, as may be convenient, and in that case Our Army Council, Our Air Council, the Secretary of State for India in Council, the Secretary of State for the Colonies, or the Secretary to the Government of India in the Army Department, as the case may render convenient, or an officer deputed by any one of them, shall exercise the functions of appointment of additional or future members of such Standing Committee, or of alteration of definition of the nature of its operations, or of its dissolution, instead of the Commander-in-Chief by whom it was appointed

6 The former Regulations shall apply to any standing Committee of Adjustment appointed under these Regulations save in so far as may be inconsistent with these Regulations

7 Where within the area of operations any person subject to military law deserts or is found in the prescribed manner to be insane these Regulations shall apply in the same manner as if he had died in or through the campaign at the time of his desertion or insanity, as the case may be

Given at Our Court at St James's, this 10th day of April, 1915, in the 5th year of Our Reign

By His Majesty's Command,

KITCHENER

Royal Warrant—Soldiers' Effects Fund.

VICTORIA R & I

WHEREAS by our Warrants of the 12th June, 1884, and the 16th July, 1887, We are pleased to make regulations for carrying into effect the provisions of Section 18 of the Regimental Debts Act, 1863, respecting the undisposed of residues of the effects of persons dying on service while subject to military law ,

AND WHEREAS by the Regimental Debts Act, 1893, which comes into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed ,

AND WHEREAS We deem it expedient by this Our Warrant

to make regulations for carrying into effect the provisions of Section 10, § (2), of the Regimental Debts Act, 1893,

NOW, THEREFORE, OUR WILL AND PLEASURE IS, and We do by this Our Warrant direct, as follows —

1 Our Warrants of the 12th June, 1884, and the 16th July, 1887, shall be and the same are hereby cancelled as from the 1st October, 1893

2 All such undisposed of and unappropriated residues, mentioned in Section 10, § (2), of the Regimental Debts Act, 1893, as are now in the hands of Our Secretary of State for War, and are applicable as mentioned in that subsection, together with any income or accumulations of income accrued therefrom, shall forthwith, and all such undisposed of and unappropriated residues, as shall, from time to time, hereafter be in the hands of Our Secretary of State for War for the time being, together with any income and accumulations of income accrued therefrom, shall, from time to time, until We shall by Our Warrant direct to the contrary, be paid over and transferred unto the Official Trustees for the time being of the Patriotic Fund, and We do hereby order and direct the payment over and transfer of the said residues and income and accumulations of income accordingly

3. All residues and income and accumulations of income so to be paid over or transferred as aforesaid from time to time, shall form one fund to be called the "Soldiers' Effects Fund," to be under the management and control of the Executive Committee for the time being of Our Commissioners for the time being of the said Patriotic Fund, but subject to and under such orders and regulations as may from time to time be made by Our said Commissioners or any three or more of them, and shall be applied in payment of such compassionate, annual, or other allowances, to the widows and children or other dependent relatives of soldiers dying on service, or within six months after discharge, and generally in such manner for the benefit of such widows and children or other dependent relatives of soldiers dying as aforesaid, as the said Executive Committee, or any two or more of them, shall, from time to time, think fit, preferential consideration being given to the widows and children of soldiers on the married establishment, who—

(*a*) Were killed in action, or died of wounds received in action, or from illness which can be directly traced to fatigue, privation, or exposure incident to active operations in the field, within 12 months of sustaining such wound or contracting such illness,

(*b*) Died from an injury directly traceable to military duty within 12 months of sustaining such injury,

(*c*) Died from illness directly traceable to fatigue, privation, or exposure in the performance of military duty

4. The widows and children of Mobilised Army Reserve men dying as aforesaid shall be considered as on the married establishment

5. The said "Soldiers' Effects Fund" shall be held by the Official Trustees for the time being of the said Patriotic Fund,

on behalf of Our said Commissioners for the time being as having the management thereof Our said Commissioners shall be at liberty to invest the said "Soldiers' Effects Fund" upon such investments as they or any three or more of them shall from time to time think fit, and shall keep separate accounts of the said Fund.

6. This Warrant shall come into operation on the 1st October, 1893

Given at Our Court at Osborne, this 22nd day of August, 1893, in the 57th Year of Our Reign

By Her Majesty's Command,

H CAMPBELL-BANNERMAN

The Friendly Societies Act, 1896.

[59 & 60 VICT , c 25]

Extract from

An Act to consolidate the Law relating to Friendly and other Societies

[7th August, 1896]

Militiamen and volunteers

43 —(1) A person shall not, by reason of his enrolment or service as a naval coast volunteer, Royal Naval volunteer, naval artillery volunteer, or in any corps of [1] volunteers whatsoever, lose or forfeit any interest in a friendly society or branch whether registered or unregistered which he possesses at the time of his being so enrolled or serving, or be fined for absence from or non-attendance at any meeting of the society or branch, if his absence or non-attendance is occasioned by the discharge of his military or naval duty as certified by his commanding officer, any rules of the society or branch to the contrary notwithstanding

Official Secrets Act, 1911.

[1 & 2 GEO 5, c 28]

With specific amendments enacted by the Act of 1920, [10 & 11 GEO 5, c 75] see p 900

An Act to re-enact the Official Secrets Act, 1889, *with amendments*

[22nd August, 1911]

Penalties for spying.

1.—(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 neighbourhood of, or enters any prohibited place within the meaning of this Act, or

(*b*) makes any sketch, plan, model, or note which is calculated

1 This is applied to the Territorial Army by the T R F, Act, 1907, and Order in Council, dated March 19th, 1908

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 word, 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 guilty of felony

(2) On a prosecution under this section, 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 within the meaning of this Act, or anything in such a place or any secret official code word or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved[1]

Wrongful communication, &c., of information

2.—(1) If any person having in his possession or control any secret official code word or pass word, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or 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 His Majesty 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 His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,—

(*a*) communicates the code word, pass word, sketch, plan, model, article, note, document, or any information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it, or

(*aa*) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State,

(*b*) 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 fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof,

1. See also s 1 (3) of the Act of 1920 (10 & 11 Geo V, c, 75)

or (c) 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,

that person shall be guilty of a misdemeanour

(1A) 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, that person shall be guilty of a misdemeanour

(2) If any person receives any secret official code word, or pass word, or 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 word, pass word, sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document, or information was contrary to his desire

(3) [This subsection is repealed by the Act of 1920 (10 & 11 Geo V, c. 75, s. 11 (2) sched 2). See also s. 8 of that Act]

Definition of prohibited place.

3. For the purposes of this Act, the expression "prohibited place" means—

(*a*) Any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, minefield, camp, ship, or aircraft belonging to or occupied by or on behalf of His Majesty, or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of His Majesty 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 His Majesty 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, His Majesty, or otherwise on behalf of His Majesty, and

(*c*) any place belonging to or used for the purposes of His Majesty which is for the time being declared by order of a Secretary of State to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and

(*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 His Majesty, which is for the time being declared by order of a Secretary of State to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy

4 [This section is repealed by the Act of 1920 (10 & 11 Geo V , c 75, s 11 (2), sched 2) See also s 7 of that Act]

Person charged with felony under Act may be convicted of misdemeanour under Act

5 Any person charged with an offence which is a felony under this Act may, if the circumstances warrant such a finding, be found guilty of an offence which is a misdemeanour under this Act

Power to arrest

6 Any person who is found committing an offence under this Act, whether that offence is a felony or not, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained in the same manner as a person who is found committing a felony

Penalty for harbouring spies

7 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 this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully omits or refuses to disclose to a superintendent of police any information which it is in his power to give in relation to any such person he shall be guilty of a misdemeanour

Restriction on prosecution

8. A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General

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 the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained

Search warrants,

9.—(1) If a justice of the peace 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 constable named therein 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 on any such person, and with regard to or in connexion 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 superintendent of police that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section

Extent of Act and place of trial of offence

10 —(1) This Act shall apply to all acts which are offences under this Act when committed in any part of His Majesty's dominions, or when committed by British officers or subjects elsewhere

(2) An offence under this Act, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was committed, or in the High Court in England or the Central Criminal Court, and the Criminal Jurisdiction Act, 1802, shall apply in like manner as if the offence were mentioned in that Act, and the Central Criminal Court as well as the High Court possessed the jurisdiction given by that Act to the Court of King's Bench

42 Geo 3, c. 85

(3) An offence under this Act shall not be tried by any court of general or quarter sessions, nor by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law

(4) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act

50 & 51 Vict c 20

Saving for laws of British possessions

11 If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act

Provided that the suspension of this Act, or of any part thereof, in any British possession shall not extend to the holder of an office under His Majesty who is not appointed to that office by the Government of that possession

Interpretation

12 In this Act, unless the context otherwise requires,—

Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom or of any British possessions, whether the place is or is not actually vested in His Majesty,

The expression "Attorney-General" means the Attorney or Solicitor-General for England, and as respects Scotland, means the Lord Advocate, and as respects Ireland, means the Attorney or Solicitor-General for Ireland, and, if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney-General, or exercises the like functions as the Attorney General in England,

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 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,

The expression "document" includes part of a document,

The expression "model" includes design, pattern, and specimen,

The expression "sketch" includes any photograph or other mode of representing any place or thing,

The expression "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,

The expression "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 purpose of this Act conferred by a Secretary of State,

The expression "office under His Majesty" includes any office or employment in or under any department of the Government of the United Kingdom, or of any British possession,

The expression "offence under this Act" includes any act, omission, or other thing which is punishable under this Act

Official Secrets Act, 1920.

[10 & 11 GEO 5, c 75]

An Act to amend the Official Secrets Act, 1911

[23rd December, 1920]

Unauthorised use of uniforms, falsification of reports, forgery, personation, and false documents

1 & 2 Geo 5 c 28

1. If any person for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, within the meaning of the Official Secrets Act, 1911 (hereinafter referred to as "the principal Act"), or for any other purpose prejudicial to the safety or interests of the State within the meaning of the said Act—

(*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 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 His Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word 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 Government Department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by any Government Department, or by any diplomatic, naval, military, or air-force authority appointed by or acting under the authority of His Majesty, 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 uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of a misdemeanour

(2) If any person—

(*a*) retains for any purpose prejudicial to the safety or interests of the State 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 fails to comply with any directions issued by any Government Department 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 word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word 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, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable, 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 a misdemeanour

(3) In the case of any prosecution under this section involving the proof of a purpose prejudicial to the safety or interests of the State, subsection (2) of section one of the principal Act shall apply in like manner as it applies to prosecutions under that section

Communications with foreign agents to be evidence of commission of certain offences

2 —(1) In any proceedings against a person for an offence under section one of the principal Act, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without the United Kingdom, shall be evidence 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 shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if—

(i) He has, either within or without the United Kingdom, visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) Either, within or without the United Kingdom, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person

(*b*) The expression "foreign agent" includes any person who is or has been or is reasonably suspected 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 the United Kingdom, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without the United Kingdom, committed, or attempted to commit, such an act in the interests of a foreign power

(*c*) Any address, whether within or without the United Kingdom, reasonably suspected 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, shall be deemed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent

Interfering with officers of the police or members of His Majesty's forces.

3 No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, the chief officer or a superintendent or other officer of police, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of a misdemeanour

Power to require the production of telegrams

4 —(1) Where it appears to a Secretary of State that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy,

used for the sending or receipt of telegrams to or from any pl out of the United Kingdom, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the United Kingdom by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid refuses or neglects to do so shall be guilty of an offence under this Act and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and fine

(3) In this section the expression "telegram" shall have the same meaning as in the Telegraph Act, 1869, and the expression "wireless telegraphy" shall have the same meaning as in the Wireless Telegraphy Act, 1904 32 & 33 Vict c 73 4 Edw 7 c 24

Registration and regulation of persons carrying on the business of receiving postal packets

5 —(1) Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended shall as soon as may be send to the chief officer of police for the district for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the chief officer of police shall keep a register of the names and addresses of such persons, and shall, if required by any person who sends such a notice, furnish him on payment of a fee of one shilling with a certificate of registration, and every person so registered shall from time to time furnish to the chief officer of police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register

(2) Every person who carries on such a business as aforesaid shall cause to be entered in a book kept for the purpose the following particulars—

(*a*) the name and address of every person for whom any postal packet is received, or who has requested that postal packets received may be delivered or forwarded to him,

(*b*) any instructions that may have been received as to the delivery or forwarding of postal packets,

(*c*) in the case of every postal packet received, the place from which the postal packet comes, and the date of posting (as shown by the post-mark) and the date of receipt, and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet,

(*d*) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered,

(*e*) in the case of every postal packet forwarded, the name and address to which and the date on which it is forwarded.

and shall not deliver a letter to any person until that person has signed a receipt for the same in such book as aforesaid, nor, if that person is not the person to whom the postal packet is addressed, unless there is left with him instructions signed by the last-mentioned person as to the delivery thereof, and shall not forward any postal packet to another address unless there is left with him written instructions to that effect signed by the addressee

(3) The books so kept and all postal packets received by a person carrying on any such business, and any instruction as to the delivery or forwarding of postal packets received by any such person, shall be kept at all reasonable times open to inspection by any police constable

(4) If any person contravenes or fails to comply with any of the provisions of this section, or furnishes any false information or makes any false entry, he shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding ten pounds, or to both such imprisonment and fine

(5) Nothing in this section shall apply to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in such newspaper or periodical

(6) Nothing in this section shall be construed as rendering legal anything which would be in contravention of the exclusive privilege of the Postmaster-General under the Post Office Acts, 1908 to 1920, or the Telegraph Acts, 1863 to 1920

Duty of giving information as to commission of offences

6. It shall be the duty of every person to give on demand to a chief officer of police, or to a superintendent or other officer of police not below the rank of inspector appointed by a chief officer for the purpose, or to any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence under the principal Act or this Act, 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, and, if any person fails to give any such information or to attend as aforesaid, he shall be guilty of a misdemeanour

Attempts, incitements, &c

7. Any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence under the principal Act or this Act, shall be guilty of a felony or a misdemeanour or a summary offence according as the offence in question is a felony, a misdemeanour or a summary offence, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence

Provisions as to trial and punishment of offences

8.—(1) Any person who is guilty of a felony under the principal Act or this Act shall be liable to penal servitude for a term of not less than three years and not exceeding fourteen years

(2) Any person who is guilty of a misdemeanour under the principal Act or this Act shall be liable on conviction on indictment

to imprisonment, with or without hard labour, for a term not exceeding two years, or, on conviction under the Summary Jurisdiction Acts, to imprisonment, with or without hard labour, for a term not exceeding three months or to a fine not exceeding fifty pounds, or both such imprisonment and fine

Provided that no misdemeanour under the principal Act or this Act shall be dealt with summarily except with the consent of the Attorney-General

(3) For the purposes of the trial of a person for an offence under the principal Act or this Act, the offence shall be deemed to have been committed either at the place in which the same actually was committed or at any place in the United Kingdom in which the offender may be found

(4) 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 the principal Act or this Act or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under the principal Act or 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 national safety, 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

(5) Where the person guilty of an offence under the principal Act or this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent

9 [The amendments effected by this section are included in the Act of 1911, s 2 (1) (*aa*), s 2 (1A) and s 12 ("munitions of war")]

10. [This section specified minor amendments to the Act of 1911, which have been included therein]

Short title, construction and repeal

11.—(1) This Act may be cited as the Official Secrets Act, 1920, and shall be construed as one with the principal Act, and the principal Act and this Act may be cited together as the Official Secrets Acts, 1911 and 1920

Provided that—

(*a*) this Act shall not apply to any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia (which for this purpose shall be deemed to include Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, Newfoundland, and India, and

(*b*) nothing in the principal Act shall be construed as preventing an offence under this Act which is to be tried summarily being tried in Scotland by the sheriff.

* * * * *

(2) [Repealed.]

(3) For the purposes of this Act, the expression "chief officer of police"—

(*a*) with respect to any place in England other than the city of London, has the meaning assigned to it by the Police Act, 1890, 53 & 54 Vict c 45

(*b*) with respect to the city of London, means the Commissioner of the City Police,

(*c*) with respect to Scotland, has the meaning assigned to it by the Police (Scotland) Act, 1890, and 53 & 54 Vict c 67

(*d*) with respect to Ireland, means, in the police district of Dublin metropolis, either of the Commissioners of Police for that district, and elsewhere the district inspector of the Royal Irish Constabulary

Emergency Powers Act, 1920.

[10 & 11 Geo 5, c 55]

An Act to make exceptional provision for the Protection of the Community in cases of Emergency [29th October, 1920]

Issue of proclamations of emergency

1 —(1) If at any time it appears to His Majesty that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life, His Majesty may, by proclamation (hereinafter referred to as a proclamation of emergency), declare that a state of emergency exists

No such proclamation shall be in force for more than one month, without prejudice to the issue of another proclamation at or before the end of that period

(2) Where a proclamation of emergency has been made, the occasion thereof shall forthwith be communicated to Parliament, and, if Parliament is then separated by such adjournment or prorogation as will not expire within five days, a proclamation shall be issued for the meeting of Parliament within five days, and Parliament shall accordingly meet and sit upon the day appointed by that proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day

Emergency regulations

2 —(1) Where a proclamation of emergency has been made, and so long as the proclamation is in force, it shall be lawful for His Majesty in Council, by Order, to make regulations for securing the essentials of life to the community, and those regulations may confer or impose on a Secretary of State or other Government department, or any other persons in His Majesty's service or acting on His Majesty's behalf, such powers and duties as His Majesty may deem necessary for the preservation of the peace, for securing and regulating the supply and distribution of food, water, fuel, light, and other necessities, for maintaining the means of transit or

locomotion, and for any other purposes essential to the public safety and the life of the community, and may make such provisions incidental to the powers aforesaid as may appear to His Majesty to be required for making the exercise of those powers effective

Provided that nothing in this Act shall be construed to authorise the making of any regulations imposing any form of compulsory military service or industrial conscription

Provided also that no such regulation shall make it an offence for any person or persons to take part in a strike, or peacefully to persuade any other person or persons to take part in a strike

(2) Any regulations so made shall be laid before Parliament as soon as may be after they are made and shall not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for the continuance thereof

(3) The regulations may provide for the trial, by courts of summary jurisdiction, of persons guilty of offences against the regulations, so, however, that the maximum penalty which may be inflicted for any offence against any such regulations shall be imprisonment with or without hard labour for a term of three months, or a fine of one hundred pounds, or both such imprisonment and fine together with the forfeiture of any goods or money in respect of which the offence has been committed

Provided that no such regulations shall alter any existing procedure in criminal cases, or confer any right to punish by fine or imprisonment without trial

(4) The regulations so made shall have effect as if enacted in this Act, but may be added to, altered, or revoked by resolution of both Houses of Parliament or by regulations made in like manner and subject to the like provisions as the original regulations, and regulations made under this section shall not be deemed to be statutory rules within the meaning of section one of the Rules Publication Act, 1893 56 & 57 Vict c 66

(5) The expiry or revocation of any regulations so made shall not be deemed to have affected the previous operation thereof, or the validity of any action taken thereunder, or any penalty or punishment incurred in respect of any contravention or failure to comply therewith, or any proceeding or remedy in respect of any such punishment or penalty

3.—(1) This Act may be cited as the Emergency Powers Act, 1920 Short title and application

(2) This Act shall not apply to Ireland.

INDEX.

REFERENCES ARE TO PAGES.

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

A

Abandonment of garrison, &c . .. 426–7, 704–5

Abroad.
Actions for causes arising . 148–149, 162
Arrest of officer 31
Attestation of recruits 219, 514
Civilian witness, cannot be compelled to attend C -M in U K 540, 667
Confirmation of findings and sentences 63, 481, 536–7, 588, 589
Courts-martial, field general, rules as to 67 68, 476–7, 680–6
Mitigation, &c , of sentences passed 66, 485
Offences committed 12–14, 67, 68 162, 414, 476–7, 499, 567
Reservists to obtain permission to reside . 227, 512, 842, 843
Service (*q v*)
Trial, removal of accused for 45

Absence without leave.
Absentee, apprehension of 559–560, 569–571
,, assisting an, penalty for 558
,, custody of 543, 545, 559
,, form of order for removal in military custody 786
,, remand of, by civil court 559–560
,, surrender or arrest of, certificate regarding, as evidence .. 569–571
,, surrendered, power of police regarding 560
Company, &c , commanders' powers to deal with 35, 472
Conviction for, on charge of desertion or attempted desertion 20, 26, 58, 438, 441, 484, 566, 649
Court-martial, accused's right to demand, in certain cases 37, 472, 621
Court of inquiry, absence without leave for 21 days 441, 497, 837, 859
,, ,, declaration of, legal effect of . 497
,, ,, procedure and regulations .. 497–8, 688–9
Custody, absence ceases when taken into 441
Dates to be stated in particulars of charge 441, 701
"Day," what constitutes a . 548–9, 551
Descriptive return (*q v*)
Desertion and, distinction between .. . 19, 437
,, court cannot convict of, on charge of absence .. 441

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Absence without leave—*contd*
Drunkenness no excuse for 441
Duty not fulfilled by reason of 39, 549, 551
Escape from custody, after, charge for 447, 624
Evidence as to 441, 498
Forms of charges 707, 721, 735
Furlough, extension of, granted by justice, avoids 576
Inducing 558
Involuntary absence 441
Leave not effective until notified to applicant 441
Marines 586, 587
Offence of, what is, under Army Act 19, 440–2
Orders to rejoin, &c., non-receipt of, may not be excuse for 441
Pay, forfeiture of 37, 39, 40, 472, 546–9, 551
Period of, reckoning 497, 548–9, 551
Procuring, persuading, &c 558
Punishment by commanding officer 37, 39, 471, 547–9
,, ,, court-martial 441
Regimental Debts Act, modification in case of 878, 887–8
,, orders, notification in 39
Reserve, Army (*See* **Reserve Forces**)
School, from 440
Territorial Army (*q v*)
Ticket return lost, &c., of, by soldier on leave 441
Abstract of Evidence (*See* **Evidence**)
Academy, Royal Military 236
Accessory after the fact 108
Accessory before the fact 108

Accident
Criminal responsibility, in relation to 109–110
Evidence to disprove (*See* **Evidence**, intention)
Ex-gratia compensation for 157
Negligent driving by subordinate, through, liability of superior 156–157
Accomplice, confession by 83–84, 93–94
,, evidence of 83–84, 94 445
,, statement by 92, 94
Accounts, army, audit of 180, 185
Accusation, False, offences in relation to 27, 450, 710, 728

Accused
Account, in writing, of offence 34, 446–7, 467–8, 708
Acquittal (*q v*)
Address by, or on behalf of 54, 56, 60, 637, 643–6, 650, 659, 671, 675, 683, 751
Admission of facts by 90
Arraignment (*q v*)
Arrest (*q v*)
Caution of, before making statement 37, 87, 92, 93, 617–9
,, ,, during trial 658, 669
Character (*q v*)
Charge (*q v*)
Commanding officer of, cannot be member of D C M, or G C M 46, 477–8, 629
Conduct, general, of, evidence as to 77, 78, 89
Confession by 90–94, 97, 688
Confinement of 33, 34, 38, 616

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Accused—*contd*

Confirming officer's duty to 64, 65, 67
Conviction, previous 57, 61, 96 571–2, 649–650, 668
Counsel for 49, 51 56, 541, 672–4
Court-martial, adjournment of, application by 55, 642 666 686
,, appearance at after preliminary proceedings 51, 633
,, contempt of, by 452
,, district, right to elect 24, 33, 35 37, 40, 61, 155, 469 470, 472, 595 617, 621
,, judge-advocate, may not object to 52, 633, 635
,, members, right to list of 49, 626, 686
,, president or members, objection to 51, 52, 478–9, 633–4, 664, 682
,, proceedings, right to purchase copy of 67, 538–9
,, shorthand writers, interpreters, &c., objection to 52, 665
Cross examination of 56, 57, 94, 96–97, 626, 643–4, 650, 658, 668–9
,, ,, when not permitted 37 57 618 644–6, 668–9
,, ,, witnesses by 36 37, 55, 59 60 471, 616–9, 622, 642, 643, 650, 657, 666, 669, 670, 683
Custody of, at court-martial 51, 668
,, duty of commander of guard to receive and keep in 34, 467–8
,, until charge disposed of 33, 38
Death of, procedure 663
Death sentence (*See* **Death**)
Defence, address in (*See* Address *above*)
,, evidence in (*See* **Evidence**)
,, latitude allowed 57, 483, 644, 657–8
,, officer assisting (*See* **Defence**, Defending Officer)
,, opportunity for preparing 48–49, 55, 71, 78, 625, 642, 644, 662, 672, 679, 683, 686
,, procedure 56–57, 59,60, 643–6, 657–9, 683, 749–751
,, restriction in, non-confirmation in case of 483
,, rights of 48, 49, 52, 53, 55, 56, 59, 60, 94, 102 471, 478–9, 616, 625, 642, 679, 683, 686
,, technicalities not to prejudice 656
Description of, in charge-sheet, mistake in 53, 623, 636–7
Escort at trial of . 51, 668
Evidence (*q v*)
,, Summary of, copy to be given to 48, 473, 621, 625, 679, 686
Examination and re-examination of 56, 643, 645, 668–670
Finding and sentence (*q v*)
Friend of, at court-martial 48, 49, 51, 97–98, 625, 672, 679
Habeas corpus proceedings for release of . 142–145
Identification of . . 570, 650
Illness of, procedure . . 480, 663
Improper conduct at trial . . 658
Injustice to, by conviction, procedure in case of 64, 65, 483
Innocence of, proved after promulgation, procedure . 65
Innocent until proved guilty . . . 58, 72, 647
Insanity at time of commission of offence 88, 105, 503, 542–3, 549, 657
,, ,, trial .. . 53, 542, 636, 657
Irons, when may be used **33**

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Accused—*contd*
Joint trial (*See* **Trial**)
Jointly charged, may claim separate trial 49, 53, 94, 626
Judge-Advocate, right to consult 625 678
Medical certificate regarding 480 547 549 766, 794
Notice of charge to be given to 38 48, 625–6 679, 686
Nullity of trial 64 564, 656, 662, 677
Objections by (*See* Court-martial *above* and **Charge**)
Officer (*q v*)
Petition against finding or sentence by 67, 135
Plea (*q v*)
Prejudice to, by opinion expressed during investigation by C O 36, 37
,, trial of 45, 55 58, 64, 648 656, 657, 679
Presence during investigation by C O 36, 37, 471, 616
,, ,, swearing of court 52 634
,, ,, trial 51, 661
,, ,, view of place 480, 661
President's, Judge-Advocate's, and Prosecutor's duty to 54, 55, 613–4, 657, 658, 678
Privilege of, as witness (*See* **Witness**)
Proof burden of (*See* **Evidence**)
Questions, refusal to answer 668
Re-arrest of 47
Recommendation to mercy to be communicated to 480, 654, 684
Record of, evidence as to, in regimental books, &c 59, 649–650, 671, 754–5
Release from arrest of, pending trial by district court-martial 33, 472
,, if charge not delivered 34, 468
,, if evidence does not justify a trial 34, 47, 467, 627
,, if plea to jurisdiction allowed 637
,, on acquittal 59, 481, 649, 684, 752
Remand for trial by court-martial 35, 38, 469, 472, 618–9
Removal for trial 45
Reputation of (*See* **Character**)
Re-trial of (*See* **Trial**, new)
Sentence (*See* **Finding and Sentence**)
Separate charge-sheets, trial on 48, 52, 659, 660–1, 682, 769
Separate trial, right to claim 49, 52, 53, 94, 626, 659-660, 682
Several, procedure at trial of 52, 61, 626, 664, 682, 768
Sober, must be, when dealt with 36
Statement against (*See* **Evidence**)
,, by, not on oath— (*See also* Confession *above*)
before commanding officer in defence 36, 37, 93, 616–9
before court-martial—
influence on decision of court 56, 645–6, 647
in mitigation of punishment on plea of guilty .. 54, 641
no cross-examination on .. 57, 644–6
right to make .. 56, 644–6
Summarily dealt with by C O, desire to be .. 37, 470
Trial (*q v*)
View of place, to be present at 480, 661
Violence of, during trial 668
Wife of (*See* **Wife**).
Witness (*q v*)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Acquittal
Alternative charges, on remainder of, when convicted of one . 483
Announcement of 59, 481, 649, 654, 683–4, 752
Civil court, by, bars re-trial by military law for same offence 40, 44, 45, 53, 470, 471, 473, 567, 639
,, ,, certificate of 88, 571, 859
Confirmation of, not required 59, 481, 483, 649, 683
Confirming officer, comments by 652–3
Convening officer, no reflection on 58
Court-martial, by, does not bar re-trial by civil court 567
,, or C O , by, bars re-trial by C M or C O for same offence 40, 44, 45, 53, 470–472, 564, 639
Finding of, is final . . 59, 483
Forms for 752
Honourable, finding of 59, 647–8
Procedure on 59, 647–9, 659, 683–4
Proceedings, authentication and transmission of 59, 67, 649
Recommendation to mercy may amount to 481
Release of accused on 59, 481, 649, 684, 752
Revision of, not allowed 59, 481, 483
Summary disposal under s 47, on, bars re-trial by C M (*and vice-versâ*) 41, 45, 53, 473, 639
Votes, if equal on finding 59, 480–1, 683
Where facts alleged not sufficiently proved 58, 644, 647–9
Acting rank (*See* **Rank**)
Actions
Abroad, cause arising . 148–149,162
Against soldiers in a court of law 156–157, 241, 554–5
Aliens, by .. 148–149
Civilians, by 136, 147–148, 156–157
Damages for transport accidents, for 156–157
,, ,, wrongful punishment, assault, &c , for 135–136, 147–160, 164, 574–5, 679
Government Departments, against 156–157
Libel, for 157–160
Negligence, for . 156–157
Protection of officers and courts against 164, 574–5
Public servants, against 156–157
Slander, for 157–160
Active List, meaning of 578
Active Service
Army and Air Force acting together on, disciplinary provisions 42, 596–7, 813–7
Commanding officer, summary punishments by, on 38, 466, 469, 471, 578, 787
Convict, military, commitment of, on 488–9, 544, 690
Courts-martial, field general, rules as to 67, 68, 476–7, 599, 680–6
,, finding and sentence, confirmation of, on 43, 63, 481–2, 684–5
,, may award field punishment on 30, 463, 466, 787
Declarations by Governors, &c , as to 599–600
Definition 599–600
Drunkenness on . 24, 469, 726
Judicial notice of 466
Offences, civil, cognisable by military courts 3, 103, 431, 460, 476–7

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Active Service—*contd*
Offences, field punishment for 30, 38, 463 466, 469, 471, 684, 787
,, increased punishment for 2, 15, 20, 428–430, 432, 434 437, 445, 715
,, on 15, 20, 38 65, 66 103 426–434, 437 445, 463, 466, 469, 471, 476–7, 548 551, 680 704–6
Pay, forfeiture of 38 463, 466, 469 471, 548, 551
Persons accompanying force on, liability to military law 578 579, 580 582
Prisons and detention barracks, establishment, &c., of, on 544–5
Reduction of W O s and N C O s 594–5
Regimental Debts Act, application of, to 892–3
Rioters, armed troops employed against considered to be on 2
Secretary of State, powers of, regarding 600
Ship, on board 599 600
Troops *en route* for seat of war considered to be on 600
Adjournment (*See* **Courts-Martial**)
Adjutant, charge-sheet usually prepared by 623
,, signing of orders by 576
Adjutant-General, transfer of powers of, to Army Council 183
Adjutant-General in India
Competent military authority under Army Act 690–1
Orders, warrants, &c., signifying and validity of 575–6
Administration, letters of (*See* **Regimental Debts**)
Admiralty
Definition 587
Marines, Royal, powers under Army Act regarding 44, 67, 238, 416, 584–8
Military prison cannot be established by 587
Power to issue warrants 44, 584-5, 588
,, make articles of war for Royal Marines 584
Powers in respect of courts-martial 44, 67, 584-5, 587-8
Powers with regard to discipline, when army, navy or air force acting together 42, 596–7, 809–810
Regulations, included in term "King's Regulations" 586
Admissions and Confessions (*See* **Evidence**)
Admonition, punishment of 35, 39, 470, 471, 823
Affiliation (*See* **Children,** maintenance of)
Affirmation 95, 504, 603, 604 635
Agents, foreign, communication with 896-7, 902
,, prohibition on officers or soldiers acting as 244
Agents, Diplomatic (*See* **Diplomatic Agents**)
Air Council
Creation of 184–5
Powers of, with regard to attachment of army and air force personnel 42, 588–590, 810–13
,, ,, ,, county joint associations 868
,, ,, ,, discipline when army and air force acting together 42, 596–7, 813–7
Aircraft, espionage from 296
,, explosives from 271, 280, 397–8
,, impressment of 208
,, signs visible to, on hospitals, &c 292
,, use of tracer, incendiary or explosive projectiles against 271

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Air Force (Royal).
Air Council, powers under Army Act regarding personnel of 588–590, 596–7
Army and, acting together, disciplinary relations 42, 596–7, 813–7
Attachment of officers and soldiers to 42 588–590, 810-13
,, ,, personnel of, to Army 42, 565, 578, 579 580, 588–590, 810–13
Confirmation of findings and sentences on personnel of 588, 589, 590
Constitution of 14, 185, 415
Courts-martial, military, on personnel of 588–590
Deserted from, false statement of having 450–1, 710
Discharge with disgrace from, enlistment after 28, 218 9, 454–5, 712
Enlistment, fraudulent, into 21, 439
,, improper, into Army from 439–440
Military law, when personnel of, is subject to 42 565, 578, 579, 580, 588–590, 596–7
Military police, powers in relation to personnel of 814
Mutiny and sedition in 16, 431–2
Numbers, provisions as to 415–6
Officers and N C Os of Army, power of command over personnel of 42, 597, 813–7
,, ,, ,, of, power of command over officers and soldiers 42 596–7, 814–7
,, ,, W O s, of summary punishment under Army Act 473–4
,, of, service on military courts-martial 175, 476, 477
Police, powers in relation to military forces 814–5
Prisoners and airmen undergoing detention, power of military prison, &c , staff over 816–7
Seniority of rank in, forfeiture of 589
Supplementary Reservists, enlistment into 229
Territorial Army members, enlistment into 235

Air Force Act
Air Force governed by 14
Army and Air Force (Annual) Act, brought into force and amended by 14, 415
Army officers and soldiers, when subject to 42, 589, 597, 813
Dates of commencement and expiration 416–7
Offences against, by air force personnel attached to Army 589 590
Provisions of, when Army and Air Force acting together 597, 813 4

Air Force (Constitution) Act, 1917 185, 415, 868

Air Force Law, when officers and soldiers are subject to 42, 589, 597, 813

Airman, definition of 604

Air Ministry (*See* **Air Council**)

Air, Naval and Military Forces acting together 42, 596-7, 809-810, 813–7

Air Officer, power as to declaration of active service 600
,, ,, power to suspend sentences 488

Alarm, creating 15 428, 704
,, false, occasioning 429–431, 705, 716

Alcoholism, offence of 459, 731

Alderman of Borough, officer of auxiliary forces, election, &c , as 592–3
,, ,, officer of regular forces disqualified 243, 557

Alderney (*See* **Channel Islands.**)

Alibi.
Evidence to disprove 77

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Alibi—*contd*
Questions, proper and improper .. 100
Time and place to be stated in particulars of charge 701

Aliens
Actions by 145, 148–149
Deportation of 274
Enlistment of 179, 216-17, 234, 514 5
Naturalized 217, 515
Rank, may not be promoted to commissioned 217, 515
,, may receive honorary 515
Aliens Restriction Acts 274
Allegiance, oath of 215, 504
,, seducing from 431–2, 706

Allied country, relations between civil population and troops serving in 414

Allowances
Assignment of 552
Personation in relation to 553
Supplementary Reserve 230
Supplementary Reserve of Officers 224
Territorial Army, officers of 232
Amends, Tender of 164, 574

Ammunition
Assisting enemy with 427, 704
Casting away of, in face of enemy . 427, 704
Conveyance of, on railways (*See* **Railways**)
Damage loss, &c (*See* **Equipments**)
Purchasing, &c, from soldiers, penalty .. 561–3

Animals
Dangerous, care of .. 112
Horses (*q v*)
Ill-treatment of 26, 448, 709
Impressment (*q v*)
Killing or maiming of 128, 133

Annual Act (*See* **Army and Air Force (Annual) Act**)
Applications or reports under Rules of Procedure to be in writing 697
Appointment to Corps, meaning of 505
(*See also* **Corps**)
Apprehension of Deserters and Absentees 559–560

Apprentices
Enlistment of, claims of masters as to 216, 515–6, 555, 606
Kit, disposal of 888
Regimental Debts Act, application in case of 878, 887–9
Archives, treatment of captured 338

Armed Forces.
Explanation of term . 275–6
Rights of members of . . 282

Armistices 310–17
Actions forbidden and permitted 314–5
Commencement 312–3
Dangers of indefinite terms 313
Denunciation 316–7
Duration 313–4

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Armistices—*contd*
Espionage during .. 315
Form for convention not prescribed 313
Forms of 398–9
General and partial armistices 311–2
Germany, 1918, text 402–411
Intercourse during 315–6
Nature and kinds of 310
Neutral zone to be fixed in terms of 315
Prisoners captured after conclusion of 315
Prolongation 314
Relations between inhabitants of occupied territory and belligerent forces during 316
Rules regarding 312
Specimens of 400–11
Suspensions of arms 310–11
,, ,, form of, for burial of dead 400
,, ,, specimen of 401–2
Violations of 316–7
Armour Acts 170

Arms
Assisting enemy with 15, 427, 704
Bearing of, when in close arrest 33
Casting away in face of enemy 427, 704, 715
Conveyance of, on railways (*See* **Railways.**)
Damage, loss, &c (*See* **Equipments**)
Not seizable by civil process 241, 555
Of prisoners of war 283–4
Purchasing, pawning, &c, penalty 561–3
Requisitions of depots of 335
Use of, in disturbances of peace (*See* **Firing** *and* **Force**)

Army
Administration and government, history of 6–14, 175–185
Air Force and, acting together, disciplinary relations 42, 596–7, 813–7
Attachment of Air Force personnel to (*See* **Attachment**)
Constitution of the Regular 220–1
Crown's powers over 6–14, 179
Definition 275
Finance, history of 179–180, 184
Navy and, acting together, disciplinary relations 42, 596–7, 809–810
Numbers of, provisions as to 175, 415, 842, 863
Parliamentary control over (*See* **Parliament.**)
Raising, government and payment of . 175–185
Raising of, early methods 165–173
Reserve (*See* **Reserve Forces.**)
Standing, history of . 173–185
,, illegal in peace without consent of Parliament 11, 174–5, 415
,, maintenance of 10, 11, 174–5
Territorial (*q v*)
Army Accounts. (*See* **Accounts.**)

Army Act
Administered according to rules of English civil courts **2, 3, 69, 70, 541, 665**
Adoption of, by the Dominions **239**

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Army Act—*contd*
Air Force personnel, when subject to 42, 565, 578, 579, 580, 588–590, 596–7
Amendments, date of effect of 14
,, made by means of Army and Air Force (Annual) Acts 14, 415
Application of certain sections to Reserve Forces 835–840
,, of certain sections to T A 853, 857, 858, 859
,, of military law, definitions, &c 577–606
,, of, to Irish Free State 605–6
,, of, to mandated territories 599
,, to persons subject to military law 417, 541
Arrest and trial 31–42, 467–484
Articles of war, power to make, under the 30, 496
Billeting and impressment of carriages 204, 518–535
Brought into force by Army and Air Force (Annual) Act 1, 14, 175, 415, 426
Construed in same manner as criminal law 2
Court-martial must be constituted under and act in accordance with 50, 136
Crimes and punishments 15–30, 60–62, 426–467
Date of amendments . 14
,, ,, commencement .. 416–7
,, ,, expiration 416–7
Definition of 1
Discipline 15–42, 426–500
Division into Parts 426
Duration of 1, 14, 175, 415, 426
Enlistment 500–518
Execution of sentence 485–495
General provisions (prisons, pay, &c) 535–577
Meaning of, in Rules of Procedure 696
Miscellaneous provisions as to discipline 496–500
Modifications, saving and special provisions with respect to—
Air Force personnel 42, 588–590
Auxiliary forces 592–3
Channel Islands 598–9
Indian forces 238, 590–1
Ireland, prisoners and prisons in 598
Isle of Man 598–9
Marines, Royal 238, 584–8
N C Os 594–5
Persons not belonging to H M 's forces 595–6
Ships 599
Warrant officers 593–4
Mutual relations of regular and auxiliary forces 583–4
Offences punishable under 15 -30, 426–460
Orders, rules and warrants under, copies of, as evidence 81, 88, 568
Origin .. 14
Protection of persons acting under 574–5
Punishments, scale of 28–30, 60, 462–7
Rules of Procedure may not be contrary to or inconsistent with the . 496–7, 697
Schedules 606–610
Sentence, offender undergoing, still subject to 489, 491, 565

[*References on pages* 418 *to* 610 *are to the Army Act and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Army and Air Force (Annual) Act 415–7
Air Force, provisions as to 415–6
Air Force Act brought into force by 14, 415
Army Act brought into force by 2, 11, 14, 175, 415, 426
Billeting, officers to pay for their food 417
,, prices chargeable by victualling-house keepers 204, 417
Marines, Royal, provisions as to 416
Parliamentary control over Army by 2, 14, 174–5, 179, 415
Powers of Commander-in-Chief and Adjutant-General under A A transferred to Army Council by Act of 1909 183
Preamble to 11, 175, 415–6
Title, change of 14, 415
Army Circulars, Orders, &c, copies of, as evidence 568

Army Council
Attestation and notice papers, form of, authorised by 503
Certificate of civil conviction, transmission of, to 526, 534, 567
Committing, releasing and removing authority 490, 493, 495
Competent military authority under A A 495, 498, 518
Complaint by officer to be made to 460–1
Constitution and duties of 183–4
County Association schemes to be made by 231, 846
Creation of 181, 183
History of 182–4
Orders, warrants, &c, signifying and validity of 575–6
Powers of Commander-in-Chief and Adjutant-General under A A transferred to 181, 183
Powers with regard to—
Attachment of Army and Air Force personnel 42, 588–90, 810–13
Billeting, routes for, payments, &c 518, 521, 534
Complaints by officers 460–1
Confessions of desertion or fraudulent enlistment 498–9
County Associations 846–9
County Joint Associations 868
Deserters and absentees 559–560
Discharge of men of T A 853
,, persons not duly attested or re-engaged 517–8
,, soldiers 513
Discipline, when Army, Navy or Air Force acting together 42, 596 7 809–810, 813–7
Dismissal of instructors, Army Educational Corps 595
Enlistment 177, 211, 215, 500–4, 514–5
Execution of sentence, directions as to 66, 495
Impressment of carriages, animals, &c 527–534, 610
Lunatic soldiers, disposal of 218, 512–3
Maintenance and affiliation orders 556–7
Marines, Royal, transfers to and from 238, 586
Pay, deductions from 498, 546, 548, 550, 551, 556–7
,, ,, ,, remission of 551
Punishment, commutation, mitigation or remission of 65, 485, 590
Recruiting 177, 514
Reduction of W Os and N C Os 594, 595
Re-engagement 211, 508, 509, 517
Seniority of rank, restoration of 463
Service, change of conditions of 211, 225, 501
,, continuance of and re-engagement N C Os 509
,, ,, ,, in imminent national emergency 510
,, extension of 211, 501

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Army Council—*contd*
Powers with regard to—*contd*
Service forfeited, restoration of 213, 463, 499, 502–3, 508, 566
,, prolongation of . 509
Stolen property, restitution of 499–500, 651
Suspension of sentences 488
Territorial Army, embodiment and disembodiment of 234–5, 856
,, ,, regulations for 232, 849–850
Report to, where delay in convening C M 627
Army Dental Corps 221
Army Discipline and Regulation Act, 1879 7, 14
Army Educational Corps 220
,, ,, ,, dismissal of instructors 594–5
,, ,, ,, punishment of instructors 594–5
Army Enlistment Acts 177
Army Extraordinaries . 180
Army List, admissibility of, as evidence 88, 568
Army Medical Corps, Royal 220, 228, 231
Army Orders, copies of, as evidence 568
Army Ordnance Corps, Royal 220, 228, 231
Army Pay Corps, Royal 221
Army Reserve (*See* **Reserve Forces**)
Army Service Act, 1847 177
Army Service Corps, Royal
Composition of 220, 228, 231
Drivers with medical units 300
Army (Transfers) Act, 1915 178
Army Veterinary Corps, Royal 220, 228, 231

Arraignment
Adjournment of court before 628
Charge, accused to be informed of, before 48 625, 636, 682
Charges, alternative, withdrawal of, before 52, 638
Charge-sheets, separate on 52, 659, 660, 682
Conducted by judge-advocate or president . 52, 636, 682
Field general court, in case of 682
Meaning of . 52, 636
Officer cannot be added to court after 52, 663
Separate arraignment in case of joint trial . 636
Time and method of 52, 636, 659, 660, 682
Array, Commissions of (*See* **Commissions of Array and of Musters**)

Arrest (*See also* **Custody.**)
Abroad 31
Absentees and deserters (*See* **Absence** *and* **Deserter**)
Authorities for ordering 31, 467
Breaking 26, 34, 447, 708, 726–7
Certificate of civil police as evidence of . 569–571
Charge report, absence of, may not invalidate .. 155, 468
Close, duties during 33, 34
,, meaning of 33
,, release from 33
,, when to be resorted to 33
Duties, performance of, when under 33, 34
Erroneous orders as to duty during 33
Evidence as to 569–571
Exercise during 31

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Arrest—*contd*
Guard detention room, confinement in 33
Habeas corpus proceedings for release from 144–145
Improper, actions for damages for 147
,, of witness, on civil process 539
Inferior officer may in some cases order superior in'o 32, 435, 467
Investigation should precede, in case of officer 31
Malicious 156
Military custody (*See* **Custody**)
,, ,, includes 31, 467
N C O 33
Obstruction of civil police 241, 458, 567, 713
Officer (*q v*)
Open, in case of minor offences 33
or close, in case of soldier 33
,, performance of duties when in 33
Order for, generally written, in case of officer 31
Pay, forfeiture of, during 39, 40, 547, 549
Peers and M Ps not exempt from 32
Person in possession of military stores, &c 561–3
Prison, civil, confinement in 33, 543, 784
Provost marshal, by 41, 499
Re-arrest on same charge 32, 47
Release from, order for 32, 47, 467–8, 487, 616
,, ,, pending trial 33, 472
Report of 32, 35, 446–7, 468
Restrictions during 31, 33
Retention in, until charge disposed of 33, 38
Rules as to 31–35 467–9, 616
Ship, H M's , on board 819
Soldier, private 33–35, 467–8
Unnecessary retention in 446–7, 467–8, 616, 708
Verbal order for, when given 31
Warrant officers 33
,, of, use of force in executing 111
,, without 559, 560, 562
Witnesses, privilege from 539

Arson.
Charge, form of 713
Definition and penalty 127–128, 130
Evidence of 76, 77
Letter threatening 128

Articles of War
Admiralty's power to make, for Royal Marines 584
Crown's present powers in respect of 30, 496
History of 6–8, 10–14, 150
Indian 590
Judicial notice of 30, 496
Superseded by Army Act 7, 14
Artillery, Royal 220, 228, 230
Asphyxiating Gases (*See* **Chemical Warfare**).
Assassination, not lawful act of war 280–1
Assault as legitimate means of warfare, rules as to 290–3

Assaults
Actions for damages for, against officers 136, 151
Aggravated, examples of 113

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Assaults—*contd*
Battery 113
Charge, form of 713, 733
Common, penalty for 113, 130
Indecent 113, 114, 132
Meaning and list of 113, 130
With intent to rob 122, 134

Assignment of Pay, &c 241, 552

Associations, County (T A)—(*See* **County Associations**)

Asylum, removal to (*See* **Lunacy**)

Attach, meaning of, when applied to soldiers 505

Attachment
Officers and airmen to Army 42, 565, 578, 579, 580, 588–590, 810–13
" petty officers of Navy to Army 42, 596–7, 809–810
" " soldiers to Air Force 42, 588–590, 810–13
" " " Navy 42, 596–7, 809–810
Regulations as to 588, 809–13
Reservists to regular or auxiliary forces 226, 834
Trial of persons after termination of 565, 590
Units cannot be "attached" 589

Attempts to commit Offences
Definition 108, 113, 115, 117
Desertion (*q v*)
Offence and penalty 28, 130, 459

Attestation on Enlistment.
Consuls, before 219, 514
Date of 504
Errors in, discharge owing to 215, 216, 517
Failure to appear before justice for 215 503–4
False answers on—
Age, regarding 456
Apprentices and indentured labourers enlisting 216, 515–6
Evidence of 216, 567–8, 570
Forms of charge 712, 729–730
Limit of time for proceeding before civil court 517
Punishment 219, 455–6, 503, 516, 837
Reserve Forces 837
Territorial Army 235, 859
False statement as to marital state 557
Fee to justice's clerk for 504
Invalidity in 215, 216, 517
Necessary part of enlistment 215
Notice paper, issue of, before 215, 503
Officers, before 215, 514, 587, 588, 837, 853
Paper—
Copy of, certified, evidence of enlistment 81, 88, 215, 439, 568, 570
" " recruit entitled to 504
Duplicate 215, 455, 456, 504
Errors in, amendment of 215, 504
Evidence of answers to questions .. 88, 215–16, 567–8, 570
Form of, authorised by Army Council 503
Justice of the peace, reading and signing by, of 503–4
Production at trial, when necessary 215, 455, 456, 567–8, 570
Proof of enlistment, duplicate or copy . 215, 439, 568, 570
Persons specially authorised to attest 215, 219, 514, 587, 588, 853

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Attestation on Enlistment—*contd*
Procedure on 215–16, 503–4, 514–16
Reserve Forces 837
Territorial Army 853
Audit, Board of 180
Audit of Military Accounts 180, 185
Australia, Commonwealth of
Forces of the, raising, &c , of 239
In relation to definition of "colony" in the Army Act 605
Authority (*See under* various kinds of)
Auxiliary Air Force and Air Force Reserve Act, 1924 202, 231, 868–9
Auxiliary Forces
Army Act, modification with respect to 592–3
Billeting 207 592
Channel Islands, in relation to 598
Command over, regulated by H M 194, 497
Commissions in, granted by Crown 194
Constitution of 230
Court-martial, composition of, on member of 46, 630
Definition of 602
Enlistment in 592–3
Impressment of carriages, &c 209, 532, 592
Lieutenants of counties, jurisdiction of, as to, re-vested in Crown 194
Military law, application of, to 578, 579, 581, 582, 583–4, 592
Municipal office, election of officers to 592–3
Permanent staff, military law applied to 579, 581, 582, 592
Personation of man in 127, 552–3
Railway, conveyance by 209, 828–830
Regular forces, enlistment in, stoppage from pay for compensation due to Auxiliary Forces 548
,, relation to, of 583–4
,, when treated as 583–4, 592
Service, false statement as to service in or discharge from 450–1, 552, 710
Sheriff, officer as 233, 592–3, 858
Ship, H M's , embarked on board, subject to Naval Discipline Act 598
Territorial Army (*q v*)
Volunteers (*q v*)

B.

Bacteriological methods, use of, in war 271, 280
Badges.
Good Conduct (*See* **Decoration.**)
Unauthorised wearing of 563
Bailee, stealing by 22, 119–120, 134, 724
Balloons, discharge of explosives from 271, 280, 397–8
Band
Property, injury to 26, 448–9, 709
,, stealing, &c , of 22, 444, 707
Banker's Book, entry in, as evidence 80
Banknotes.
Forgery of 125, 132
Possession of forged 126, 132

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Bankruptcy, deduction from officer's pay, &c , in case of 552

Banks.
In occupied territory 338
Military Savings (*See* **Savings Banks**)

Barrack Damages
Deductions from pay in respect of 547
Meaning of . 547–8

Barracks.
Breaking out of 18, 435–6, 706, 719
Building of 180, 195, 205
Confinement to 39, 471

Bastard. (*See* **Children**)

Battalion.
As a unit 221
Meaning of . 602

Battery, offence of 113

Bazeilles, shooting of inhabitants at 278

Belligerents
Intercourse between . 305–323
Loans to, by neutral persons and Powers 348

Beyond the Seas, definition of 603, 606

Bicycles
Impressment of 532
Of prisoners of war 284
Requisition of 335

Bigamy 128, 131

Bill of Rights 174, 204

Billeting
Accommodation, &c , to be provided 607
Acts prohibiting, suspended 204, 518
Army Council's power with regard to 518, 521, 534
Auxiliary forces 207, 592
Barracks, provision of 205
Channel Islands excluded from provisions as to 598
Civilians, of, Act of 1917 206
Compensation for damage caused by persons billeted 452–3, 524
Constables (*See* Police *below*)
Derivation of name 203
Emergency, in case of 206, 522–4
Exemptions from liability to billet 519–20
Foreign troops in U K 216, 217
Fraudulent claims in relation to 535, 711
Great War, during 206–7
History of 171, 203–207
Horses, special provisions regarding 607–8
Illegal, except as authorised by Army Act . . 171, 203, 204
Ill-treatment in relation to, compensation for 452–3, 534
Improper and unlawful 203–5, 452–3, 711
Ireland, in 205
Irish Free State excluded from provisions as to .. 518
Isle of Man excluded from provisions as to 598
Justices, provisions as to 205, 206, 522–3, 526, 608
Militia (old) . . . 195, 207
Northern Ireland, in . .. 524
Occupied enemy territory, in 334–5, 337

[References on pages 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Billeting—*contd*
Offences by constables 525
,, ,, officers and soldiers 452–3, 525, 534, 711
,, ,, victualling-house keepers 525
,, ,, women 524, 526
,, forms of charges for 711
Officer to pay for food 417
Payment for 452–3, 520, 521, 534
Police, interfering with, in regard to 452–3, 711
,, obligation to provide billets 205, 518, 522, 524, 608
,, performance of duties in absence of 205, 534
,, provisions as to 205, 206, 452–3, 518–524, 534, 592, 608
Prices chargeable by occupiers of public buildings, &c 523
,, ,, victualling-house keepers 204, 417, 520–1, 608
Private houses, in 204, 205, 206, 519
Public buildings, in 522–3
Regulations as to 452–3, 518–526, 534–5, 592, 607–8
Relief from, corruption in regard to 452–3, 525, 711
Requisitions, in case of emergency 206, 522–4
Right extends to officers, soldiers and horses 520
Routes, orders substituted for, in case of auxiliary forces 592
,, rules as to 205–7, 518–9, 522
Scotland, in 205
Territorial Army 206, 207, 524, 592
Unnecessary, demanding 452–3, 711
Unoccupied premises, in 524
"Victualling-house," meaning of 519
Victualling-houses, keepers of, complaints by 521, 534, 608
,, ,, ,, liability to provide billets, &c 204, 206, 518–20, 522, 607–8
,, ,, ,, list of 521
,, ,, ,, offences by 525
,, ,, ,, recovery of money due to 534, 608
,, ,, where accommodation insufficient 520, 608
Volunteers 592
Women, of 206, 520, 524

Birth
Certificate or register of, forgery of 125, 132
Death at causing 115
Registration abroad 245

Blockade 290

Boats, impressment of 207, 530–2

Bombardment 290–3
By naval forces 290
Exodus of non-combatants 291–2
Notice of 291
Sparing of public buildings and hospitals 292–3
Undefended localities 290

Bona fides, when no excuse for illegal act (and *see* **Malice**) 147

Books,
Conduct (*See* **Conduct Book.**)
Publication of, by officers and soldiers .. 244
Regimental. (*See* **Regimental Books**)

Booty 284, 339

Bounds, offence of being found out of . 440, 442, 707, 722

Bounty Certificates, as security for debt 562–3

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Bounties.
Army 176–7
Militia (old) 196, 197, 199
Supplementary Reserve 230
Boys, enlistment of 211, 213, 216, 501, 502, 505
Branch Detention Barracks (*See* **Detention**)
Brassard, red cross 304–5
Breaking and entering house (*See* **House**)
Breaking out of barracks. (*See* **Barracks**)

Bribery and Corruption
In respect of duty **459**
In respect of service **561, 713**
In respect of supplies **26, 447, 709**

Brigadiers
Complaints by soldiers, to (*See* **Complaints.**)
Summary disposal of officers and warrant officers by (*See* **Officers, summary disposal**)
British Forces, composition of 220–38
British Islands, meaning of 605

Buildings (*See also* **Property**)
Public—
Billeting in **522–3**
Definition of **523**
During bombardment **292–3**
Property in 338

Bullets.
Soft-nosed and explosive, use of 271, 280, 353–6
Tracer, incendiary or explosive, use of, against aircraft 271
Burden of proof (*See* Evidence)

Burglary
Definition, offence and punishment 122–123, 131
Form of charge 732
Use of force in preventing 112

Burial of dead
Form of suspension of arms for 400
Prisoners of war 290
War, in 305

C.

Cables, submarine, seizure of, in war 335
Cadets, gentlemen, not subject to military law 236
Cadets, O.T.C. (*See* **Officers Training Corps**)

Cadet units (Territorial)
Affiliation to T A or Regular Army units 237, 849
County associations, administration by 237, 848
Military law, not subject to 237
Object of 237
Regulations 237
Camp, breaking out of 18, 435–6, 706

Camp followers.
Cannot be tried by C O **578**
Exaction practised towards, punishment for **447**

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Camp followers—*contd*
Form of charge for 703, 717
Indian forces, in, application of Indian military law to 590
Military law, application of, to 2, 578, 582, 623
Prisoners of war, when treated as . 282

Canada, Dominion of
Forces of the, raising, &c , of 239
In relation to definition of "colony" in Army Act 605

Canteens
Exemption from billeting . 519
Licences for, provisions as to 245, 577

Capitulations 317–322
Breaches 321
Competence of commanders to accept and grant conditions of 318–9
Damage and destruction after capitulation 321
Denunciations and annulment 321–2
Form of 319
Handing over of forts, arms, &c , on 321
Honours of war . 320
Irregular stipulations 317–8
List of conventions for, worthy of study 321
Matters requiring mention in 320–1
Nature 317
Negotiations for surrender 319
Power to agree to . 317
Specimen, Port Arthur 411–2
Surrenders 319

Cards, cheating at 124, 131

Carnal knowledge 77, 113, 114, 115, 131

Carriages, impressment of (*See* **Impressment**)
,, meaning of . 208, 604
,, sale and purchase of, prohibition of . 532–3

Cartel ship 323

Cartels 289, 323

Cashiering.
Effect of sentence of . 465
Must precede sentence of penal servitude or imprisonment on officer 29, 463, 466, 756
Offences for which cashiering is maximum punishment 15, 34, 104, 429–430, 432, 434–6, 440–2, 445–7, 450–1, 453–4, 456–8
Officers punishable by 462
Scandalous conduct of officer punishable only by C -M by 21, 29, 442
Sentence of, commutation of 485
,, ,, confirmation of . . 63, 789, 791
,, ,, date of effect of 465, 565, 654

Caution of accused .. 37, 87, 92, 93, 617–9, 658, 669

Cavalry, composition of . . . 220, 230

Censorship
Correspondence in occupied territory .. 329
Letters, &c , of prisoners of war .. 289

Certificate
Arrest or surrender of officers or soldiers by civil police 569, 571
Birth or death, forgery of 125
Bounty, taking as security, or illegal possession of .. 562–3

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Certificate—*contd*
Civil court, in case of conviction or acquittal 88, 526, 534, 567, 571, 859
Character . 217, 512, 513
Deserters and absentees, arrest or surrender of 560, 569–571
Discharge 217, 226, 230, 513
,, illegal possession of 563
False statement in 449, 709
Identity, medical personnel in war 305
,, taking as security, or illegal possession of 562–3
Life, taking as security, or illegal possession of 562–3
Medical, production of false 459, 731
,, regarding accused 480, 547, 549, 794
President of court-martial, by, regarding offences by civilians or counsel 540, 541
Service, of 217, 225, 226, 512, 513
Certiorari, Writ of 140–142, 145–146
Challenge of Members of Court (*See* **Courts-Martial,** Objections)
Channel Islands.
Army Act, application of, to 598–9
,, ,, date of commencement and expiration in 416
Auxiliary forces, in relation to 598
Billeting illegal in 598
Colonies, when deemed, for certain purposes 598–9, 695
Court of summary jurisdiction, meaning of, as respects 604
Fines, recovery of, in 574
Impressment of carriages, &c , illegal in 598
Militia 240
Mutiny Act extended to 13
Not deemed as being "beyond the seas" 603, 606
Penal servitude, imprisonment, and detention sentences in 598–9
Prisons and detention barracks in 598–9, 695
Regimental Debts Act, application of, to 880
Reserve Forces Act, 1882, application of, to 839
Rules of Procedure, application of, to 697
Summary proceedings in 574, 604
United Kingdom, when treated as part of 598–9, 605, 697
Chaplains.
Courts-martial, service on 476
May accompany prisoners of war 290
Treatment of, in war 283
Chaplains' Department, Royal Army 221, 231
Character.
Address by defence on 60, 650
Bad, verbal evidence of, not admissible 60, 650
Certificate of, on discharge, &c 217, 512, 513
Clearing of, court-martial as a means of 48
Court of Inquiry, where affected 687
Cross-examination as to 60, 96, 101, 626, 650, 658, 668–9
Evidence as to—
Absent persons, protection of 70
Admissibility of 74, 75
After conviction 59, 60, 74, 649–650
At trial . 74, 75, 96, 640–6, 668–9
Effect of . 74
False statement as to, on enlistment ,, ,, ,, 219, 517

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Character—*contd*
Form for statement as to 754–5
Good, evidence as to 60, 74, 650
Witnesses as to 54, 56, 57, 59, 60, 74, 640–646, 649–650, 671
,, , of 96, 101, 650, 668–9, 674

Charge
COURT-MARTIAL, FOR TRIAL BY—
Accused, explanation to, of 48, 54, 625–6, 638, 682
may claim separate trial on each charge 52, 659–660, 682
may claim separate trial when charged jointly 49, 53, 626
notice to, of 38, 48, 625, 679, 686
objection by, to 53, 636, 686, 744
pleading by, to 52–54, 636–642, 682–3
"Active service" to be stated in charge, if appropriate 430, 466, 715
Alternative (*See also* **Offences**, cognate) 52, 442, 459, 483–4, 623–4, 638–641, 648–9
conviction on one only 144, 483, 641
conviction on, on revision, not permissible 483
finding on 57, 483, 639, 640–1, 648–9, 752
when to be framed 442, 459, 484, 699
withdrawal of, before arraignment 52, 638–9
Amendment of 47, 53, 636–7
Arraignment of accused on (*See* **Arraignment**)
Bad in law, non-confirmation in case of 483
Charge-sheets—
Accused, description of 53, 623, 636–7
,, to be given copy of 48, 625
All to be disposed of before sentence given 659, 660
Amendment of 53, 623, 636–7, 745
Commencement of, rules and form as to 623, 699, 702–3
Convening officer's duty regarding 48, 623, 627, 659, 660, 682
Court, description of, to be stated on 48
,, laying before 49, 636
F G C M , not necessary in case of 682
Form of 714
Judge-Advocate-General, when to be submitted to 38, 47, 442, 445, 623, 627
Memorandum as to signing, &c , of 764–5
President, to be sent to 49, 627–8, 636
Reserve Forces 623, 702, 734–5
Separate, conviction on one may be sufficient 48, 659, 660
, finding on first before arraignment on others 52, 659, 660
,, procedure in case of 48, 52, 659, 660–1, 682, 769
,, rules as to placing charges in 660
,, sentence in case of 60, 659, 660
Signing of 48, 623, 744, 764
Statement in, showing that accused elected trial 472, 765
,, showing that accused subject to military law 623, 699
Territorial Army 623, 702
Validity of, presumptions in support of 623
Contents of . 71, 622–4, 699–702
Convening officer responsible for correctness of 25 28, 47, 623, 627

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Charge—*contd*
COURT-MARTIAL, FOR TRIAL BY—*contd*
Dates, statement of, in particulars of . 437, 625, 649, 701
Defect in 51, 53, 632, 678
Dropping of, for minor offence 47
Explanation of, by prosecutor 55, 642
Field general court, framing of, in case of 682
Forms of, and note as to use 696, 699–735
Framing of 47, 622, 623, 699–702 764–5
Good and bad, examples of 624–5, 699–700
Improperly framed, or not explicit, adjournment of court 51, 53, 632
Invalid, mitigation of sentence where one of several charges 654–5
Joint trial of several accused on one 49, 53, 94, 626, 659
Meaning of term 623
Numbering of 623
Objection to 53, 636, 686, 744
Offence, one only to be stated in each 624 699
,, under Army Act must be disclosed by 47, 51, 53, 624, 632, 636, 637, 682
Officers (*q v*)
One sentence in respect of all 60, 651 659, 660
Particulars, statement of, in 624, 699–702
,, value of article stolen, damaged, &c , to be stated in 440, 445, 456, 550, 624–5, 701
Place, statement of, in 430, 701
Plea of guilty to some and not guilty to others 54, 640–2
Promulgation of 65, 654
Proof of 58 71–2, 74
Relevant to, what is matter 74–8, 658
Responsibility for, where under wrong section of Army Act 28, 458
Separate plea to each 636
Several, accused may claim separate trial on each 52, 659, 660, 682
,, findings to be arrived at in all cases before consideration of sentence . 54, 659, 660
,, particulars of charge, rules as to 624, 700–1
,, sentence in case of 60, 651, 659, 660
,, trial on different charge-sheets 48, 659, 660–1, 682
Sheet (*See* Charge-sheet *above*)
Specimens of 715–735
Statement of offence in, rules as to 71, 624, 682, 699–700
Substance of, must be proved 71, 72, 643, 649
Time, statement of, in 701
Validity of, inquiry by court into 51, 632
INVESTIGATION BEFORE TRIAL—
Account in writing of . 34, 446–7, 467–8, 708
Accused, caution of 37, 617–9
,, must be present during investigation 36, 37, 471, 616
Additional offences disclosed during investigation 34, 618
Adjournment of, for taking down summary of evidence 37, 617–9, 686
Air Force Act, offences against 590
Charge report, absence of, may not invalidate custody 155, 468
,, ,, accused to be given copy of .. 34, 468
,, ,, delivery of (*See* Delivery *below.*)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Charge—*contd*
INVESTIGATION BEFORE TRIAL—*contd*
Commanding officer's duties and powers in relation to 31, 34–38, 467, 468–470, 472, 616–621
,, officer of detachment, powers in relation to 40
Committing officer, duty of, regarding 34, 446–7, 467–8
Company, &c., commander's duties and powers in relation to 35, 40, 467, 468–9
Court-martial, remand for 35, 38, 469, 619, 686
Delay in, or failure to proceed with 446–7, 467–8, 616, 618, 708, 763
Delivery of 34, 446–7, 467–8
Dismissal of 35, 36, 469–472, 549, 617–8
Evidence at investigation, comparison with summary of evidence 38, 620
,, not taken in writing 617
,, on oath when required 36, 470, 471, 617–9
,, summary of (*See* **Summary of Evidence**)
Guard commander's duty to report 35, 446–7, 468
Hearing of 616–7, 686
Hospital patients, in cases of 472
Meaning of term 468
Names of persons preferring, to be given to accused 34, 468
N C O against (*See* **N.C O**)
Officer, against (*See* **Officer**)
Officer who investigated, disqualified as member of D C M or G C M 46–7, 477–8, 629
,, ,, ,, meaning of 478
,, ,, ,, name of, to be stated in application for C -M 764, 794
Officers qualified to investigate 467, 468–9, 693–4
Omission or failure to deliver 34, 446–7, 467–8, 708
Opinion, caution as to expression of 36, 37
Rules of procedure, power to make, regarding 496–7
Summary disposal of (*See* **C O**, **Officer**, *and* **Punishment**, summary)
Superior authority, reference to, of 35, 36, 38, 471, 617–9 (*See also* **Commanding Officer**)
Warrant officer, against (*See* **Warrant Officer**)
Witness (*q v*)

Charges, Preferential (*See* **Regimental Debts**)
Charitable Societies for assisting prisoners of war 289
Cheap Trains Act 828–830, 832
Cheating 124, 129, 131
Chemical Warfare, Declaration regarding 271, 280, 356–7
,, ,, present position regarding 271
Cheques, offences relating to 445, 459, 722

Children.
Birth, injuries before or during, death from 115
Carnal knowledge of 114
Consent of, to offences 109
Desertion of, by soldier 241, 555
Evidence of 83, 95, 96, 114
Guardian for, appointment by soldier's will 242–3
Lunatic soldier, of, provisions as to 218

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Children—*contd*
Maintenance of legitimate and bastard 241, 548, 550, 552, 555–7
,, ,, ,, ,, arrears of payments under order 557
,, ,, ,, ,, service of process for 556
Neglect of 112
Responsibility for crime 105
Children Act, 1908 95
Christmas Day
Exclusion in reckoning time 468, 616, 697
Inclusion 468, 697
Sitting of courts-martial on 661
Citizen, soldier is a 1, 2, 103, 241, 246
Civil Authority (*See also* **Civil Power**
,, ,, definition of 246
Civil Court.
Acquittal or conviction by, bars retrial under military law 40, 44, 45, 53, 470, 471, 473, 567, 618, 639
Appearance before, exemption of soldiers from 241, 554–5
Certificate of acquittal or conviction by 88, 526, 534, 567, 571, 859
Conviction of N C O by 567, 595
,, ,, soldier by, evidence of, before court-martial 88, 571, 650
Court of summary jurisdiction (*q v*)
Courts-martial, &c , jurisdiction over (*See* **Courts-martial**)
,, ,, offences by civilians or counsel at, punishment by 539–541, 590–1
Definition of 603, 665
Desertion formerly punished by 173
Discipline, military, jurisdiction on questions of (*See* **Discipline**)
False answers on attestation punishable by 219, 516–7
Invoking aid of, by officers and soldiers 135–6, 147, 164, 574–5
Jurisdiction, none in cases of grievances of purely military character 135–137, 141–142, 152, 154
,, not barred by previous acquittal or conviction under military law 567
,, over military courts in martial law area 146
,, over offences committed by C Os outside United Kingdom 567
,, over offences committed by persons subject to military law 1, 103, 241, 460, 564–5, 566–7
Officers, powers over (*See* **Officer.**)
Pay cannot be recovered in 135, 137
Punishment by, after punishment by military law 566–7
Territorial Army members, trial of, by 235, 857–9
Trial by, in certain cases 21, 103, 104, 219, 235, 241, 255, 261, 414, 438, 445, 460, 553, 857–9
Civilians (*See also* **Persons not belonging to the Forces** *and* **Inhabitants**)
Absence without leave, procuring, &c , by .. 558
Actions against military officers for acting without jurisdiction, &c 136, 147–148, 164, 414, 574–5
,, for damages for injuries to 156–157
Charges against, framing of 623
Courts-martial, in relation to (*See* **Courts-martial,** Civilian)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Civilians—*contd*
Damage, &c , to property of . 549, 550
Desertion, procuring, &c , by 558
Maiming, &c , of soldiers by 558–9
Military law, not subject to 2, 5, 7, 171
,, ,, ,, ,, except on active service 578, 579, 580, 582, 595–6, 623
Mutiny, inciting 432
Obstruction of military duty by 558–9
Orders by, to soldiers employed under them 435
Prisoners of war, when liable to be made 282
Traitorous conduct, inciting 432
Treatment of, in time of war 282, 414, 431
Trial and punishment of, for offences committed while subject to military law .. 564–5, 578, 595–6
Witness (*q v*)

Civil Law.
Allied country, of, amenability of troops serving in, to 414
Invoking aid of, by officers and soldiers 135–136, 147, 164, 574–5
Liability of officers and soldiers to 1, 2, 11, 103, 241, 460, 567
Military law and, adjustment of 103, 241, 566–7
Offences against (*See* **Offences**)
Rioters subject only to 2

Civil Life, relation of officers and soldiers to 1, 233, 241–5

Civil Offences (*See* **Offences.**)

Civil Population and military, relations between, in time of war (*See also* **Inhabitants**) 414, 431

Civil Power (*See also* **Riot, &c.**)
Aid of, army reserve calling out in 226, 229, 605, 833, 835
duties in, King's Regulations regarding 255, 256, 257, 259
duty under common law regarding 246, 251–2, 255–6, 259, 267
force, use of (*See* **Force**)
legal position of troops when employed in 2, 246, 251–2, 256
military . 2, 246–269
,, responsibility for 246–7, 254–69
refusal of (unjustified), a misdemeanour 255, 258, 261, 267
request to take action, discretion in complying with 246–7, 255–6, 259, 261, 268
,, requisition for troops, discretion in complying with 246, 255–60, 263, 264, 267, 268
,, supplementary reservists, liability of . 229
Refusal to deliver up officer or soldier to 241, 458, 567, 713
Responsibility of, for suppression of riots, &c , 246–7, 251, 254–6, 260, 266

Civil Prison (*See* **Prison.**)

Civil Proceedings, liability of officers to, for acting in excess of jurisdiction 3, 135–160, 164, 414, 574–5

Civil Process.
Arrest of witnesses on 539, 667
Complaint by C O as regards 555
Exemption of soldiers in certain cases from .. 241, 554–5, 567
Obstruction of 129
,, ,, by officer 241, 567
Officers not exempt from 555
Service of, in affiliation and maintenance cases 556

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Clergymen, communications to, not privileged 98

Clothing, &c
Damage, loss, and other offences in respect of (*See* **Equipments**)
Issue of . 180
Not seizable by civil process 555

Coinage.
Offences in relation to 76
Coldstream Guards, raising of 174
Collective punishment (*See* **Punishment**)
College, Royal Military 221, 236

Colony.
Active service in, declaration as to 599–600
Air Force personnel attached to Army in, provisions as to 589
Attestation, persons specially authorised for purposes of, in 514
Central Legislature of a .. 602, 605
Channel Islands, when deemed to be 598–9, 695
Colonial forces, Colonial law, application of, to 240, 579, 581, 583
,, courts-martial, trial by 537, 541
,, military law, application of, to 240, 578, 579, 580, 581, 582, 583
,, raised by colony 240, 583
,, ,, imperial government 240, 579, 580, 581, 582
Committing authority 490, 493, 495, 690–1
Convict, military, in, interim custody of 490, 690
,, ,, removal to U K 66, 67, 489–490, 691
,, ,, transfer to a 489
Court-martial, convening, confirming, &c 43, 63, 482, 536–7, 790–2
,, ,, trial by, in 103, 460
Court of summary jurisdiction, meaning of, as regards 604
,, superior jurisdiction ,, ,, ,, 603
Currency of, declaration as to value of .. 574
Cyprus, when included in term . 602, 694
Death sentence in 65, 66, 482
Definition of 602, 605
Detention in 66, 67, 491–3, 695
Fines imposed in 562, 574
Forces raised in (*See* Colonial forces *above*)
Governor of, approval of death sentence by 65, 482
,, ,, penal servitude 65, 482
,, confirmation of finding and sentence by . 482, 536–7
,, meaning of term in Army Act 603
,, warrants for convening, &c , general courts-martial granted to . . 43, 536–7
Habeas corpus, writ of, in . 142
Imprisonment in . 66–67, 491–3, 545, 694–6
Indentured labourers, enlistment of .. 216, 516, 607
Interpreter, appointment of, in 55
Irish Free State, when deemed to be 605
Isle of Man, when deemed to be 598–9, 695
Lunacy of person undergoing sentence in 542–3
Marines, Royal, in, provisions as to 585
Mutiny Act extended to . . . 12, 13
Penal servitude in . 65, 66, 67, 482, 489–490, 495, 690, 691
Possessing responsible Government, meaning of . 843

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Colony—*contd*
Prisoners, military, in, removal of 66–67, 492–3, 691, 694–6, 776–7
Prisons, civil and penal servitude, definitions of 495
,, in, provisions as to 67, 489–493, 495, 545, 694–6
Protectorates, British, included in term 602
Releasing and removing authority in 490, 493, 495, 691–2
Reservists, enlistment of, in 843
Sentences in, power to commute, mitigate, or remit 485
Summary proceedings in, provisions as to 574, 604
Volunteers in (*See* Colonial forces *above*)
Coloured Troops, employment of 279

Command (*See also* **Orders**)
Auxiliary Forces, Crown's power of, over 194, 497
Civilian, by, to soldier 435
Illegal, insubordinate discussion of 154, 435
,, or impossible, disobedience of 18, 152–154, 434–5, 444
Lawful, disobedience of (*See* **Disobedience to Lawful Command.**)
,, examples of 435
,, explanation of term 18, 434–5
Powers of, when naval, military and air forces are acting together 42, 596–7, 809–810, 813–7
Regulations as to, Crown's power to make 194, 221, 497
Ship, on board (*See* **Ship**)
Superior officer's right to give a 18, 434
Territorial Army, of 202, 231, 847

Commander-in-Chief.
History of office 181–3
Meaning of, in Army Act 601
Powers of, transferred to Army Council 181, 183

Commander-in-Chief in India
Air Force personnel attached to Army, powers with regard to 589
Courts-martial, power to confirm findings and sentences of 43, 63, 789–790
,, ,, ,, convene 43, 789–790
Marines, Royal, powers with regard to 585
Orders, warrants, &c, signifying and validity of 575–6
Powers of 181, 461, 485, 498, 575–6, 594, 595, 622, 672, 690–2, 693
Punishments, commutation, &c, of, by .. . 485
Reduction of W Os and N C Os by . .. 594

Commander-in-Chief in the Field
Powers in war and in occupied territory, &c 3
,, on active service—
as to courts-martial 43, 63, 790
as to military prisons and detention barracks 544–5
as to punishment of W Os and N C Os 594

Commanding Officer
Actions against (*See* **Actions.**)
Adjournment for taking down summary of evidence 36, 37, 617, 619, 686
Arrest of officer by 31, 32
Award of, cancellation, variation, &c . 135, 472, 622
,, complete when accused leaves presence of .. 40, 472, 620
,, no appeal from 40, 135
,, or decision of, entry of 472, 620

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Commanding Officer—*contd*
Charges, decision on 36, 38, 617–619, 620
,, dismissal of 35, 36, 469–470, 549, 617–620
,, ,, ,, bars re-trial by C M 40, 44, 45, 53, 470–2, 639
,, opinion not to be expressed before decision on 36–37
,, procedure on investigation of 31, 34–38, 467, 468–470, 472, 616–621
Charge-sheets must be signed by 48, 623, 764
Civil courts, control over illegal acts of 3, 135–164
,, prison, power to commit soldier to 33, 543, 784
Committing, removing and releasing authority 690–2
Complaints, duty regarding 461–2
Conduct sheets, examination by 37
Court martial—
Application for, by 36, 38, 47, 472, 619–620, 764–5, 794
Constitution of, for trial of 46, 476
Convening and confirmation by 538, 627, 653
Disqualified for service on district or general 46 477–8, 629
Report as to delay of assembly of 467–8 616
Court of inquest in India, convening by 545, 692–3
Definition (*See* Meaning *below*)
Delegation of power by 35, 40, 470, 575
Desertion, neglect to inform C O regarding 21, 440, 707
Detachment 40, 67, 68, 476–7, 620, 680, 694
Detention (*See* Punishments *below*)
Drunkenness, duty and power to deal summarily with 24, 38, 39, 469–471, 594, 618, 823
Evidence, comparison of, by 38, 620
Field punishment awarded by 38, 39, 466, 469, 471, 787
Fines and deductions, power to award 38, 40, 469, 471
Hospital, military, of 472
Imprisonment cannot be awarded by 471
Jurisdiction, acting without or in excess of (*See* **Jurisdiction**)
Meaning of term 221–2, 432, 440, 442, 451, 462, 468, 472, 478, 594, 596, 686, 693–4
Memoranda for guidance of 763–6
Minor offences, power to deal with 36, 40
Mutiny, failure to inform 16, 432, 706
N C Os , powers in relation to 24, 33, 35–36, 39, 469, 470–2, 594–5
Obstruction of arrest of soldiers by civil police by 241, 458, 567, 713
Offences, investigation of, by 31, 34–38, 467, 468–470, 472, 616–621, 686
,, which may be dealt with by 471, 474
Officers not punishable by 39, 470
,, offences by, investigation by 35, 469, 470, 621
Pay, forfeiture of, cannot order, after conviction by C -M 472, 550
,, ,, on active service, by 38, 469, 471, 548, 551
,, ,, &c , of, power of 35, 38, 39, 40, 469–472, 547, 548, 549–551
,, ,, &c , of, right of accused to D C M 35, 37, 470, 472, 621
Person not belonging to forces cannot be dealt with by 36, 470, 578, 596
,, ,, ,, in case of, who is .. 596
,, not subject to military law cannot be dealt with by .. 136

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Commanding Officer—*contd*
Punishments, cannot increase after award 40, 472, 620
,, detention, award of, by 38, 39, 466, 469, 471, 620
,, dismissal from T A , or Volunteers 593
,, minor, powers as regards 35, 37, 39, 469, 470–2, 819, 823
,, mitigation of 472, 620
,, power to cancel or reduce 135, 472
,, summary (*See* Summary *below*)
Question to be put to accused by, before award 37, 470, 472, 621
Rank, acting or lance, deprivation by 37, 39, 470, 472, 594, 595
Release of accused, pending trial by district court-martial 33, 472
Remand of accused 35, 38, 469, 619, 686
Ship, H M 's, position of, when on board .. 818–820, 823
Statements made before, admissibility at trial 93, 102, 618–9, 628
Summary dealing with, by—
Active service, on . 38, 466, 469, 471, 578, 787
Barred by conviction or acquittal by C -M or civil court 40, 470, 471–2, 567, 618
Bars retrial by C -M 40, 44, 45, 53, 470, 471–2, 639
Drunkenness (*See above*)
N C Os (*See above*)
Power of 24, 25, 35–40, 469–472, 594, 617–621
Reserve Forces 839–840
Ship, H M 's, when on board 819, 820, 823
Soldier may elect . 37, 470
Territorial Army 593, 858–9
Summary of evidence (*q v*)
Superior authority, reference to, by 32, 35, 36, 38, 39, 468, 469, 471, 498, 617–620, 627
Threats or promises to accused for confession 91
Trial of, constitution of court for 46, 476
Warrant officer may not be punished by 35, 39, 136, 470, 593–4
Who is a (*See* Meaning *above*)
Commissariat 180, 181, 182

Commissions
Aliens and 217, 515
Auxiliary Forces, in 194
Honorary, officers holding 578, 601
,, women holding 605
Indian forces 238–9
Issue of, under Officers' Commissions Act, 1862 869
Power of Commander-in-Chief to issue 181
Reserve of Officers (including Supplementary Reserve) 222, 223, 863
Resignation of .. 137, 221, 232
Tenure of 137
Territorial Army 232–233, 593, 851, 858, 869
Trafficking in, offences and penalty . 561, 713
Commissions of Array and of Musters 169–171, 186
Commitment (*See* **Convict, Detention** *and* **Prisoner.**)

Committal Orders.
Provisions as to, and forms of 143, 572, 575–6, 654, 771–786
Validity of 143, 575–6, 696
Committee of Adjustment (*See* **Regimental Debts**)
Committing Authority . . 490, 493, 495, 690–1
Common intent to commit offence 107

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Common Law.
Defined .. 2
Doctrine regarding duty to aid civil power 246, 251, 255–6, 259, 267
Rights of soldiers under, assertion of, in civil courts 135–136, 147, 155
Things not subject of theft at 121
Communications, Privileged 97–98, 158–160, 668
Communications, Treacherous 427, 704
Commutation of Sentences (*See* **Punishment,** Commutation)
Commuting Authority 64, 65, 485–6, 488, 590, 654–5, 689, 690
Company, &c., Commander
C.-M., disqualified for service on district or general 47, 477–8, 629
C.O., when included in term . 693
N.C.Os., power to admonish or reprimand 35, 469
Power to investigate and deal with offences 35, 40, 467, 468–9, 470, 472
Competent Military Authority
For purpose of Part II of Army Act . 518, 693
,, ,, Section 57A of ,, . . 488
,, ,, ,, 58–67 of ,, . 495, 690–2
,, ,, ,, 73 of ,, . . 498–9, 692
Complaints.
By officers and soldiers—
Army Council's powers and duties regarding officers' 460–1
combined, treatment of 462
false statement in making 450, 461, 462, 710
frivolous, not an offence 155, 459, 462
Indian Army, officers of 461, 591
inspecting officer, to 461, 462
offences in regard to 450, 459, 462 710
orders of doubtful legality, in cases of 18
prescribed officer for . 689
procedure 460–2, 591
redress of wrongs (*q v*)
seconded employment, during . 461
suppression of facts in .. 27, 450, 710
By officers of Royal Marines . 585
Of belligerents . 340
Comptroller and Auditor General . 185
Compulsion, offences committed under 106
Comrade (*See* **Property** *and* **Stealing.**)
Condonation of an offence . 45, 53, 639–640
Conduct Book. (*See* **Conduct Sheet.**)
Conduct, Disgraceful. (*See* **Disgraceful Conduct.**)
Conduct, Scandalous. (*See* **Scandalous Conduct.**)
Conduct Sheet. (*See also* **Regimental Books**)
Evidence from .. 74, 650, 671, 754–5
Examination of, by C.O. 37
Officers and warrant officers, of, entries in 622
Conduct, &c., to the Prejudice of Good Order and Military Discipline.
Attempts to commit offences may be charged as .. 28, 459
Charges, form of 713, 730–2
,, of, as alternative charges . 442, 459

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Conduct, &c , to the Prejudice of Good Order and Military Discipline—*contd*
Charges of, responsibility for preferring 459
Conviction for, when justified 458
,, not invalidated because charge wrongly laid under S 40 28, 458
Neglect, meaning of 459
Offences charged as 16, 17, 18, 23, 25, 28, 431, 433, 434, 435, 436, 448, 457, 458–9
,, not to be charged as 28, 458–9
Punishment of 458
Ship, H M's, on board 818
Confession of desertion or fraudulent enlistment, procedure on 213, 498–9, 502, 506, 547, 549, 559–560
Confessions and Admissions (*See* **Evidence**)
Confidential Papers, privilege of 97
Confinement.
Authorities for ordering 467
Barracks, to 39, 471
Civil prison or lock-up, in 33, 543, 784
Close arrest of soldier means 33
Detention barracks, &c , in 33, 785
Duties during 33, 34
Escape from 26, 34, 447 466, 708, 726
Military custody (*See* **Custody**)
Military custody includes 31, 467
Pay, forfeiture of, while in 39 40, 547, 549
Release from 33, 47, 467–8, 472, 487, 616
,, improper, from 26, 34, 445–6, 708, 726
Report by guard commander 35, 446–7, 468
Retention in, until charge disposed of 33, 38
Ship, H M's , on board 819, 823
Soldier in close arrest is put in 33
Temporary, in prison, form of order for 784
Unnecessary retention in 446-7, 467–8, 616, 708
,, ,, ,, civil proceedings for 142–145, 151–152
Confirmation
Acquittal of, not required 59, 481, 483, 649, 683
Active service (*q v*)
Alteration, &c , of minute of 65, 483
Confirming authority (*q v*)
Contempt of court, order of C -M , does not require 27, 452
Death sentence, of 63, 481, 684–5
Finding and sentence, abroad 63, 481, 536–7, 588, 589
,, ,, ,, active service, on, 43, 63, 481–2, 684–5
,, ,, ,, Air Force personnel, in case of 588–590
,, ,, ,, ,, ,, soldiers attached to 589
,, ,, ,, authorities having power. (*See* **Confirming Authority**)
,, ,, ,, by unauthorised officer 136, 143, 483
,, ,, ,, Colony (*See* **Colony**)
,, ,, ,, complete when promulgated 65, 482–3, 654
,, ,, ,, confirmation, nullity of 483
,, ,, ,, ,, partial 64, 482, 654–5, 686
,, ,, ,, delegation of power (*See* **Delegation.**)
,, ,, ,, district court 62, 63, 481, 537–8, 588, 589

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Confirmation—*contd*
Finding and sentence, field general court 477, 481–2, 589, 684–5
,, ,, ,, general court 43, 63 481, 535–7, 588–590
,, ,, ,, India (*See* **India**)
,, ,, ,, informal or excessive 654–6, 686
,, ,, ,, invalid without 62, 64, 482–3, 684
,, ,, ,, King's, The, powers regarding 63, 64, 481, 535–6, 588
,, ,, ,, Marines, Royal, in case of 584–5, 588
,, ,, ,, member of court cannot confirm 482, 684
,, ,, ,, native officers 63, 791
,, ,, ,, non-confirmation of 64, 65, 482–3, 641
,, ,, ,, non-confirmation of, new trial in case of 45, 64, 483, 564, 641
,, ,, ,, plea to jurisdiction, effect of 637
,, ,, ,, provisions, general, as to 29, 62–65, 481–3, 485–6, 536–8, 652–6, 684–5
,, ,, ,, reference to superior authority for 64, 482, 652, 684–5
,, ,, ,, rules of procedure as to 496
,, ,, ,, ship, in case of trial on board 537, 538, 599
,, ,, ,, where proceedings lost 677
,, ,, ,, withholding of (*See* non-confirmation *above*)
Finding, restrictions regarding 64, 483, 653
Form of 653, 760–1
Insanity finding of 64, 542, 653
Plea in bar of trial, finding on, requires 54, 64, 639
Promulgation of 65, 654, 761
Reservation of finding and sentence for 64, 482, 652, 685
,, ,, power of 63, 536, 538
Sentence only, of, implies confirmation of finding also 483
Signing of 576

Confirming Authority.
Actions for damages against 136, 147
Active service (*q v*)
Air force personnel, in case of 588–590
Alteration, &c , of minute by, before promulgation 65, 483
Colony (*q v*)
Commanding officer as 538, 653
Committal, power to defer, previous to suspension of sentence 487
,, to Indian and colonial prisons, power to order 492
Convening officer may be 536, 538
Court-martial, member of, may not be 482, 684
Death sentence, duty in regard to execution of 66
Delegation (*q v*)
Finding and sentence, confirmation of, by 62–65, 481–3, 652–6, 684–5
,, ,, ,, revision of, by (*See* Revision *below*)
,, cannot be altered by 64, 483
India (*q v*)
Insanity, finding of, powers of 64, 653
King, The, powers as a 63, 64, 481, 535–6, 588
Marines, Royal, in the case of 584–5, 588
Non-confirmation, duty as to 64, 483, 641

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Confirming Authority—*contd*
Officers having powers as 43, 62, 63, 481, 535–8, 584–5, 588, 684–5
Opinion of, proof of 686
Pay, automatic forfeiture of, cannot be remitted by 486
Petitions to, by aggrieved persons 67, 135
Plea in bar, finding on, powers of 54, 64, 639–640
,, to jurisdiction, duty in case of 637
Prisons, power to order committal to Indian and colonial 492
Promulgation, instructions as to, by 65, 654
Prosecutor cannot be 633, 684
Provisions, general, as to powers and duties of 29, 62–67, 481–3, 485–6, 499–500, 536–8, 652–6, 684–5
Punishments, commutation of, by 29, 64, 485–6, 654–5
,, mitigation of, by 64, 485–6, 654–5
,, remission of, by 29, 64, 485–6, 654–5
Qualified officer, meaning of 536–7
Quashing of conviction by 65
Reference by, to superior authority 64, 65, 482, 652, 684–5
,, to, before finding 59, 647–9, 753
Remarks by 652–3
Reservation of powers of 63, 536, 538
Revision, power to send finding or sentence for 63, 64, 481–3, 652–3, 685
Sentence, increase of, may not recommend 481, 653, 685
power to substitute valid for invalid 65, 655
,, to suspend execution of 485
,, ,, operation of 65
,, to vary informal or excessive 64, 655–6, 686
responsible for execution of 66
Stolen property, power as to restitution of 499–500
Unauthorised, confirmation by 136, 143, 483
Warrant, action before arrival of 537
Warrants empowering officers to act as 43, 63, 535–7, 584–5, 588, 788–793
,, forms of 788–793

Conscription (*See* **Service**, compulsory.)

Consent to offence 109, 113, 114, 115

Conspiracy.
Cause mutiny or sedition, to 16, 78, 431–2, 626, 706
Definition of 128–9
Defraud, to 124, 129, 131
Evidence as to 78
Murder, to 118, 131
Obstruct justice, to 129, 133
Persons unknown, &c., with 129

Conspiracy and Protection of Property Act, 1875 248–9

Constable. (*See* **Police.**)
,, High 7–9

Consuls
Attestation, powers of, in connection with 219, 514
Foreign, exempted from billeting 520
In occupied territory 352
Of neutral Powers, in a siege 291–2

Contagious diseases. (*See* **Disease.**)

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Contempt of Court (*See* **Courts-Martial**)
Contractors.
Claim to be treated as prisoners of war if captured 282
Military law, application of, to 580
Contracts, servants of the Crown, liability for 157
Convening Officer
Acquittal of accused no reflection on 58
Air Force personnel, in the case of 589
Charge, amendment of, by 53, 636–7
,, for minor offence may be dropped by 47
,, invalid, &c., court to report to 51, 53, 632
,, responsible for form of 25, 28, 47, 623
Charge-sheets, duty as regards 48, 49, 627
,, ,, separate, power as regards 48, 659, 660, 682
Colony (*q v*)
Commanding officer, in what cases acts as 538, 627
Counsel, obtaining of, by 49, 673
Court-martial, adjournment of, to be reported to 50, 51, 53, 629, 631, 632, 636–7, 667
,, delay of, power as to 47
,, ,, report by 468, 627
,, district 43, 44, 46–48, 474–5, 537–8, 584, 588
,, field general 67, 68, 476–7, 576, 599, 680
,, ,, ,, may be president of 68, 476, 680
,, general 43, 46–48, 474–5, 535–7, 584, 587, 588
,, member of, cannot be 46, 476, 477, 629
,, members of, appointed or detailed by 46, 49, 50, 476, 477, 627–8, 630–1, 736–7
,, new court, may convene 51, 52, 53, 628, 636, 637
,, president of, appointment of, by 46, 51, 475, 476, 478, 480, 627, 630–1
,, prosecutor, approval of, by 633
,, refusal of, by 47, 627
,, selection of type of 48, 627
Defending officer, assignment of, by 49, 625, 672
Delegation of powers (*See* **Delegation**)
Duty and procedure of 25, 28, 46–49, 51–53, 67, 68, 468, 475–8, 480, 621, 627–8, 637, 666
Evidence, consideration of, by 47, 627
,, power to order further 47
,, summary of, to be sent to president by 49, 627
India (*q v*)
Intention of, not to influence decision of court 58, 61
Joint charge, power to grant separate trial 49, 626
Judge-Advocate, when appointed by 50, 68, 677, 681
Judge-Advocate-General, submission of charge, &c., to, before trial 47, 627
Marines, Royal, in case of 44, 584–5, 587–8
Memoranda for guidance of 766–8
Opinion of, statement and effect of 46, 68, 475–7, 627–8, 630–2, 680–1, 686
Persons not belonging to forces, in cases of 595–6
Qualified officer, meaning of 536–7
Release accused, power to 47, 627, 637
Reservations as to powers of 536, 538
Rules of procedure, power to suspend 679, 741
Ship, power to act on board, as 477, 537, 538, 599

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Convening Officer—*contd*
Special pleas, reference by C -M to 53, 637
Summary disposal of charge, power to effect 47
Superior authority, power to refer case to 47, 627, 680–2
Warrant, action before arrival of 537
Warrants by, delegating power 43, 475, 535–7, 792–3
,, empowering officers to act as 43, 535–7, 584–5, 588, 599, 788–793
,, forms of 788–793

Convening Order
Contents of 46, 49, 50, 475–6, 584, 627–8, 630, 631
Forms of 736–7, 740
Production and examination of, by court 49–50, 631
Reading of 51, 136, 633
Signing of 564, 576, 631, 680, 767

Conventions (International)
Geneva, 1906, wounded and sick in armies in the field 358–367
,, ,, ,, ,, ,, ,, ,, ,, present position regarding 271
Hague, 1907, bombardment by naval forces in war 271, 290, 392–6
,, laws and customs of war on land 370–385
,, ,, ,, ,, ,, ,, present position regarding 272
,, opening of hostilities 367–370
,, rights and duties of neutral powers, &c 386–392
Military, for entry of French troops into Switzerland (1871) 413–4
Present position of 270, 271, 272
When binding 272

Conveyance—
Of soldiers on discharge, &c (*See* **Discharge** *and* **Reserve Forces**)
Of troops, stores, &c (*See* **Impressment** *and* **Railways**)

Convict, Military
Active service, on, committal to military prison 66, 488, 544, 690
Channel Islands, in, provisions as to 598–9
Civil prison, transfer to 490
Commitment, procedure for, and forms of 490, 654, 771–4
,, validity of order 143, 575–6, 696
Custody, interim, of 490, 690, 773
Definition of 494
Foreign country, in, provisions as to 490
Hard labour, provisions as to 490
India and colonies, in, provisions as to 67, 489–490
Ireland, in, special provisions as to 598
Isle of Man, in, provisions as to 598–9
Military law, application to, until completion of sentence 489, 565
Penal servitude prison, committal to 488–9, 690–1
Release of, order for . . 490–1, 692
Removal, &c , of, authorities for 490, 495, 691–2
Removal of, to United Kingdom, when required 66, 67, 489, 599
,, from India or colony to United Kingdom, when not required 67, 489–490
Restraint during removal, &c 490
Ship, on board . 490, 576, 820
Treatment of .. 491, 544
(*See also* **Penal Servitude.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Conviction.
Alternative charges, on 144, 483, 640–1, 648–9
Character, bad, no reason for 74
Civil court, by, bars re-trial under military law 40, 44, 45, 53, 470 471, 473, 567, 639
,, ,, certificate of, how obtained 571
,, ,, ,, ,, transmission to Army Council 526, 534, 567
,, ,, evidence of 88 571 859
C -M , by, does not bar re-trial by civil court 567
C -M , by, evidence of 53, 57 571–2 649–650, 671 755
C M , or C O , by, bars re-trial by C -M or C O 40, 44, 45, 53 470–2, 564, 639
Confirmation of 62–65, 481–3, 564, 652–3 684–5 760–1
,, ,, refusal of . 45, 64, 483, 652
Forms of proceedings on 753 -9
Guilt must be established beyond reasonable doubt 58, 647–8
Illegal, responsibility for 136
Insanity at time of offence, finding of, is not a 503, 542–3, 549
Less offence, of 17, 20, 58, 71, 108, 483–4
On one of several charge-sheets may be sufficient 48, 659, 660
Previous 57, 61, 96, 571–2, 649–650, 668, 671
Procedure on 59, 60, 649–650, 753–6
Quashing of 65, 75, 76, 140, 145, 458, 564, 590, 641, 656
Summary, meaning of 516
,, disposal, on, bars re-trial by C -M (and *vice versâ*) 45, 473, 639
Validity of . 28, 62, 64, 458, 483, 564
Convoys 303
Copies of Documents admissible as evidence (*See* **Documents**)
Corporal Punishment. (*See* **Punishment.**)
Corps
Amalgamation of, liability to serve in new corps 214, 507
Appointment to, Army List, &c , as evidence of 568
,, of boys 213, 505
,, of men of T A 233, 850–1
,, of officers 221, 568
,, of recruits 213, 221, 505–7
,, of reservists when called out 227, 835
Constitution of, alteration in, liability to serve in altered corps 214, 507
Enlistment in particular 213, 505
Fraudulent enlistment, after . 219, 439, 498, 503, 566
Liability to serve in any part of same 221
Meaning of . 221, 602, 605
Transfer (*q v*)
Warrant defining 602, 605
Correspondence with Enemy (*See* **Enemy**)
Correspondents, Newspaper (*See* **Newspaper Correspondents.**)
Corroboration. (*See* **Evidence.**)
Costs
Of action for damages . . 164, 574
Of parties in dispute as to payment for impressed carriages, &c 610
Councils of War 9
Counsel.
Accommodation for 51
Addresses by. (*See* **Accused** *and* **Prosecutor.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Counsel—*contd*
Communications to, privileged . 97–98
Courts-martial, contempt of, by 541
,, removal from 541–2
,, when allowed before 672
Defence, for 49, 51, 56, 672–4
Defending officer has same rights, &c , as 49, 672
Notification of employment of . 49, 673
Objection to, no right of 674
Privilege of 158
Prosecution, for 49, 56, 672–4
Qualification of 674
Rules as to 56, 541, 672–4
Witnesses, examination of, by 673–4
Counterfeit Coin, offences in relation to 76
Countersign, making known, or giving wrong 429–431, 705
County.
Alteration of boundaries of 870
Contributions towards expenses of old militia 168–9, 195
Enlistment of men of T A to be for a 233, 852
Lieutenant of (*q v*)
Meaning of, in T R F Act 864–5, 866
County Associations
Administration of, responsibility for 184
Cadet units, administered by 237, 848
Commissions in lowest rank T A , applications to be made to 232, 851–2
Duties and powers 202, 231–2, 847–8, 852
,, impressment of carriages and animals 532
,, payment of separation and other family allowances 848
,, registration and classification of horses 848
,, reservists and discharged soldiers, care of 848
Establishment of 202, 231, 846–7, 868
Expenses of 231, 848–9
Fines paid to 858–9
Joint Associations 202, 231–2, 868
,, Committees 850
Members, appointment of 846–7
,, ex-officio 864
No powers over training or command 202, 231, 847
President of 846
,, ,, recommendations by, for first commissions in T A 232, 851–2
Property of yeomanry and volunteers transferred to 861
Recruiting for T A organised by 848
Re-engagements, T A , period fixed by 234
Schemes for constitution of 231, 846–7
Supplementary Reserve, Category B, administered by 228
T A units raised and administered by 202, 231, 848
County Council, officer eligible as member of .. 243, 557
County Court Judge.
Meaning of . . . 604
Reference to, and powers of, as regards payments for impressed carriages, &c .. 527–8, 610
County Joint Associations .. . 202, 231–2, 868
Court, Civil. (*See* **Civil Court.**)
Court, Military. (*See* **Military Court.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Court of Chivalry, origin, constitution and jurisdiction 7–9
Court of Inquest (India), when required and procedure 545 692–3
Court of Inquiry.
Absence without leave, in case of 441, 497–8, 688–9, 837, 859
,, ,, ,, period of 21 days, how calculated 497
Assembly, constitution, and character 496, 497–8, 687–8
Composition of 687, 688
Confession at, inadmissible at trial 93, 97, 688
Declaration, form of, to be made by 498, 688–9
,, of, admissibility of, as evidence 497–8, 689
,, ,, entry of, in regimental books 497–8, 688–9
Deficiencies in arms, equipments, &c 118–9, 497–8, 689
Evidence, false, before 93, 97, 452, 688
,, given before, is privileged 93, 97, 158–9, 688
,, on oath, when taken 496, 497–8, 687, 689
Instructions to 687
Members cannot sit on district or general court-martial 47, 478, 629 742
,, not sworn 498, 687
Notice of meeting of, to be given 687
Oath, administration at 496, 687, 689
Officer cannot demand 621
,, charge against, investigated by 35, 621
Opinion on conduct of officer or soldier not to be given by 687
Presence of officer or soldier at, where character affected 687
Prisoners of war, in case of 40, 687–8
Privilege of proceedings (*See* Proceedings *below*)
,, ,, statements made at 93, 97, 158–159, 688
Proceedings, accused entitled to copy 621, 688
,, copy of, fee for 688
,, destruction of 498, 688
,, forwarding of 688
,, inadmissible as evidence 93, 97, 157–158, 498, 688
Re-assembly of 688
Regulations for 687–9
Report, privilege of 157
Reserve, Army, in case of 837
Rules of Procedure as to, power to make 496
Statement as to, in application for C -M 794
Stores, loss of, in case of 443
Territorial Army, in case of 859
Witnesses, cannot compel attendance of civilian 688
,, privilege of 93, 97, 158–9, 688
,, questions to 687, 689
Writs against 137, 140
Court of Law
Meaning of, in Army Act 604
Occupied enemy territory, in 328, 333
Court of Requests in India abolished 558
Court of Summary Jurisdiction
Complaints to, in connection with billeting and impressment 521, 523, 529, 534, 608
Constitution of, in England 572–3
Deserters and absentees, procedure before 559–560
Ireland (*q v*)
Jurisdiction and powers of 572–3
Meaning of, in Army Act 604, 606

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Court of Summary Jurisdiction—*contd*
Offences under Army Act punishable by 516–7, 525–6, 531, 533–5, 553, 554, 558–9, 561–3, 572–4
Proceedings before, regarding enlistment of apprentices 515–6
,, ,, under Army Act 572–4
,, ,, ,, Reserve Forces Act, 1882 833–4, 836, 838–840
,, ,, ,, T R F Act 235, 858–9
Public property, improper possession of, power of 561–3
Scotland (*q v*)
Court of Superior Jurisdiction, definition of 603
Courts-Martial.
Abroad, warrants giving power to convene 43, 536–7, 789-792
Accommodation for counsel, friend, &c , at 51
Accused (*q v*)
Acquittal (*q v*)
Actions against members of (*See* **Actions**)
Active Service, on (*See* **Active Service**)
Adjournment—
Accused, application by, for 55, 642, 666, 679
,, illness or death of 480, 663
Authority for 480, 661–3, 684
Before end of trial 661–3
Charge, for purpose of amending 53, 636–7
,, where no valid 51, 632, 637
Convening authority, reference or report to, on 50, 51, 53, 629, 631, 632, 636, 662–3, 667,678
Field general 684
Finding, where legal effect of, doubtful 647–9
Judge Advocate, absence, disqualification, &c , of 631, 662, 678
Objections may necessitate 51, 52, 478, 636
Plea in bar found proven 54, 639
Plea to jurisdiction allowed 53, 637
President, absence, disqualification, &c , of 50, 51, 478, 480, 628–9, 631, 662–3
Reasons for 50, 51, 52, 53, 54, 55, 448, 452, 478, 480, 628–9, 631, 632, 634, 636, 637, 647–9, 661–3, 666–7, 678–9, 749
Rules as to, power to make 496
When court below legal minimum . 50, 631
,, improperly constituted 50, 628–9
When full number of members detailed are not present 50, 628–9, 662–3
Witness, absence of 626, 667
Admiralty, powers of, regarding . 584–5, 587–8
Air Force officers, service on military 475, 476, 477
,, ,, personnel, in case of 588–590
,, ,, soldiers attached to . 589
Appeal from decision of, not allowed 135
Application for, by C O 36, 38, 47, 472, 619–20
,, ,, documents to accompany 38, 794
,, ,, duty of convening officer in respect of 47, 627
,, ,, form of . 794
,, ,, memoranda as to . . 763–6
,, ,, should be disposed of at once . .. 47
,, ,, time limit for . 619–620
Arraignment of accused (*See* **Arraignment.**)
Assembly, delay in (*See* **Delay** *below*.)
,, forms for 736–7, 740

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Courts-Martial—*contd*
Assembly of court, procedure 49, 631, 657
Auxiliary forces, constitution of, for trial of member of 46, 630
Bona fide judgment of 679
Books on military law to be before 657
Certiorari, writ of, issue to 140-142
Challenge of members by accused (*See* Objections *below*)
Chaplains, service on 476
Character, clearing of, by 48
Charge (*q v*)
Civil claims for damage, &c, C -M not to be used for enforcing 549
Civil courts, control of, over Cs -M and officers—
Adjustment of military and civil law 103, 566–7
Excess of jurisdiction of military courts, &c 3, 135–164, 574–5
How exercised 135
Civil offences, framing of charges for 624, 713
,, ,, punishment by 460
,, ,, time limit for trial of 45, 114, 639, 640
,, ,, triable by 3, 21, 44 103–134, 459–460, 476–7
,, ,, when jurisdiction to try, should be exercised by 103, 104, 431
,, ,, when not to be tried by 460
Civilian, action by, against members of, for acting without jurisdiction 136, 147–148
,, misconduct of, at 539–540
,, ,, ,, in India at 590–1
Closing of court 51, 57, 60, 63, 480, 634, 636 644, 647, 652–3, 661, 684
Colony (*q v*)
Commanding officer's powers (*See* **Commanding Officer**)
Condonation of offence, when bar to trial by 45, 53, 639–640
Confirmation (*q v*)
Confirming authority (*q v*)
Constitution 45–47, 68, 236, 474–8, 630–1, 680–2
,, enquiry as to legality of 49, 50, 136, 631
,, for trial of C O, and other officers 46, 475–6, 630–1
,, illegal 136, 143, 476, 564
,, rules as to, power to make 496
Contempt of court by accused 452
,, ,, by civilians 27, 540, 590–1
,, ,, by counsel 541
,, ,, by person subject to military law 27, 451–2, 710
,, ,, form of commitment 786
Convening (*See* **Convening Officer**)
,, Order (*q v*)
Conviction (*q v*)
Counsel (*q v*)
Court of Inquiry, proceedings of, inadmissible as evidence before 93, 97, 498, 688
Criminal liability of members of 135, 160, 163–164
Custody of accused at 51, 668
Death, sentence of, by (*See* **Death**)
Defending officer (*See* **Defence.**)
Delay in assembling 446–7, 467–8, 619, 620
,, convening officer's power as to 47
,, report as to 467–8, 616, 627
Delegation of powers (*See* **Delegation**)
Descriptions of **43, 67**

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Courts-Martial—*contd*
Descriptions of, to be inserted in charge-sheets .. 48, 714
Discretion of, as to sentence 60, 62
Dissolution of . 480, 496, 662–3, 678
District—
Air Force personnel, on . .. 589
Application by C O 36, 38, 619, 620
Assembly of, form for 736–7
Composition of 45, 46, 236, 474, 478, 630
Confirmation of finding and sentence of (*See* **Confirmation and Confirming Authority**)
Contempt of (*See* Contempt *above*)
Convening of (*See* **Convening Officer**)
Corps of members of, rules as to 45, 46, 236, 478, 630
Death penalty, cannot award 44, 104, 474
Delegation of power to confirm (*See* **Delegation**)
Finding and sentence, confirmation of (*See* **Confirmation**)
Marines, Royal (*q v*)
Members of, qualification of 45, 46, 474, 629, 630
,, rank of . . 46
Offences triable by 44, 48, 474–5
Officers cannot be tried by 43, 44, 104, 452, 474
Penal servitude, cannot award 44, 104, 474
President of, qualification of 46, 475, 628, 629, 631
Proceedings of, form of 741–761
Punishment by, limitations on power of 44, 104, 465, 474, 593–4
Release of soldier pending trial by 33, 472
Right of soldier to elect trial by 24, 33, 35, 37, 40, 61, 155, 469, 470, 472, 595, 617, 621
Ship, H M's, not held on board 599, 819
,, power to convene, &c, on board 537, 538, 599
Warrant officers, limited powers as to 44, 465, 476, 593–4
,, ,, rank of president of 46, 594
English law to apply to 2, 3, 69, 70, 541, 665
Escort (*See* Custody *above*)
Evidence (*q v*)
Exclusion of person interfering with proceeding of 540, 661
Field General—
Abroad or on active service, can only be convened 67, 68, 476–7, 680
Acquittal by 481, 683–4
Adjournment of 684
Air Force officers, service on 475, 477
,, personnel, in the case of 589
Arraignment of accused at 682–3
Assembly of, form for 737, 740
Charge before 682
Charge-sheet, not necessary 682
Closing of court 684
Composition of 68, 476, 680–2
Confirmation of findings and sentences of 477, 481–2, 589, 684–5
Convening officer may be president of 68, 476, 680
,, order, signing of 576, 680
,, restrictions on 67, 68, 476, 576, 680
Death sentence by, confirmation of . 481, 684–5
,, ,, must be unanimous 68, 477, 684
Defence by accused before . .. 683
Definition of terms in Rules relating to 680

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Courts-Martial—*contd*
Field General—*contd*
Field punishment, award of, by . 477, 684
Imprisonment, award of, by 68, 477
Judge-advocate, appointment of 68 681
Members of, Air Force officers as 475, 477
,, ,, disqualifications for serving as 68, 478, 680–1
,, ,, minimum 68, 476, 680–1
,, ,, objections to . 682
Military exigencies in case of . 681–3
Oaths, forms of 682
Object and jurisdiction of 67, 68, 476–7
Offences triable by 68, 460, 476–7, 680
Officers are triable by 68, 680
Opinion of convening and confirming officer evidence of . 686
Penal servitude, confirmation of sentence of 481, 684–5
Plea to jurisdiction of . 683
Powers, general provisions as to 68, 477, 680, 684
President, appointment of 68, 476–7, 680–1
Proceedings of . 681–6
,, ,, forms for 737–9, 740
Punishments awardable by 68, 477, 594, 684
Recommendation to mercy 684
Revision of finding and sentence 685
Rules of Procedure, application of to 68, 682, 683, 686
Separate trial 682
Several accused, trial of 682
Ship, on board . 477, 599
Transfer from, to another court 684
Trial, procedure at 682–684
View of place, &c 684
Votes, general provisions as to . 684
Warrant not required 67
Witnesses, examination of . 683
,, oath to 682
Finding and sentence (*q v*)
Forms as to 736–761
,, of charges for offences in relation to 715–735
,, ,, orders as respects, power to make rules as to 496
Friend of accused (*See* **Accused**)
General—
Air Force personnel, on . 588–590
Application for 38, 619, 620
Assembly of, form for . 736–7
Charge to be submitted to Judge-Advocate-General 627, 766
Colony (*q v*)
Commanding officer, trial of, by 46 631
Composition of 46, 236, 474–5, 478, 628, 630–1
Confirmation of finding and sentence of (*See* **Confirmation and Confirming Authority.**)
Convening of (*See* **Convening Officer.**)
Corps of members of, rules as to .. . 45, 46, 236, 478, 630
Death sentence (*See* **Death**)
Delegation of powers to confirm, &c (*See* **Delegation.**)
India (*q v*)
Judge-advocate must be appointed for 50, 677
Marines, Royal (*q v*)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Courts-Martial—*contd*
General—*contd*
Members of, qualification of . 46, 474–5, 629
,, ,, rank of 46, 50, 474–5, 630–1
Offences triable by 44, 48, 474–5
Officers triable by 43, 46, 474–5
Penal servitude, can award 44, 474–5
President of, qualification and rank of 46, 475–6, 628, 629
Proceedings of, form of 741–761
Habeas corpus, writ of, in relation to 142–147
History, early of 9–13
Hours of sitting 661–2
Illegality of proceedings of 64, 65, 476, 564
In camera, sittings may be held 51, 661
Incidental questions arising at, procedure on 664
India (*q v*)
Insane persons, trial, &c , of (*See* **Lunacy**)
Interpreter (*q v*)
Judge-advocate (*q v*)
Jurisdiction of, amenability of accused to 51, 623, 632–3
, excess of, powers of civil courts in case of 3, 135–136, 138, 145–147, 163–164
,, in charges of drunkenness 24 469
,, in civil offences 14 103 104 459–460, 477
,, restrictions as to 40 41, 43–45, 68 136 235, 460 470 471 473 474, 476, 564–5 632
special plea to 53 633, 637 8, 683 745
Majority of opinions, decision to be by 663–4, 684
Mandamus, writ of no record of application for, in respect of 137
Marines Royal (*q v*)
Members of—
Absence of, effect of 52, 663
Actions against (*See* **Actions**)
Air Force officers as 475, 476, 477
Appointed or detailed by convening officer 46, 49, 50 476, 477 627–8
Auxiliary forces, officers of, as 46, 236, 630
Cannot be added after arraignment 52, 663
Challenge to (*See* Objections *below*)
Chaplains as 476
Confirming authorities, may not act as 482, 684
Convening order, notification in of 46 49 50 476, 627
Corps of, rules as to 45, 46, 50, 477–8, 630
Criminal proceedings, liability to 135 147, 160, 163–164, 679
Disqualifications for acting as 46 47 50, 68, 95, 475–6, 477–8 564, 629, 631, 680–1, 742
Eligibility of 45, 46 49 50 68, 474–7 629, 631, 680–1
Errors of judgment, not liable for 146, 147
Evidence, duty in regard to 69, 70, 479
Field general court-martial, of (*See* Field General *above*)
Interpreter, member may act as 56
Judge-advocate, advice of, to be regarded by 69, 678–9
Legal minimum 45, 46, 50, 51, 68, 136, 474, 476, 480, 628–9, 631, 634, 662–3, 680–2
,, ,, president to be included in calculating 632
List of to be given to accused 49, 626, 686
Naming of, in convening order 46, 50, 476

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Courts-Martial—*contd*
Members of—*contd*
New 51, 52, 478, 628–9
,, cannot be added after arraignment 52, 663
Objections by accused to (*See* Objections *below*)
Officers under instruction, previous attendance as, essential 629
Opinions of, not to be stated 479
,, ,, to be taken separately (*See also* Vote *below*) 59, 62, 647, 663–4
Personal interest in case, disqualified by 47, 50, 629
Precedence of 49, 657
Previous court, cannot be members of new court on re-trial 47, 478, 564, 629
Privilege of 158–159
Rank of 46, 50, 474–6, 630–1, 681
Reserve, officers of, as 46 630
Responsibility of, for irregular procedure 163–164, 655
Seating of 49 657
Swearing of 52, 479–480 634, 664, 682, 762–3
Territorial Army, officers of, as 46, 236, 630
Unqualified, effect of 136, 143, 476, 564
View of place, all must be present at 480, 661
Volunteers (*See* Auxiliary forces *above*)
Vote, cannot abstain from giving 59, 62, 663–4
,, must be kept secret (*See also* Opinions *above*) 479, 762
Waiting (*See* Officers in waiting *below*)
Witness, competent for defence only 46, 95, 478 666
,, may be questioned by 55, 56, 57, 102, 650, 670–1
Memoranda for guidance of officers, &c , in relation to 763–770
Military courts and, difference between 5
,, knowledge of court (*q v*)
Misprision by 164
New, convening of 51, 52, 53, 628, 636, 637, 662
Oath (*q v*)
Objections on matters of law, evidence, &c , procedure 664
,, to members, interpreters, charge, &c 51, 52, 53, 478–9, 633–4, 636, 664–5, 682, 742–4
Offences in relation to (*See also* Contempt *above*) 27, 451–2, 539–541 590–1, 710
Officer, right to claim 32, 41, 473
Officers attending for instruction—
Accused may not object to 52, 635
Oath or declaration by 52, 479–480, 635, 762
Presence when court closed 661
Officers in waiting at—
Appointed or detailed by convening officer 45, 49, 476, 627
Challenge of, filling vacancies 633–4
Names given to accused 626
Procedure when none available 51, 628, 633
Vacancies filled by 50, 51, 627–8, 633–4
Open, rules as to 51, 481, 649, 654, 661, 684
Opinions of members (*See* Members *above*)
Order convening, to be produced before 49, 631
Orders of, forms of 496, 681–2, 696
Origin of 9
Pardon of offence, when bar to trial by 45, 53, 639
Pay (*q v*)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Courts-Martial—*contd*
Penal servitude (*q v*)
Perjury, when triable before 127, 452
Persons not belonging to H M forces, trial of, by 595–6
,, not subject to military law cannot be dealt with by 2, 7, 136, 147
,, who have ceased to be subject to military law, trial by 44, 512, 564–5, 734
Petition against finding or sentence of 67, 135
Plea (*q v*)
President (*q v*)
Press, admission of (*See* **Reporters.**)
Private deliberations 51, 480, 661, 684
Privilege of statements, &c, by 158–159
Procedure, general provisions as to 49–62, 478–481, 496, 541, 631–652, 657–665, 682–4, 768–770
,, injustice to accused by, non-confirmation in case of 64, 65, 483
,, irregular, responsibility for 136, 137, 138, 163–164, 655
Proceedings of—
Copy of, admissible in evidence .. 81, 572
,, payment for . 67, 538–9, 676, 686
,, right of person tried or next-of-kin to 67, 538–9
Custody of 67, 676
Erasures not allowed in 670, 675
Evidence, admissible in 81, 571–2
,, inadmissible as, on charge of false evidence 452
Field general court, form of, in case of . 681–2, 737–740
Forms of 55, 696, 737–9, 741–761
Information or advice to court to be entered in 678
Inspection of 676
Loss of 676, 686
Memoranda as to . 768–770
Preservation of, period of, &c 67, 539, 676, 686
Privilege, questions regarding, to be noted in 98, 675
Promulgation of (*See* **Finding and Sentence**)
Questions to be entered, whether answered or not 98
Recommendation to mercy to be recorded in 62, 480–1, 652, 684, 759
Responsibility for .. 55, 675
Review of, by the Judge-Advocate-General 135
Rules as to entries in, &c 55, 62, 98, 652, 675–6, 678, 681–2
Sentence to be recorded in 62, 652, 756–9
Signing and dating of 59, 62, 494–5, 648, 649, 652, 653, 657, 675, 741
Special reports not to be entered in 62, 675
Transmission of 59, 62, 67, 649, 652, 653, 657, 663, 676, 686
Prohibition, writs of, examples of applications in connection with . . 138–140
Prosecutor (*q v*)
Public, open to 51, 661
Punishment (*q v*)
Re-assembly of, for revision, &c, of sentence 63, 481, 483, 652–4, 656, 685, 759
Recommendation to mercy (*q v*)
Remand for trial by 35, 38, 469, 472–3, 619, 686
Reporters, admission of (*See* **Reporters.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*.]

Courts-Martial—*contd*
Reserve, Army (*See* **Reserve Forces**)
Revision of finding and sentence (*See* **Finding and Sentence**)
Right to have (*See* Officer *above*, *and* Soldier *below*)
Rules as to, power of Crown to make . 496–7
Sentence (*See* **Finding and Sentence**)
Service, forfeiture of (*See* **Service**)
Several accused, trial by one court, procedure 52, 61, 94, 626, 659, 664, 682, 768
Ship (*q v*)
Shorthand-writer (*q v*)
Sittings, period of 496, 661–2
Soldiers' right to claim trial by 24, 33, 35, 37, 40, 61, 155, 469, 470, 472, 595, 617, 621
Special reports by, to be made in separate document 62, 675
Summary of evidence (*q v*)
,, punishment bars trial by 40, 44, 45, 53, 470, 471–2, 473, 639
Supplementary Reserve (*See* **Reserve Forces**)
,, ,, of Officers (*See* **Reserve of Officers**)
Swearing of persons at (*See* Members (*above*), **Oath, Witness**, &c)
Territorial Army (*q v*)
Time limit for application for 619–620
,, ,, commencement of trial 44, 45, 53, 114, 564–5 566, 639–640
,, ,, trial of member of T A by 44, 45, 564–5, 859
,, ,, ,, reservist 44, 45, 564–5
Transfer from field general to ordinary 684
Trial (*q v*)
Validity of, not affected by invalid appointment of judge-advocate 677
View place, power of, to 69, 480, 661, 684
Voting at (*See* Members *above*, *and* **Votes**)
Waiting members (*See* Officers in waiting, *above*)
Warrant officer (*q v*)
Warrants in relation to (*See* **Confirming Authority, Convening Officer** *and* **Warrants**)
Witness (*q v*)
Power of, to call 57, 102, 647, 666–7, 671
,, ,, ,, question 55, 56, 57, 102, 670–1
Cowardice, offences of 15, 427, 704, 715
Creditor of soldier, restrictions on 241, 554–5, 877
Crescent used for Red Cross by Mahommedans 304
Crimes. (*See* **Offences**, *and under each Offence*)
Criminal Evidence Act, 1898 94, 563, 665, 667–8
Criminal Justice Administration Act, 1914 95
Criminal Law
Liability of officers and soldiers to 1, 103, 241, 460, 567
Text-books on 104
Criminal Law Amendment Acts 95, 114, 668
Criminal Proceedings, liability of officers to, for acting in excess of jurisdiction . 3, 135, 160–164, 414
Criminal Responsibility.
Accidents, in relation to 109–110
Assisting in offence 107
Attempting to commit offence . .. 108

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Criminal Responsibility—*contd*
Common intent, in relation to 107
Compulsion, in relation to 106
Consent, in relation to 109, 113, 114, 115
Drunkenness, in relation to 25, 26, 106
Force, for use of 110
Homicide, for, where no legal excuse 115–116
Ignorance, in relation to 106
Innocent agent, act done through, for 107
Insanity, in relation to 88, 105, 542
Instigation of offence, for 107
Knowledge of intended offence, in relation to 108
Necessity 106
Negligence 106, 110, 117
Omission, acts of, in case of 112
Parties to offence, of 106
Criminals pardoned conditionally on enlisting 172, 175
Cross-examination (*See* **Witness**)
Crown. (*See also* **King**)
Actions, civil, against 156
Army in peace, statutory power to govern 11–14, 175, 179
,, war, prerogative power of 6, 11, 13, 14, 150
Officers subject to will of 141, 142
Powers of, in relation to articles of war 6 12–14, 30, 150, 496
,, ,, ,, billeting and impressment in emergency 206, 522, 530
,, ,, ,, discharge of soldiers 137, 217, 500, 513
,, ,, ,, dismissal of officers 137 141, 142
,, ,, ,, Marines, vested in Admiralty 584–5, 587
,, ,, militia (old) 192–4
,, to make regulations as to command 194, 497
,, ,, rules of procedure 496–7, 585
Proclamation of martial law in a colony by the 4
Purveyance, right of 166, 203, 207
Rates, exemption from 243
Servants of (*See* **Servants**, public)
Cruelty
Disgraceful conduct involving 24, 444–5, 708, 725
To animals 26, 448, 709
Currency, British, equivalent in India and colonies 574
Custody.
Civil—
Definition of 494
Deserters and absentees in 543, 545, 559
Escape from 129
Military convict, detention in or transfer to 490
,, prisoner or soldier undergoing detention, detention in or transfer to 493
Court-martial, custody of accused at 51, 668
Illegal, *habeas corpus* in relation to 142–147
Insane persons, of, during H M 's pleasure 542–3, 657
Interim, in case of military convict 490
,, ,, ,, prisoner or soldier undergoing detention 493
Interrogation of persons in 99
Military
Arrest (*q v*)
Authorities for ordering ,, ,, ,, 31, 467

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Custody—*contd*
Military—*contd*
Between two periods of imprisonment, &c . 466
Charge report, absence of, may not invalidate 155, 468
Civil custody, transfer to, from 490
Confinement (*q v*)
Detention, sentence of, may be undergone in 66, 491
Escape from, or attempting to 26, 34, 447, 466, 708, 726–7
,, ,, permitting 26, 34, 109, 445–6, 708, 726
Form of order for removal of deserter or absentee in 786
Illegal, *habeas corpus* in relation to 142–147
Imprisonment, sentence of, may be undergone in 66, 491
Meaning of . 31, 467–8
Military convict may be kept temporarily in 490
,, prisoner may be kept temporarily in 493
N C Os in 33
Not illegal through informality 143, 575–6
Offences in relation to persons in 26, 34, 109, 445–7, 708, 719, 726–7
,, while in 18, 435, 706 719
Officers in 31, 467
Periods in, reckoning for purpose of maximum imprisonment, &c . 466
Provost marshal's powers regarding 41, 499
Receiving and keeping in 34 467–8
Release from 32, 33, 47, 467–8, 472, 487, 616
,, improper, from 26, 34, 445–6, 708, 726
Removal of persons under sentence in 490, 491, 493
Rules as to taking into 31–35, 467–9
Ship, on board, provisions as to 490, 493, 576, 819–820
Soldiers in .. 33, 467–8
,, ,, on line of march, temporary confinement in civil prisons and lock-ups of 33, 543, 784
Naval, when officers and soldiers may be ordered into. 819
Pay, forfeiture of, while in 39, 40, 547, 549
Retention in, before trial, report on necessity of 467, 616
,, until charge disposed of 33, 38
Unnecessary retention in 446–7, 467–8, 616, 708
,, ,, ,, ,, civil proceedings for 144–145, 151–152
Validity of 143, 575–6
Violence to custodian 18, 435, 706, 719
Warrant authorising retention in 143, 572, 575–6
Custom of the Service 65, 222, 435, 451, 461, 467, 575, 686, 693–4, 696, 838, 860
Cyprus, included in term Colony in Army Act 602

D

Damage
Amount of, calculation of, and evidence as to 449, 550
Civil claims for, military tribunals not to be used for enforcing 549
Compensation for, stoppages of pay 40, 104, 472, 546–550, 624–5 701–2, 757, 758
"Occasioned by," meaning of 546
To equipments, &c (*See* **Equipments**)
To property (*See* **Property.**)
To public or regimental goods 442–3, 707
Damages.
Actions for, against soldiers . 554–5

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Damages—*contd*
Actions for, in respect of excess, &c., of jurisdiction 135–136, 147–160, 164, 679
,, ,, transport accidents 156–157
,, public servants, against 156–157
,, tender of amends 164, 574–5
,, time limit for bringing 164, 574–5
,, what courts competent to try 164, 574–5
Barrack (*q v*)
Dangerous Driving (*See* **Driving**)
Dates, commencement and expiration of Army Act . . 416–7
,, insertion of, in charge 437, 701
Day, reckoning of, for purposes of stoppages 548–9, 551, 697
Dead
Burial of (*See* **Burial**)
Protection of 305
Statements by, before decease (*See* **Evidence**)
Treatment of bodies and property 305
Deaf and Dumb, as witnesses 95
Death (*See also* **Regimental Debts**)
Acceleration of 115
Certificate or register of, forgery of 125, 132
Force, from use of (*See* **Force**)
Funeral expenses 872, 883
Homicide (*q v*)
Justification and responsibility for causing 110, 111, 112, 115–117
Neglect or omission to perform duty, through 112
Negligence, through 110, 117
Punishment, excessive or illegal, through 160–161, 164
Sentence of, active service, on (*see* Offences *below*)
,, articles of war, punishment under, by 30, 496
,, colonies, in, approval by Governor, when required 65, 482
,, communication of, to accused 62, 762, 795
,, commutation of 485
,, confirmation of 63, 481, 684–5
,, courts-martial, district, cannot award 44, 104, 474
,, ,, field general, verdict must be unanimous 68, 477, 684
,, ,, general, two-thirds majority necessary 62 475
,, execution of, responsibility for 66, 163–164
,, India, approval by Governor-General, when required 65, 482
,, martial law, under 146
,, offences in relation to enemy punishable by 15, 426–7
,, ,, punishable by 15, 16, 29, 127, 426–9, 431–2, 437 460
,, ,, ,, on active service by 15, 20, 65, 426–429, 437, 482
,, plea of guilty not accepted if liable to 54, 638, 683
Violence, by, in prison or detention barrack in India 545, 692–3
Death Duties, provisions as to 243, 872, 876
Debts, prisoners of war, retention of, until they have paid 290
,, private, of soldiers 241, 552, 554–5
,, regimental (*q v*)
,, securities for, official documents as . . 562–3

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Debtors, released conditionally on enlisting 172, 175

Declaration
Court of inquiry, of 497–8, 688–9
Deceased persons, of, when evidence 86
Dying, when evidence 84, 85
False 127, 449–450, 552–3 709
Members of court of inquiry, on recovered prisoners of war 687–8
Solemn, in lieu of oath—
Forms of 635, 669, 762–3
Interpreter or shorthand writer 762–3
Members or officers of courts-martial 52, 479–480, 635, 682, 762–3
"Oath," included in expression 603, 604
Refusal to make, or take oath 451–2, 710
Witnesses, by—
Before C M 55, 95, 479–480 669, 682, 763
,, C O 470, 617
,, court of inquiry 497, 687
,, investigating officer 470 473, 617 618
War, of 272–3

Declarations (International)
Hague (*q v*)
Present position of 270, 271, 272
St Petersburg (*q v*)
When binding 272

Decoration
Definition of 602
Disposal of medals, &c, on death 875 886–7
Evidence as to, on conviction 649–50
False representation as to entitlement to 563
Forfeiture of 443, 445, 464, 466 823
,, present powers of C M regarding 466
Good conduct badges, forfeiture of 443, 445, 466, 758 823
Loss of, by neglect, not an offence 449
,, &c, stoppage of pay 547
Making away with 26, 448–9 709
Purchasing, &c, from soldier 561–3
Unauthorised wearing of, or supply of 459, 563

Deductions from Pay (*See* **Pay**)

Defence
Accused (*q v*)
Address for 54, 56, 60, 637, 643–6, 650, 659, 671, 675, 683, 751
Counsel (*q v*)
Defending officer, appointment, duties and rights of 48, 49, 51, 56, 97, 98, 625, 643–6, 672, 686
Form of proceedings relating to 749–752
Insanity, of (*See* **Lunacy**)
Preparation of, accused's rights 48, 49, 55, 71 78 625, 642, 644, 662, 672, 679, 683, 686
President's duty in regard to 54, 644, 657–8
Procedure 55–57, 60, 636–646, 672–3, 683
,, when accused only witness to facts 56, 643–5
,, ,, accused pleads "guilty" 54, 640–1, 746
,, ,, witnesses are called 56, 57, 643–6
Rights of 48, 49, 52, 53, 55, 56, 59 60, 94, 102, 471, 478–9, 616, 625, 642, 657–8, 672–5, 679, 682, 683, 686, 750

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Defence Force, 1921 179
Defence of the Realm Acts, 1914–15 206
Defending Officer (*See* **Defence**)
Deferred Pay (*See* **Pay.**)

Definitions and Explanations of Terms
Absence without leave 19
Accessory before or after the fact 108
Active list 578
Active service, on 599–600
Admiralty 587
Airman 604
Appoint 505
Armed forces 275–6
Army 275
Army Act 1, 696
Army reserve force 840
Army service 501
Arraignment 52, 636
Arson 127
Assault 113
Attach 505
Attorney general 899
Auxiliary forces 602
Bailee 119
Barrack damage 547–8
Battalion 602
Beyond the seas 603 606
Bigamy 128
Blockade 290
British Islands 605
Burglary 122–123
Carnal knowledge 113
Carriage 208, 604
Cartel 323
Certified copy 650–1
Certiorari, writ of 140–141
Charge 468 623
Charged with care of 443
Chief officer of police 523 4, 906
Colony 602, 605
Command, lawful 18, 434
Commander-in-chief 601
Commanding officer 221-2, 432, 440, 442, 451, 462, 468, 472, 478, 594, 596, 693–4
,, ,, of a corps or portion of corps 686
Common law 2
Commutation of sentence 486
Competent military authority (*q v*)
Conspiracy 128–9
Constable 604
Corps.. .. .. 602, 605
County borough council 865
County Court Judge 604
County for purposes of T R F Act .. 864, 866
Court, civil 603, 665
,, of law 604
,, ,, summary jurisdiction 604, 606

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Definitions and Explanations of Terms—*contd*

Court, superior 603
,, supreme 603
Custody, civil 494
,, military 31, 467–8
Decoration 602
Defending officer 672
Desertion 19
,, attempted 438
Detention barrack 494
Discharge with disgrace 455, 854
Document 900
,, false 125
,, public 80
Dwelling-house 123
Embezzlement 22, 120
Enemy . 602
Evidence, direct and indirect 81
,, hearsay 84
,, rules of 69
Exemplary manner, service in . 566
Extortion .. 122
False documents 125
,, pretences, obtaining by . 121
Feign disease, &c . 444
Foreign agent 902
,, country 603, 606
Forgery 125
Fraudulent conversion 120–121
,, misapplication . 22
Friend of accused . 672
Government printer 569
Governor . 603
Governor-General (India) 603
Habeas Corpus, writ of 142–143
Homicide 115
Horse 604
House, breaking and entering 123
India 602, 605
,, British 602
,, native of 602
Indian military law 590
Insurrection 252, 253
Intimidate . . 249
Invasion . .. 324
Judicial notice .. 72
Justice of the Peace .. 514
Land . . 865
Lawful command 18, 434
Lord Lieutenant of Ireland . 601
Malicious injury .. 127
Malinger 444
Man . . 587, 840, 864
Mandamus, writ of . .. 137
Manslaughter .. 116–117
Martial law . 4
Menaces, demanding with . 122

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Definitions and Explanations of Terms—*contd*
Military conv ict . 494
custody 31, 467–8
law 1
,, (Indian) 590
prison 494, 587
prisoner 494
reward 602, 605
Misdemeanour 603
Mitigation 486
Model 900
Month 604, 697
Munitions of war 900
Murder 116
Mutiny 15 16
Night 122, 123, 124
Non-commissioned officer 601
Oath 603, 604
Occupation of enemy territory 324
Offence under Official Secrets Acts 900
Office under His Majesty 900
Officer 577–8, 601, 604–5
,, (for purposes of Regimental Debts Act) 879
,, superior 433, 601
,, who investigated charge 478
Out-pensioners of Chelsea Hospital 840
Overseer 865
"Owner" of property 118
Pass 322
Pay, ordinary 54 › 548
Pecuniary or proprietary interest 86
Perjury 126
Permit 322
Personal interest 629
Personation . 127
Plant 828
Plea to jurisdiction 53
Police authority 206, 604
Post 427, 430
Posting 505
Prescribed . 603, 840, 864, 880
Prison, civil 495
,, military 494, 587
,, penal servitude . 495
Prohibited place .. 897–8
Prohibition, writ of . .. 138
Proper military authority . 696
Public building 523
Purporting .. 570
Railroad 828
Railway .. 831
Rape .. 113
Receiving 22, 124
Regimental 602
Regular forces 601, 605
Remission of sentence 486
Reserve . 518

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Definitions and Explanations of Terms—*contd*
Reserve forces 601
Riot 250, 252
Robbery 122
Route 205
Ruse 293
Safe-conduct 322
Safeguard 323, 431
Secretary of State 601
Sedition 16
Sketch 900
Sodomy 115
Soldier 578, 601, 605
Spy 296
Station beyond the seas 603
Statute law 2
Stealing 22, 118–9
Summary Jurisdiction Acts 603, 606
Superintendent of police 900
Superior military authority 488
Swear 603, 604
Telegram 903
Territory (invasion) 278
Theft 22, 118–9
Traffic 831
Transfer 505
Unit 221
United Kingdom 605
Unlawful assembly 249–50, 252
War crime 340
Watchword 430
Wireless telegraphy 903
Year 604
Defraud, conspiring to 124, 129, 131

Delegation
Army Council's powers regarding deductions of pay for maintenance and affiliation orders 556–7
Commanding officer's powers to award minor punishments and fines 35, 40, 470
Courts-martial—
District, of power to convene and confirm 43, 62, 63, 474–5, 481, 537–8, 584, 793
General, of power to convene and confirm 43, 63, 474, 481, 535–7, 584, 792–3
Power to make orders under Army Act 575–6
,, ,, Reserve Forces Act, 1882 838
,, ,, T R F Act 860
Powers of officers, of 575, 696, 838, 860
Delirium Tremens 105, 444
Departments connected with Army, not corps within meaning of A A 221
Deportation of aliens 274
Depositions, admissibility of, as evidence 87
Deputy Lieutenant. (*See under* **Lieutenants of Counties**)
Descriptive Return of Deserter
Admissibility as evidence 88, 569, 570
Sending and form of 559–560, 570, 609

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Deserter (*See also* **Desertion**)
Apprehended, no court of inquiry held on . 498
Apprehension of 559–560
,, ,, evidence as to 569–571
,, ,, neglecting to cause 21, 440, 707
Assisting a 21, 440, 558, 706–7, 721, 836
Court of inquiry regarding 441, 497–8, 688–9
,, ,, summary jurisdiction, power of, regarding 559–560
Custody of 543, 545, 559
Descriptive Return (*q v*)
Falsely pretending to be 438, 450–1, 558, 710, 729
Form of order for removal in military custody 786
From the enemy, treatment of 279, 283
Kit (*q v*)
Marines, Royal, from 587
Regimental debts 878, 887–9, 893
Remand of, by civil court 559–560
Return of, after being "struck off" power of C O 498
Surrender of, evidence as to 569–571
Surrendered, no court of inquiry held on . 498
,, power of police regarding 560
Transfer of 214, 507

Desertion
Absence without leave, and, difference between 19–20
,, ,, ,, conviction for, on charge of desertion or attempted desertion 20, 26, 58, 438, 441, 484 566, 649
,, ,, ,, power of C O to deal with, as 498
Acquittal on charge of, bars trial for absence without leave 564
Active service, on 20, 437–8, 566, 706
Assisting or conniving at 21, 440, 558, 706–7, 721, 836
Attempted, conviction of, on charge of desertion and *vice versâ* 20, 71, 438, 484
,, offence of 20, 437–8, 706, 720
Charge-sheets, separate, when necessary 438
Confession of, procedure on 213, 498–9, 502, 506, 547, 549, 559–560, 692
,, ,, to police 560
Court of inquiry, effect of record of declaration of, as conviction for desertion 497
Dates, proof of 437
Death, formerly punishable by 7, 11–13, 173, 195
Distance or length of absence not a criterion 19
Doubtful cases, finding in 20
Draft leave, overstaying 438
Drunkenness, absence caused by 26
Embarkation, when under orders for 19–20, 437–8, 720
Evasion of special duty is 19–21, 437–8
Evidence of . 19–20, 88, 437–8, 658
False statement as to being guilty of 438, 450–1, 558, 710, 729
Finding, special, on charge of 20, 26, 58, 438, 484, 649, 658, 753
Forfeiture of previous service for 20, 212–13, 235, 498–9, 502–3, 543
Forms of charges 706, 720
Fraudulent enlistment, previous conviction for, may reckon as desertion and *vice versâ* . 437–8
,, ,, when chargeable as 21
Furlough, by soldier while on 20, 438, 576

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Desertion—*contd*
General service, liability to, for 213 214, 506-7
Inducing . 20, 437, 558, 706, 836
Insanity of accused at time of 503, 543, 549
Intention, evidence of 19–20, 437
Kit (*q v*)
Neglecting to prevent, or notify C O , regarding 21, 440, 707
Non-effective account of deserter 888–9
Offence of, what constitutes 19–20, 437–8
Pay stopped during 89, 498–9, 543, 547–9
Procuring, persuading, &c 20, 437 558, 706, 721
Punishment for 20, 173, 195, 212–14, 437–8, 506–7
,, ,, second offence 437–8
Recruit absconding before attestation not chargeable with 504
Regimental Debts Act, application of, in case of 878, 887–9, 893
Reserve, Army 835–6
Several charges of, at same time 437
Summary disposal of, as absence without leave 438, 498
Surrendering after 20 560, 569–571
Territorial Army 235, 857 859
Trial for, after ceasing to be under military law 44, 564–5
,, corps of accused for purposes of 437
,, time limit for, after offence 44, 45 564–5, 566

Detachment
Commanding officer of power of 40 67 68, 476-7 620 680, 694
Discipline of 221

Detention.
Airmen undergoing, in military detention barracks, discipline of 816–17
Army Educational Corps instructors, in cases of 594–5
Barrack— .
Active service, establishment, &c , of, on 544–5
Air Force, committal to 494, 817
Colonial, removal of prisoners or soldiers to or from 491–3, 694–6
Commander-in-chief's power as to, on active service 544–5
Committal to 491–3, 654, 691
,, ,, during suspension of sentence 487–8
,, ,, power to defer, pending suspension of sentence 487
Confinement in 33, 66, 491, 620
Definition 494
Establishment and regulation of 543–4
Forms of commitment to 774–9, 785–6
,, ,, release or removal from 780–5
General provisions as to 66, 491–3, 543–5
Imprisonment, serving sentence of, in 66, 491
India, in 543–5
Removals to or from, in U K and abroad 491–3, 495, 542–3, 691, 694–6
Rules as to, power to make . 543–4
Transfer to, or from .. . 493, 495
Barrack, Branch—
Confinement in .. 33, 66, 620
Soldiers may be confined in, while awaiting trial . 33
Channel Islands, sentences of, in 598–9
Colony, sentences of, in 66, 67, 491–3, 695
Commanding officer's power to award summarily 38, 39, 466, 469, 471, 620–1

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Detention—*contd*
Commutation of 214, 465, 486, 488, 495
Contempt of court, punishable by . 27, 451
Day, how calculated, for purposes of stoppages 551
Discharge with ignominy cannot accompany sentence of 29
Foreign countries, sentences passed in 66, 492, 695
Forms of orders, power to make rules as to 496
Guard detention room, temporary confinement in 33, 620
Hours, when to be awarded in 471, 620
Imprisonment, commutation of, to 29, 463, 486, 495
India, sentences in 66, 67, 492–3, 543–5, 695
Isle of Man, sentences of, in 598–9
Lunacy of soldier undergoing 542–3
Month's, means calendar month 604, 697
N C O sentenced to, deemed to be reduced to ranks 29, 594–5
Object of . 29
Pay stopped during 39, 486, 547–9, 551, 620
Periods of, reckoned as service 213, 502
,, ,, reckoning of, for purpose of maximum 466
Place where served 66, 67, 491–3
Rooms, barrack detention, confinement in 33, 66
Rules as to award of 29, 464, 466, 469, 471, 487, 495, 594–5, 620
Sentence of, award of, while under suspension of sentence 487
,, date of commencement 67, 486, 487–8, 494–5, 620, 652
exceeding 12 months, served in United Kingdom 492–3
execution of 66 67, 491–5, 598–9
maximum which may be imposed by C M 463, 466, 487, 495
maximum which may be imposed by C O 39, 469, 471
may not be carried out in a prison 66, 491
suspension of 65, 66, 487–8, 795–808
Severity of 544
Ship, H M's , award of, when on board 821, 823
Soldier undergoing—
Abroad, may be sent, for service 491–2, 782
Air Force detention barrack personnel, powers of, over 817
Commitment of 491–3, 654, 691
Custody, interim, of 493, 690
,, military, delivery into 493
Escape of 447
Forms of orders relating to 774–786
Hospital, &c , removal to 494
Insanity of 542–3
Military law, application to, until completion of sentence 491, 565
Release of 487, 493–4, 495, 692
Removal of (*See* **Prisoner, Military**, removal of)
Rules as to punishment, &c , of 543–5
Ship, on board, restraint and custody of 493, 576
United Kingdom, provisions as to sentences of, in 66, 491–3
Warrants for 572, 575–6
Devastation, general, when permissible 339
Diplomatic Agents.
In occupied territory . 352
Of neutral powers, in a siege 291–2

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Directors of Companies, restrictions on officers being .. 244

Discharge.
Abroad, conveyance home in case of . . 218, 511
Army Council, powers with regard to . 512–3
Care of soldiers after, duty of county associations . 848
Certificate of, illegal possession of 563
,, service given on 217, 226, 513
Competent military authority, by order of 217, 513
Confirmation of 513
Conveyance home or to place of attestation, on 218, 511
Crown's power to dispense with services of soldier 137, 217, 500, 513
Date of taking effect 513
Delay in 513
Disgrace, with, enlistment after 28, 218–19, 454–5, 712, 729
,, ,, meaning of 455, 854
Evidence of 568
False statement as to 450–1, 710
Felony, on account of conviction for, enlistment after 218–19, 454–5
Ignominy, with, cannot accompany sentence of detention 29
,, ,, date of effect 465, 513
,, ,, enlistment after 28, 218–19, 454–5, 729, 734, 853–4
,, ,, in addition to penal servitude or imprisonment 463
,, ,, power of court-martial to sentence to 463, 513
,, ,, remission of, if imprisonment commuted to detention 29
Lunatic soldiers, disposal of, on 218, 512–3
Marines, Royal (*q v*)
Misconduct, for, enlistment after 28, 218–19, 454–5, 712, 729
Penal servitude, on account of sentence of, enlistment after 218–19, 454–5
Persons not duly attested or re-engaged 216, 517
Premature, to take up civil employment 218
Purchase of, within three months of enlistment 215, 504
Regulations as to 217, 513
Reserve, Army, certificates 226
Right of soldier to, after prolongation of service 509
,, ,, on completion of term 511
,, ,, where continuing in service after 21 years 211, 508
,, ,, ,, illegality, &c., in attestation 216, 517
,, ,, ,, serving without attestation 216, 517
,, ,, ,, state of war exists .. 212, 509–10
Sentence not affected by 489, 491, 565
Service, reckoning of, for. (*See* **Service**)
Supplementary Reserve . . 229, 230
Territorial Army . 235, 236, 852–3
Theft, in consequence of conviction for . . 455
Trial after, limit of time for . . 44, 564–5

Disciplinary Regulations and Orders.
Army, Navy and Air Force acting together, relations between, when . 42, 596–7, 809–810, 813–7
Attachments of Army and Air Force personnel 42, 588, 810–13

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Discipline, Military.

Air Force, Army and Navy acting together, provisions as to 42, *596–7, 809–810, 813–7*

,, *members of, attached to Army, provisions as to* 42, 565, *578, 579, 580, 588–590, 810–3*

, *officers and soldiers attached to, provisions as to* 42, *588–590, 810–13*

Army Act, explanation of provisions of, as to 2, 15–30, 42, 416–7, 426

Civil courts, jurisdiction of, on questions as to 135–136, 152–156

Conduct to prejudice of (*q v*)

Maintenance of 18, 60–62, 104, 112, 416

Navy, officers and petty officers of, attached to Army, provisions as to 42, 596–7, 809–810

Necessities of, suspension of rules of procedure on grounds of 679, 686

Ship, on board (*See* **Ship**)

Unit for purposes of 221

Disclosures, injurious. (*See also* **Military Information**), 457, 713

Disease.

Concealment of 436

Contagious, intentional spread of, in war 271, 280

Feigning, producing, or aggravating 24 443–4, 558–9, 707, 723–4

Venereal 436, 444

Disgraceful Conduct.

Forms of charges 707–8, 722–5

Offences and penalties 24, 115, 442–5

Disguise at Night 124, 132

Disloyal Words, use of 456, 712

Dismissal

Army Educational Corps instructors, of . 594–5

Charge (*q v*)

Confirmation of sentence of 63, 789, 791

Effect of sentence of 465

Enlistment after 28, 218–19, 454–5

Navy, from (*See* **Navy**)

Officer, power of Crown regarding 137, 141

,, punishment of, by 462, 465, 561

Sentence not affected by 489, 491, 565

,, of, date of effect of 465, 565, 654

Territorial Army, member of 29, 593

Trial after, time limit for .. 44, 564–5

Volunteer . 29, 593

Warrant officer, power of C -M to order . 465, 593

Disobedience to Lawful Command.

Charges of, framing . .. 17, 706, 719

Civilians, orders to soldiers employed under . 435

Definition of "lawful command" . .. 18, 434

Degrees of . . 17

Elements of offence of 17–18, 434

Graver offence of, elements of 17–18, 434–5

Hesitation or delay may constitute 17–18

Illegal or impossible commands 18, 152–154, 434–5, 444

Less offence of . 17, 26, 434–5

Mutiny (*q v*).

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Disobedience to Lawful Command—*contd*
Religious scruples no excuse for 18, 434
Superior officer, to 17–18 434–5, 706, 719
Disorderly Houses Act 577
District Court-Martial (*See* **Courts-Martial**)
Disturbances of the Peace. (*See* **Riot**)

Doctors.
Communications to, not privileged 98
Expert evidence by 88
Documentary Evidence Acts 81

Documents.
Admissibility of, may depend on time of possession 78
Air force, admissibility as evidence 569
Army Act, provision in, as to proof of and of contents of 81, 88, 567–571
Attestation of, when required to be proved 79
Copies of 79–81, 88, 157, 158, 568–571, 652
Defacement or alteration of, fraudulent 27, 449, 709 728
Definition of (Official Secrets Acts) 900
Evidence of 69, 79–81, 87, 88, 97, 98, 102, 157–158 567–572, 643, 649–650
Execution, proof of 79
False, meaning of 125
Falsifying official 26, 27, 449–450, 709, 727–8
Forging, uttering, &c 125–126, 132, 734
Forwarded to president of C.-M. 627
,, with application for C.-M. 38, 794
Identity of persons named in, evidence as to 570, 572, 650
Improper possession of, regarding pay, pensions, gratuities, &c 562–3
Issued by military authorities, amendment of 576
,, ,, unauthorised person 576
Letters, proof of receipt of 80, 839
Making away with, with intent to defraud 449, 709, 728
Memoranda on forms and 769
Offences relating to, under Official Secrets Acts 901
Omissions in, fraudulent 26, 27, 449, 710
Primary evidence of 79, 80
Private, proved by production 79, 80
,, secondary evidence of 79, 80
Privilege of, from disclosure 97, 157–158, 541, 665, 688
Production of, by prosecutor 59, 643
,, refusal by witness 27, 79, 96, 451, 539–540, 710
,, rules as to 97, 98, 157–158, 541, 570, 665
,, verbal request for, may be disregarded 667
Public and private, distinction between 79
,, copies of, when admissible 80, 81, 88, 568–571
,, Documentary Evidence Acts, provisions of, as to proof of 81
,, forgery of 125, 132
,, hearsay evidence, application of rule of, to 87, 88
,, meaning of 80
,, proof of 80, 81
,, statements in, when admissible as evidence 87, 88
Secondary evidence of 79, 80
Signing in blank 450, 710

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Documents—*contd*
Suppression of 27, 449, 709
Witness as to . . 79, 80, 568, 570
Dog Stealing 121

Dominions
Adoption of Army Act by . 239
Forces of the, raising, government, &c , of .. 239

Driving
Negligent, &c , actions for damages for 156–157
Unauthorised 157

Drugs
Intoxication by . 24, 106
Supplying to soldiers, to render unfit for service . 558–9

Drunkenness.
Accused not to be brought up while drunk 36
Active service, on 24, 445, 469 726
Aggravated offence of 24, 25
Alcoholism (*q v*)
Charge for, framing of 24, 701
C O , must deal with, in certain cases 24, 39, 469, 470, 471, 618
,, powers of, to deal with summarily 24, 38, 39, 469–471, 594, 618, 823
Company, &c , commander's powers to deal with 35, 40, 470
Court-martial, trial by, for 24, 25, 445, 469
Drugs, produced by 24, 106
Duty, after being warned for 24, 469, 726
,, on 24, 25, 431, 445, 469, 726
,, unfit for, on account of 24, 25, 469
,, when not warned for 25
Evidence as to circumstances 25, 445
Fine for 25, 38, 40, 445, 466, 469–471, 823
Forms of charges for 708, 726
Intention to commit an offence, in relation to 25, 26, 106
Line of march, on 25
N C O , of 24, 39, 470, 471, 594
Offence of, under Army Act 24, 445, 708, 726
Offences during, responsibility for 25, 26, 106, 433, 441, 456
Officer to be tried for 24, 442
On post 15, 429-431, 701, 705
Opium, intoxication by, included in 24
Parade, failure to appear at, owing to 442
Previous convictions for 24, 469
Punishment for 25, 38, 40, 445, 466, 469-471
Sentinel drunk on post 15, 429–431, 705
Ship, H M 's , on board 823
Witnesses to state reasons for their opinion as to 445
Duelling, offence and punishment of 457–8, 713
Duke of York's Royal Military School 236

Duty (*See also* **Regimental Debts**)
Death 243, 872, 876
Estate 243
Licence duty for soldier servants, exemption from . 243
Dwelling House (*See* **House**)
Dying Declaration (*See* **Evidence**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

E

Earl Marshal, office of . 7–9
Education establishments in occupied territory 329
Effects of Officers and Soldiers (*See* **Regimental Debts**)
Elections (*See* **Parliament**)

Embezzlement
Evidence of 76, 88, 120
Fraudulent misapplication, conviction of, on charge of embezzlement 23, 443, 444, 484
Meaning of term 22, 120
Military offence, when to be treated as 21, 22
Money, meaning of 443
Person subject to military law, property, &c , of 21, 22, 444, 707
Prevention of, officers' responsibility for 23, 443
Public servants, by 120, 131
Punishments for 22, 131, 442–5
Receiving property embezzled 124, 444, 708
Regimental or public money or goods, of 21, 22, 442–5, 707, 708, 722, 725
Restitution of property embezzled 499–500
Servant, definition of 120
Theft, conviction of embezzlement on charge of, and *vice versâ* 23, 71, 120, 443, 444, 483–4
Embodiment and disembodiment of T.A (*See* **Territorial Army**)

Emergency Powers Act, 1920
Provisions of 248, 906–7
Regulations under, employment of troops in connection with 248
Emergency, Requisition of (*See* **Impressment**)

Enemy
Active service, in relation to . . 599–600
Aiding . 128, 427, 704
Alien, action for damages by . . 145
Correspondence with 427, 428, 704
Harbouring, &c , an . 427, 704
Intelligence to, giving 427, 428, 704
,, ,, offences under Official Secrets Acts 896–7, 902
Intercourse with 3, 305–323
Meaning of, in Army Act 602
Misbehaviour before . .. 15, 427 704, 715
Offences in relation to . .. 15, 426–8, 704
Property (*See* **Property**)
Reservists, detention of 274
Rioters, &c , when treated as 2, 602
Subjects, expulsion or detention of 273–4
Territory, occupation of (*See* **Occupation**)
Treachery (*q v*)

Engineers, Royal
Composition of . 220, 228, 231
Fortress Coy , Hong Kong . 240

Enlistment.
Abroad .. 219
Affirmation in lieu of oath .. 504

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Enlistment—*contd*
Aliens, regulations, &c , as to 216–17, 234, 514–5
Apprentices, of 216, 515–6, 606
Army Act, general provisions of, as to 500–518
Army Council's powers as to terms of 211, 501, 514, 517–8
Army Reserve (*See* **Reserve Forces**)
Attestation on (*q v*)
Auxiliary forces 592–3
Bounties on 176–7
Boys, of 211, 213, 216, 501, 502
Character, false statement as to, on 219, 517
Colonies, in 514
Competent military authority for purposes of 518
Completed by attestation 504
Contract, nature of 214, 216, 500
Corps, appointment of boys to 213, 505
,, ,, to, on 213, 219, 221, 505
,, particular, in 213, 505
Criminals debtors, &c , released conditionally on 172, 175
Disgrace, of men discharged with 28, 218–19, 454–5, 712, 729, 734
Error in claim to discharge for 215, 216, 517–8
Extension of term of original 211, 501
False answers or declaration on (*See* **Attestation**)
Fraudulent—
Confession of, procedure in case of 213, 498–9, 502, 506, 547, 549
Corps of soldier after 219, 439, 498, 503, 566
Death, formerly punishable by 12, 13
Desertion, distinction between and 21
,, or attempted desertion, previous conviction for, may reckon as fraudulent enlistment and *vice versâ* 438, 439
Engagement under which convicted soldier can be held to serve 219, 503, 566
False statement as to 450–1, 710
Forfeiture of pay 440, 456, 498–9, 549
,, ,, service 212–13, 498–9, 502–3, 566
Forms of charges for 707 721
General service, liability to, as punishment 213, 214, 506–7
Kit, free, of necessaries, obtaining (*See* **Kit**)
Marines 586
Offence of 21, 219, 439–440, 707, 721
Punishment of 21, 176, 212–14, 439, 506–7
,, ,, second offence of 439
Several charges of, at same time 439
Territorial Army, of men of the 21, 235, 439, 721, 859
Trial, after ceasing to be under military law 44, 564-5
,, corps of accused for purposes of 439
,, time limit for commencement of 44, 45, 564–5, 566
General service, for 213, 505
Great War, during 178–9
History of 172–3, 175–9, 215
Ignominy, of men discharged with 28, 218–19, 454–5, 729, 734, 853–4
Indentured labourers in Colonies, of 216, 516, 607
Indian forces 239, 591
Irregular or unlawful 28, 215, 216, 218–19, 454–6, 516–8, 712
Lascars, of 217
Marines, Royal (*q v*)

[*References on pages* 418 *to* 610 *are to the Army Act and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Enlistment—*contd*
Militia (*See* **Reserve Forces**)
Minors 216
Natives, of 217, 515
Negroes and inhabitants of Protectorates 217, 515
Notice paper, issue of, before 215, 503
Oath of allegiance 215, 504
Offences in relation to 28, 218 19 454-6, 516, 7?2
,, ,, , forms of charges for 712, 721
Original (*See* Terms *below*)
Pay, effect of acceptance of 216, 517–8
Procedure on 215–16, 503–4, 514
Proof of 215 439, 568, 570
Re-engagement (*q v*)
Refusal to be enlisted 215, 503
Regulations, &c , regarding, contravention of 456, 712
Reserve, Army (*See* **Reserve Forces**)
Shilling acceptance of on 215
Supplementary Reserve (*See* **Reserve Forces**)
,, Reservists into Regular Army 229
Terms of original 211, 212, 219, 227 500 1, 583
,, variation of 211, 214, 225, 501-3
Territorial Army (*q v*)
Voluntary, beginning of 175–6
,, during the Great War 178

Equipments, Ammunition, Necessaries, Clothing, &c
Damage or loss of, 448–9, 709, 727
,, ,, calculation of amount for purpose of stoppages 449, 550
,, , ,, pay stopped for 40, 472, 547–551, 624–5
Deficiency in 448–9, 497–8, 688–9
Documents regarding, signing in blank 450 710
Making away with 26, 448–9, 709, 727
Not seizable by civil process 241, 555
Offences in respect of 26, 40, 427, 448–9, 561–3, 709, 727
Purchasing, &c , from soldiers, penalties 561–3
Territorial Army (*q v*)

Error
Erroneous order during arrest does not affect charge 33
In documents, amendment of 576
In orders, &c , does not nullify 576
Not necessarily an offence 449, 452
Of judgment, members of court-martial or officers not liable for 146, 147

Escape.
Absence following, charge for 447
Assisting felon to 108
,, to 129, 134
Effect of, in regard to new sentence 466
From arrest, confinement, &c , or attempted 26, 34, 447, 466, 708, 726-7
,, civilian, by arrested deserter 447
Permitting 26, 34, 109, 445–6, 708, 726
Prisoners of war, assisting to 129, 134
,, ,, punishment, &c , of 284–5

Escort.
At trial 51, 668
Breaking away from an 436, 727

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Escort—*contd*
Of parlementaires 308
Offences by members of 26, 34, 109, 446, 708, 726
Officer under close arrest is put under charge of 31
Resisting an 18, 435–6, 706, 719
Surrendered deserter or absentee, of 446
Escuage 168, 173

Espionage
A war crime 340–1
Aircraft, from 296
By inhabitants 297
Definition of spy 296
During armistice 315
Harbouring spy, penalty 898
Immunity for completed acts 297–8
Lawful means of obtaining information 295–6
Penalties for, under Official Secrets Act, 1911 895–6, 898
Trial for 297
Estate Duty, in case of deceased soldiers 243

Evidence
Abstract of 48, 54, 473, 621, 625, 640
Accomplice, of 83–84, 94, 445
Accused, acts and declarations of, as 78
,, admissions by 87, 90
,, by, against another accused person 94, 96, 626, 668–9
,, ,, before C.-M., in defence, procedure 56, 57, 643–6, 683
,, ,, during taking of summary 37, 619
,, caution of 37, 87, 92, 93, 617–9, 658 669
,, conduct, general, of, as 77, 78, 89
,, death or illness of, as to 663
,, false evidence by 452
,, for, court may adjourn for production of 662
,, ,, procedure 56, 57, 102, 643–6, 669, 670, 683
,, in mitigation of punishment 54, 640–1
,, ,, support of plea in bar 53, 639
,, ,, ,, to jurisdiction 53, 637–9
,, irrelevant observations by 57, 658
,, may give, any time during hearing for defence 646, 667
,, omission by, to give, Judge-Advocate may comment on 57, 646
,, ,, ,, prosecutor may not comment on 56, 645, 658, 667
,, statements made in presence of, not excluded as 84, 85, 94
,, summary of, to be given 48, 473, 621, 625, 679, 686
,, to be taken down in presence of 37, 617
,, translation to, of 95
Additional, on revision of finding, &c., inadmissible 63, 481, 483, 648, 685
Adjournment of court, accused's application for, on 55, 642
Admiralty Regulations as 586
Admissibility of 37, 70, 73–94, 96, 97, 146, 569–572, 665, 688
Admissions (*See* Accused *above*)
Age, as to 59, 649
Air Force documents, admissibility of 569
Army Act, provisions of, relating to 541, 567–572
,, circulars, orders, &c., copies admissible as 81, 88, 568

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Evidence—*contd*
Arrest by civil police, as to 560–571
Attestation papers as (*See* **Attestation**)
Banker's book, entries in, as 80
Belief, admissibility of, as 88, 89
Best obtainable 74 79-84, 88, 98
Burden of proof (*See* Proof *below*)
Character of accused, as to (*See* **Character**)
Child, of 83, 95 96, 114
Circumstantial and direct, distinction between 70 81–83
,, good and bad illustration of difference between 82–83
Civil conviction or acquittal of 88 571, 650 859
,, courts, rules of, to be followed 2, 3, 69, 70 541, 665 686
Commanding officer, before, admissibility at trial 93, 102, 618–9
,, ,, ,, comparison with summary of evidence 38, 620
Conduct book, evidence from 74, 671
Confession—
Accomplice, by 83–84, 93–94
Court of inquiry, at, inadmissible as evidence 93, 97 688
Illustration of 91, 93
Involuntary, facts discovered through, when admissible as 93
,, under threat, &c 91
Oath, upon 93
Obtained unfairly 93
Police officers to 91–92
Previous proceedings, at 93, 97, 688
Rules as to 90–94, 688
Secrecy, under promise of 93
Voluntary 90–92
Whole confession must be given 93
Conspiracy, in case of 78
Convening officer, duty to consider 47, 627
,, ,, power to order further 47
Convictions, of previous 57, 93, 571–2, 668, 754–5
Correction of by witness 56, 670, 748
Corroboration of 58 83 84, 95, 114 126, 445, 452
Court, duty of, as to rules of 69, 98
,, of inquiry (*q v*)
,, ,, proceedings of, inadmissible as 93, 97, 157–8, 498, 688
,, ,, ,, record of declaration of, admissible as 497–8, 689
Criminal acts not covered by charge, when admissible as 75–77, 96–97
Criminal Evidence Act, 1898 (*q v*)
Deaf and dumb persons, by 95
Deceased person, declaration by, as 84, 86
Defence, for (*See* Accused *above*)
Depositions admissible as 87
Descriptive return as 88, 569, 570
Deserters and absentees, arrest or surrender of, certificate as 569–571
Direct 70, 81
,, information may supplement 69
Discharge from forces, of 568
Discrepancy in 38, 87, 102, 452, 620, 628
Disposition, general, of, not admissible 74
Documentary, rules as to 69, 79–81, 87, 88, 97 98, 102, 157–158, 567–572, 643, 649–650

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Evidence—*contd*
Documentary Evidence Acts .. 81
Documents (*q v*)
Dying declarations admissible only in murder and manslaughter 85
,, ,, rules as to admissibility of 84, 85
,, ,, ,, illustration of 85
Evidence Act, 1851 572
Exclusion of 70 74, 84, 101, 146
Expert, rules as to 88, 89
Explanation of, by witness 56 101, 670, 748
Facts as to (*See Res gestæ below*)
False, before court of inquiry 93 97, 452, 688
,, by civilians 540
,, evidence on charge of 27, 126, 452, 688
,, offence and penalty 27, 127 452, 710, 729
Feelings, bodily or mental, statements as to admissible as 86
Government publications as 81, 568
Handwriting as to 79, 83, 89
Hearsay, admissible in certain cases 84
,, application to public documents 87–88
,, definition 84
,, inadmissible 74, 78, 84, 90, 98
,, *res gestæ* statements (*See Res gestæ below*)
Identity of persons named in document, of 570, 572, 650
Inadmissible, conviction quashed or not confirmed if admitted 75–76, 483, 564
Indian Evidence Act, 1872 541
Indirect 70, 81–83
Insufficient charge dismissed on 36, 47, 58, 470, 618, 627
Intention, knowledge, &c , as to 19–23 73, 75, 76, 77, 78, 109
Introductory notes on 69–71
Irrelevant, by accused 57, 658
,, for prosecution, not admissible 74, 665
Judge-advocate duty of, to record 55, 675, 683
Judicial and extra-judicial proceedings 70
Judicial notice 72, 665
King's evidence 94
,, Regulations as 81, 568, 586
Letters, proof of receipt of 80, 839
Lunacy of 88 105, 458, 657
Member of court must be present during all the 52, 663
Military knowledge, judicial notice taken of matters within 72, 665
Mode of giving 98–102, 668–671
Motive 78
Narrative form, to be recorded in 55, 675
Nature of 69
Notes of, witness may not read 89, 90
Oath, not on 83, 95, 114
,, on, accused may demand 36, 37, 41, 470 473, 617–9, 622
,, ,, and statement not on oath, difference between 56, 644
,, ,, at court of inquiry 496, 497, 687, 689
,, ,, at taking of summary of evidence 37, 497, 618–9
Objections regarding, procedure in cases of 664
Offences, connected, of 76
,, consequences of, as 78
,, similar, of 75, 76, 77
Officer, on charge against.. 41, 473, 621–2

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Evidence—*contd*
Official Secrets Act, 1920, under 902
Opinion as to conduct as 77, 78, 89
,, as to drunkenness as 445
,, not generally admissible as 74, 88–90
Oral, rule as to 60 69, 95, 650
Orders or warrants as 81, 88, 436, 568
Plea in bar of trial, in case of 53, 639
,, of guilty, in case of 54, 640–1
,, to jurisdiction, in case of 53, 637–9
Preparation for offence 78
President, duty of, to record 55, 675, 683
Presumption of innocence 58, 72 74, 647
Prima facie, use of 73, 78, 81
Primary, of documents 79, 80
Proceedings of court-martial admissible in 81, 571–2
,, ,, ,, inadmissible as, on charge of false evidence 452
,, ,, court of inquiry not admissible in 93, 97 498, 668
Proof, burden of, on person alleging fact 72
,, ,, rules as to 58, 72 73, 124, 128
,, ,, shifting 73
Prosecution, duty of, to establish 58, 72, 73, 643
Prosecutor, by rules as to giving 59–60, 642–3, 666, 669, 673,768
, outline by, regarding 55, 642
Provocation, of (*See* **Provocation**)
Public records as 88
Questions to be entered on proceedings whether answered or not 98
Rape, special rule in case of 86
Read over to witness, to be 56, 617, 670
Rebutting 57, 73, 74, 75, 76, 80, 102, 650, 671
Recording of 55, 617, 640, 675–6, 683
Refreshing memory 89, 90
Regimental books, records in 59, 81, 88, 448 498, 568–570, 649-650, 689, 755–6
Relevancy, rule of 74–78, 658, 665
Repetition of, in trial on separate charge-sheets 660
Reserve forces, Army Act provisions applied to 840
Res gestæ, rule as to statements forming part of 84, 85, 86, 88, 90
Rules made under Army Act, copies admissible as 81, 568
Rules of—
Classification of 71, 74
Court-martial, at, to be same as in English civil courts 2, 3, 69, 70, 541 665, 686
Meaning of 69
Points requiring special attention in 98–99
Rules of Procedure, provisions of, regarding 665–671, 675–6, 683
Secondary, of documents 79, 80
Service, as to 59, 88, 568, 570, 649–650
State, affairs of, as to 97
Statement before C O or at taking of summary, admissibility as 37, 87, 93, 102, 618–9, 628
,, by deceased against interest, as 86
,, ,, as to health, as 86
,, ,, made in course of business, as 86–87
,, made in presence of accused not excluded .. 84, 85, 94

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Evidence—*contd*
Statement of accused, how differing from 56, 644
,, of facts, document may be evidence of 88
,, previous, cross-examination as to 101–102
,, rules as to (*See* Hearsay *above*)
,, summary of evidence to prove previous 102, 628
(*See also* Accused *and* Confession *above*)
Summary disposal of officer or W O , at 41, 452, 472–3, 621–2
,, of (*See* **Summary of Evidence**)
Summing up of, by judge-advocate 57, 646, 662, 675, 678, 752
,, ,, ,, prosecutor 56, 643–5
Surrender, as to 569–571
Territorial Army, Army Act provisions applied to 859
Text books on 70–71
Translation of (*See* **Interpreter**)
Verbal, not admissible as to bad character 60, 650
Verbatim, may be recorded 55, 675
View of place by court in order to understand 69
Warrants as 81, 88, 568, 585
Wife's (*See* **Wife**)
Witnesses, dissuading from giving 129
,, explanation by, of 56, 101, 670, 748
,, to be read over to 56, 617, 670
Examination of Witness (*See* **Witness**)
Exchange of Prisoners of War (*See* **Prisoners of War**)
Execution
Of death sentence (*See* **Death**)
,, prisoners of war (*See* **Prisoners of War.**)
Exemplary Manner (serving in), meaning of 566
Expert's Evidence (*See* **Evidence**)
Explosive projectiles
Use against aircraft 271
,, of, in war 271, 280, 353–4
Explosives.
Offences in connection with 128, 133
Throwing of, from aircraft 271, 280, 397–8
Expulsion of enemy subjects (*See* **Enemy**)
Extension of Service (*See* **Service**)
Extortion, offences of 122, 133, 162

F

Fact
Accessory before or after 108
Ignorance of, as excuse for offence 106
False Accusations, offences in relation to 27, 450, 710, 728
False Alarms. (*See* **Alarm**)
False Answers on Attestation (*See* **Attestation**)
False Documents. (*See* **Documents**)
False Evidence. (*See* **Evidence**)
False Personation. (*See* **Personation.**)
False Pretences.
Cheating in connection with 124
Cheques, as regards 121
Conviction of theft on charge of 122
Intention, necessity of 121

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

False Pretences—*contd*
Obtaining goods by 24, 121–122, 131, 733
Theft and, distinction between 118, 121
Things not subject to charge of obtaining by 121
False Statements (*See* **Statements**)
False Swearing, &c (*See* **Perjury**)
Featherstone Riot, report of committee on . 267–8
Fees
For attestation . 504
,, certificate of acquittal or conviction 571
,, descriptive return of deserter 560
,, warrant for impressment of carriages 527
Feigning Sickness, &c (*See* **Disease**)
Felony
Accessory before or after the fact 108
Attempt to commit, conviction of, on charge of 108, 130
Concealment of a 129
Desertion formerly punishable as a 7, 173
Housebreaking and committing (*See* **House**)
Misdemeanour, conviction of, on charge of 71
Official Secrets Acts, under 896, 898, 904–5
Refraining to prosecute for 129
Regimental Debts Act, modification in case of 878, 888–9
Table of 130–134
Theft not necessarily a 455
Warrant of arrest for, use of force in executing 111
Fencibles 198, 199
Ferries in Scotland, payment for 209, 554
Feudal Levy, history of 167–169, 172, 173
Field General Courts-Martial (*See* **Courts-Martial**)
Field Punishment
Active service, on, by C M . 30, 463, 466, 477, 684, 758, 787
,, ,, ,, C O . 38, 39, 466, 469, 471, 787
Attachment to fixed object is illegal 463
Commutation of other punishments to 464
Conditions essential to legality of 466, 787
Execution of sentence of 787
Marines, Royal, in case of . 787
Maximum sentence by C M 787
C O 38, 469, 471, 787
Month in sentence of, means calendar month 604, 697
Nature of 463, 787
N C O cannot be awarded, by C O 39, 469
,, involves reduction to ranks in case of 29, 594–5, 758
Pay, forfeiture during 39, 40, 471, 186, 547, 549
Provost marshal's powers as regards soldiers undergoing 41, 499, 787
Rules as to 30, 463, 464, 466, 568, 787
Finance, Army, history of 179–180, 184
Finding and Sentence
Confirmation and Confirming Authority (*q v*)
Convening officer's intention not to influence 58, 61
Finding—
Acquittal (*q v*)
Alternative charges, on 57, 483, 640–1, 648, 649
Charge-sheets, separate, on 48, 52, 659, 660–1
Closed court, in 57, 647, 752

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Finding and Sentence—*contd*
Finding—*contd*
Confirming authority cannot alter . . 64, 483
,, ,, reference to, before 59, 647–9, 753
Consideration of 57–59, 647, 686, 752
Extraneous considerations must not influence 58, 647
Form of 647–8, 686, 752–3
"Guilty" 58–60, 62, 64, 483, 640, 651, 659, 661, 683
Insanity, as to . 64, 105, 542–3, 549, 653–4, 657, 745, 753
Non-confirmation, effect of 45, 64, 483, 564, 641
"Not guilty" (*See* **Acquittal.**)
Plea in bar, as to 54, 64, 639
President has no casting vote on 59, 480, 663
Procedure and rules 57–59, 647, 649
Record and form of 59, 647–8, 686, 752–3
Revision of, not allowed when sentence alone sent back 63, 653
(*See also* Revision *below*)
Revoking of, necessitates revoking of sentence 63, 483, 653–4
Special, as to validity of plea 637
,, civil offence, in case of 484
,, confirming officer cannot substitute a 483
,, defence must not be prejudiced by 58, 648
,, form of 648, 753
,, when less serious offence proved 17, 20, 58, 438, 446, 483–4
when particulars in charge not proved 72, 484, 647–8, 658
Validity of, where sentence invalid 486, 656
Votes on, equality of, involves acquittal 59, 480–1, 683
,, majority decides issue 59, 663–4
Invalid without confirmation 62, 64, 482–3, 684
Non-confirmation of (*See* **Confirmation**)
Opinions of court to be taken separately 59, 62, 647, 663
Petitions against, by aggrieved persons 67, 135
Proceedings subsequent to 62–66, 652–6, 686, 759–761
Promulgation of 65, 480, 654, 761
Recommendation to mercy (*q v*)
Reservation for confirmation 64, 482, 652, 685
Revision of, object of 483, 653
,, procedure, &c 63, 64, 481–3, 496, 652–4, 655–6, 685, 759

Sentence—
Accused, communication to, regarding 62, 762, 795
Army Act, must conform to 60, 464, 651
Awarding, principles to be observed in 25 60–62, 105, 106, 464
Channel Islands, passed in 598–9
Character of accused considered before 59–60, 74, 649–650
Closed court, considered in 60, 756
Colony, passed in 63, 65, 66, 67, 482, 485, 489–493, 694–6
Commencement of 67, 466, 486, 487–8, 494–5, 565, 620, 652, 653
Commutation of (*See* **Punishment.**)
Completion of, though offender no longer under military law . . . 489, 491, 565
Death (*q v*)
Disclosure of 62, 479, 762, 795
Discretion of court as regards 60, 62
Execution of, abroad, by provost marshal 41, 499
,, illegal or irregular 163–164

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Finding and Sentence—*contd*
Sentence—*contd*
Execution of, provisions as to 64, 66, 67 482 485–495 572, 598–9, 694–6
,, rules as to, power to make 496, 585
,, ship, passed on board 599
,, suspension of 64, 485–6
,, writs to prevent 138, 139
Foreign country, passed in 66 490 492, 495, 694–6
Forms of 60 756–9
,, commitment of soldier awaiting 785
Illegal, action for damages 156–7, 147 149 150 164, 574–5
,, award of, by confirming authority 486
,, may not affect conviction 486, 656
,, nullity of 653, 656
Increase of valid, not allowed on revision 63 481 483, 653, 685
India, passed in 63, 66 67, 482, 485 489–493, 694–6
Isle of Man, passed in 598–9
Lunacy, sentence not required where finding of 654
Martial law, confirmation of sentence under 5
Mitigation of (*See* **Punishment**)
New, illegal if new evidence is received 483
,, required on revision of finding 63, 483, 653
Not given till all charge sheets disposed of 659, 660
One, in respect of all charges 60 651, 659, 660
Pay, forfeiture of while under 39, 40, 547–9
Postponement of, in case of several accused 61, 651 664
Preliminary procedure 59 60 649–650, 753–6
Publication of, not a libel 157
Punishment (*q v*)
Recommendation to mercy (*q v*)
Recording of 62, 652, 756–9
Remission of (*See* **Punishment**)
Review of, Army Council's instructions regarding 795–808
Revision of, court's power, when finding only sent back 481, 654 (*See also* Revision *above*)
Revoking of, if finding revoked 63, 483, 653–4
Rules of procedure as to, power to make 496–7
Signature of president required 62, 652
Substitution of (*See* Valid *below*)
Suspension of operation of—
Army Council's instructions regarding 795–808
Authorities having power of 65, 66, 487–8
Committal of soldier during 487, 488
Competent military authority, duty of, regarding 487
Discharge from prison or detention barrack on 487
Execution (*See* Execution *above*)
Form for review 804–8
Fresh sentence during, reckoning of 487
General provisions as to 65 66, 67, 487 8
Instructions regarding 795–808
Minute for, signing of 488
Pay not automatically forfeited during 486
Promotion not barred during 488
Reduction to ranks not affected by 488
Release from custody on 487
Remission of sentence during 487, 488

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Finding and Sentence—*contd.*
Sentence—*contd*
Suspension of—*contd*
Review of suspended sentence periodically 487, 488, 795–808
Sentences which may be suspended 65, 66, 487–8
Superior military authority, powers regarding 487–8
Valid for invalid, substitution of 65, 496, 655
Validity of, in case of several charges 60, 651, 659
Vary, power of confirming authority to 64, 655–6, 686
Votes on, equality of 62, 480, 663–4
,, majority essential 62, 663–4
Ship, passed on board, execution of 599
Validity of 62, 64, 65, 482, 486, 651, 654–6, 659, 684
Votes on, to be kept secret 479, 762
Fines
Application of, when recovered summarily 573
Awarded by C O or C M for drunkenness only 38, 445, 463, 466, 471, 550
Civil courts, powers of, to award against civilians, for offences under A A —
Billeting, offences in relation to 525–6, 535
Decorations, unauthorised wearing of 563
False personation 553
,, statement as to character of recruit 219, 517
Impressment of carriages, offences in relation to 533–5
Interfering with military duties 558–9
Pawnbrokers, offences by 561–2
Stores, public, improper possession of 561–2
Trafficking in commissions 561
Unlawful collection of tolls 554
,, recruiting 219, 516
Court of summary jurisdiction, power of, regarding maximum, when sitting in occasional court-house 572–3
Drunkenness, for 25, 38, 40, 445, 466, 469–471, 823
Ireland, imposition, &c , in 573
Offences punishable by, under Official Secrets Acts 903–5
Payment of part to informer 572–3
Recovery of, summarily 572–3, 574
Reduction of, in India or colony 562, 574
Reserve forces, minimum in case of . . 839
Scotland, imposition, &c , in 573–4
Stoppages for purpose of paying . .. 40, 548, 550
Territorial Army, in case of .. 235, 857, 858–9
Warrant officers, on 465, 593
Firing on crowd, responsibility and justification for 247, 252, 254–6, 259, 263, 265, 267–9
Flag
National, improper use of 295
Red Cross 294, 304
Truce, of—
Displaying white flag in presence of the enemy, charge for 459
Improper use of .. . 294–5, 310
Offences in connection with 427, 428, 459, 704
White—
Signification of 306–8
Flogging (*See* **Punishment,** Corporal)
Flying Corps, Royal 185
Followers of Armies. (*See* **Camp Followers**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Food, impressment of, in emergency (*See* **Impressment.**)
Forage.
Documents regarding, signing in blank 450, 710
Impressment (*q v*)
Purchasing, &c, from soldier, penalty for 561–3
Force
Amount of, to constitute an assault 113
,, which may be used in quelling disturbances, &c 246–8, 251–69
Excessive use of, offence and penalty 246–7, 254–5, 259, 261
Use of, responsibility and justification for 4, 5, 110–112, 146, 246–7, 251–69
,, troops may constitute excess of 246, 254, 256–7, 261
Forces of the Crown
Air, naval and military acting together, disciplinary relations 42, 596–7, 809–810, 813–7
Auxiliary forces 230–36
British forces 220–238
Colonial forces 240
Commissions for raising 169–171
Constitution of 220–240
Dominion forces 239
False representation as to membership of 552–3
History of 165–210
Indian forces 238–9
Militia 224
Miscellaneous 236–7
Numbers (*q v*)
Penalties in relation to 558–56ɔ
Persons not belonging to (*q v*)
Railways, conveyance by (*See* **Railways**)
Regular forces (*q v*)
Regulation of the Forces Act, 1871, extracts from 827–8
Reserve forces 224–30
Reserve of Officers, including Supplementary Reserve of Officers 222–4
Royal Marines 237–8
Supplementary Reserve 228–30
Territorial Army 230–36
Foreign Agents.
Communication with 896–7, 902
Definition 902
Foreign Country.
Active service, declaration as to 599–600
Committing, releasing and removing authority in 490, 493, 495, 690–2
Commutation, &c, of sentences passed in 485
Definition of term 603, 606
Execution of sentences passed in 66, 490, 492, 495, 694–6
Mutiny Acts and Articles of War in 13, 14
Offences against person or property in 68, 430, 431, 476–7, 705, 717
,, ,, ,, ,, ,, ,, actions for damages 147–148
,, civil, trial of, by courts-martial in a 103
Foreign Troops, employment in United Kingdom .. 175, 216–17
Foreigners. (*See* **Aliens**)
Forfeiture.
Military decoration (*See* **Decoration.**)
,, reward (*See* **Reward, Military, &c.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Forfeiture—*contd*
Pay (*q v*)
Pension, service towards (*See* **Pension**)
Rank, seniority of (*See* **Rank**)
Remission of punishment does not cover automatic 486, 656
Reservist, in case of offence by 839
Service (*q v*)

Forgery.
Abettors in 126
Definition of, and punishment 125–126, 132
Form of charges 734
Handwriting, expert evidence as to 89
Intention, proof of 125, 126
Notes, &c, possession of forged 76, 126, 132
Obtaining, &c, property or money by means of forged instrument 126, 132
Official Secrets Acts, under 901
Public documents, of 125
Route or requisition, of 535
Uttering forged documents 126, 132, 734

Forms
Committal, to prison, &c 771–786
Court-martial, application for 794
,, ,, convening orders 736, 737, 740
,, ,, proceedings of 737–9, 741–761
Death sentence, communication of, to accused 795
Descriptive return of deserters, &c 609
In Rules of Procedure, deviations, &c from, not to invalidate 696
,, ,, power to append notes to 696
Of charges, directions as to use of 699–702
,, examples of 702–735
Of charge-sheet 714
Recommendation to mercy 759
Release or removal from prison, &c 780–6
Summons to witnesses 761
Suspension of sentence, review of 804–8
Warrants for convening and confirming courts-martial 788–793

Fortifications
Construction by civilians of occupied territory 282, 332
Inhabitants cannot be requisitioned to construct 332

Fraud
Cases of, to be submitted to Judge-Advocate-General 38, 47, 442, 627
Conspiring to defraud 124, 131
Evidence as to intent 76, 77
Obliterating marks on public stores 125, 131
Offence of a fraudulent nature 23, 24, 444–5, 707, 725, 727–8, 733
Pay and pensions, obtaining by 553, 833
Reservist, by .. 833
Securities, &c, obtaining execution of 124, 131
Fraudulent Conversion .. 22, 119, 120–121, 132, 733
Fraudulent Enlistment. (*See* **Enlistment.**)
Fraudulent Misapplication 21, 22, 23, 121, 442–5, 483–4, 642, 707, 723
Friend of Accused (*See* **Accused.**)
Friendly Societies Act, 1896 .. .. 860, 895

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Fugitives, captured in enemy's ranks . . 279, 283
Funeral, expenses of 872, 883

Furlough
Desertion while on . 20, 438, 576
Extension—
False statement as to 450–1, 576, 710
Notification of 576
Power of justices to grant 451, 576
Recall from, after extension .. 576
Soldier on, is still under orders 20
Fyrd-fare, liability to . . 165

Garrison
Abandoning, surrendering, &c 426–7, 704
Orders, &c , disobedience of 19, 436, 706
Gas (*See* **Chemical Warfare**)

Gazette
Admissibility of, as evidence 81, 88, 568
Colonial, active service declarations to be published in 600
General Levy (*See* **Levy**)

General Officer Commanding.
Competent military authority, as 495, 498, 690–3
Complaints to be made to 689
Orders, warrants, &c , signifying and validity of 575–6, 696
Power of delegation under court-martial warrants 538, 791–3
,, to commute, mitigate or remit punishment 65–66, 485, 689–690
, ,, convene and confirm courts-martial 43, 535–8, 788–792
,, ,, deal summarily with officers and warrant officers (*See* **Officer,** summary disposal)
,, ,, declare active service in foreign country 599–600
,, , suspend sentences 488
Provost marshal abroad, appointment by 41, 499, 790, 791
Report to, on delay in assembly of court-martial 468, 616, 627

General Officer Commanding-in-Chief
Complaints by soldiers, to be made to 689
Delegation of power of convening, &c , district courts-martial 538
General Orders (*See* **Orders**)

General Service
Court-martial cannot award, as punishment . .. 507
Enlistment for 213, 505
Liability to, as commutation of punishment 213, 214, 465, 486, 506–7
Geneva Convention . 271, 298, 358–367
,, ,, present position regarding 271
Geneva Convention Act, 1911 . 304
Geneva Cross, improper use of . . 294, 304
(*See also* **Medical Emblem**)
Geneva Protocol, 1925, regarding chemical and bacteriological warfare 271
Girls, Offences Against 77, 83, 86, 113–114, 131, 132, 134, 445
Good Conduct Badges. (*See* **Decoration**)
Good Conduct Pay. (*See* **Pay.**)

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Good Friday.
Exclusion in reckoning time 468, 616, 697
Inclusion in reckoning time 468, 697
Sitting of courts-martial on 661
Good Order and Military Discipline, conduct to the prejudice of (*See* **Conduct, &c , to the prejudice**)
Government Departments, civil actions against 156–7
Government Printer
Documents printed by, as evidence 31, 568, 585
Meaning of 569
Governor, meaning as respects Colony 603
Governor-General of India (*See* **India**)
Gratuities.
Deductions from 552
War, are "military rewards" 602, 605
Grenades, Hand, use of 280
Grievances (*See also* **Complaints**)
May reduce punishment .. 16
No justification for insubordination or mutiny 16
Redress (*q v*)
Guard.
Abandoning, &c 426–7, 704, 705
Arrest, close, soldier under, on board ship, not to be put on 34
Commander of, duties in respect of persons committed to his custody 34, 35, 446, 447, 467-8
,, ,, offences by 26, 35, 446–7, 708
Extra, as punishment 39, 471, 823
Leaving (*See* **Post**)
Member of, when liable as a sentinel 430
Officer under arrest may be under charge of 31
Guard Detention Room, confinement in 33, 620
Guardians of the Poor, assignment of pension to 552
Guards, Regiments of 220
Guernsey, Militia, (*See also* **Channel Islands**) 240
Guides, impressment of 330
Guilt, presumption of 73
"Guilty" and "Not Guilty " (*See* **Plea** *and* **Finding**)

H.

Habeas Corpus, Writ of
Prisoner of war cannot sue out a 145
Remedy against illegal or prolonged custody 142, 144–5, 539
Rules as to grant of 142–147
Hague Conventions, 1907
Bombardment by naval forces in time of war 271, 290, 392–6
Laws and customs of war on land 271, 272, 370–385
,, ,, ,, ,, ,, present position regarding 272
Opening of hostilities . 272, 367–370
Rights and duties of neutral powers and persons in war on land 345, 386–392
Hague Declarations
Asphyxiating gases (1899) . . 271, 280, 356–7
,, ,, ,, present position regarding 271

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Hague Declarations—*contd*
Discharge of projectiles and explosives from balloons (1907) 271, 280, 397–8
Expanding bullets (1899) 271, 280, 355–6
,, ,, ,, present position regarding 271

Hague Rules
Explanation of use of term 271
Present position regarding 272

Handwriting, evidence as to 79, 83, 89

Harbouring Enemy (*See* **Enemy**)

Harbouring Spy. (*See* **Espionage**)

Hard Labour
Imprisonment with, by C M 44 104, 180, 451, 462, 684
,, ,, on summary conviction 438, 558, 833
India or colony, in 490
Military convict or prisoner subject to 490, 494

Hearsay (*See* **Evidence**)

High Constable 7–9

High Sheriff (*See* **Sheriff**)

Home Secretary
Authority of, over lunatic prisoners &c., in England 543
,, ,, military convicts 66

Homicide
Definition 115
Different kinds 115–118
Justification or excuse for 111–112 116
Murder, presumption of 116

Hong Kong-Singapore Brigade, R A 240

Honourable Artillery Company 171, 174, 230

Horses
Billeting (*q v*)
Ill-treating (*See* Making away with *below*)
Impressment (*q v*)
Making away with, ill-treating, &c 26 448–9, 709
Meaning of "horse" in Army Act 532, 604
Medical units, of 302–3
Prisoners of war, of 283–4
Purchasing, &c., from soldiers, penalty for 561–3
Requisition of, as transport, in theatre of war 335
Sale and purchase of, prohibition in emergency 532–3
Scheme for registration and classification of 528–530, 848

Hospital.
Charges against patients in, investigation of 472
Pay, forfeiture of, while in 39, 40, 547, 549
Prisoners and soldiers undergoing detention, removal to 494
Refusing to enter, when ordered 435
Sparing of, in a bombardment 292

Hospital Ship, how distinguished 304

Hostages
For prisoners 345
On railway trains 345
To ensure compliance with requisitions 345

House.
Breaking and entering 123, 132, 732
,, ,, ,, use of force in preventing 112

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

House—*contd*
Breaking into, in search of plunder . 429, 431, 705, 716
,, out of, after committing felony . 123
,, tools, possession of, at night 123, 132
"Dwelling house," definition 123
,, ,, stealing in a 123, 134
Setting fire to 127, 130, 713
Watching or besetting of, during trade dispute 249

Husband and Wife (*See also* **Wife**)
Bigamy (*q v*)
Communications between, privileged . .. 97, 668

I.

Identification of persons and things 69, 89, 100
Identity Certificate, taking as security or improper possession of 562–3
Identity, evidence of, of persons named in document 570, 572, 650
Ignominy, discharge with (*See* **Discharge**)
Ignorance as excuse for offence 106

Illegal Acts
Bona fides no excuse for . 147
By officers (*See* **Jurisdiction**)

Ill-Treating (*See* **Animals, Horses** *and* **Soldiers**)
Immoral Traffic (Scotland) Act, 1902 95

Impressment
Aircraft 208
Carriages, animals, &c —
Army Council's powers with regard to 527–534, 610
Attendants of carriages, &c, offences in relation to 454, 712
Auxiliary forces, provisions in case of 209, 532, 592
"Carriage," meaning of 208, 604
Channel Islands, not authorised in 598
Constables (*See* Police *below*)
County Association's duties in connection with 532
County court judge, fixing of prices by 527–8, 610
Deficiency of, arrangements to supply 526
Delivery of, place of, in emergency 530–1, 533
Discharge of carriages, &c, delay in 454, 712
Emergency, in case of 207, 208, 527, 530–533, 696
Fee for justice's warrant 527
Forms of charges for offences in relation to . 711–12
Fraudulent claim in relation to 535
Harness for, provision of 527, 532
History of . . 166, 207–9
Horses liable to impressment, return of . 529
Improper and unlawful 209, 453–4, 712
Inspection in preparation of list of persons liable to supply 529
,, ,, ,, ,, "proper officer" in regard to 529
Ireland, in 208
Irish Free State, not authorised in 518
Isle of Man, not authorised in 598
Justices, provisions as to 207, 208, 526, 528–532, 610
List of persons liable to supply 528–9
,, ,, ,, ,, complaints regarding .. 529

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Impressment—*contd*
Carriages, animals, &c —*contd*
Militia (old) 209
Motor-cars and other locomotives 207, 208, 527, 530
Offences by civilians in relation to 208–9 529, 532, 533
,, ,, constables in relation to 533
,, ,, officers and soldiers 453-4, 534 711
Orders for 208–9, 526, 530–2, 696
Payment for, disputes as to 527–8, 610
,, ,, excess, recovery by Army Council 610
,, ,, regulations as to 453–4, 527–8, 531, 534, 610
Police, interfering with, in regard to 454, 712
,, provisions as to 207–8, 453–4 526, 528–9, 531, 534
Possessor of, deemed to be the owner 528
Proclamation calling out Army Reserve, powers after 531–2
Purchase and sale of, prohibition of, in emergency 532–3
,, instead of hire, when permitted 208, 531
Purposes for which allowed 207, 526–7
Purveyance, Crown's right of 166, 204, 207
Refusal or neglect to furnish 208 532
Regulations as to 207–9, 526–35, 610
Requisitions of, in case of emergency 208, 530–3, 696
Restrictions on use of carriages, &c , impressed on routes 207, 527
Routes for 205, 208, 526
Scotland, in 208
Seizure, illegal, penalty for 454
, power of, in certain cases 208–9, 532
Signing of requisitions of emergency 696
Territorial Army 209, 532, 592
Tolls, vessels used in emergency exempt from 531
Volunteers 592
Warrants by justices 526-530
Food, forage and stores, requisition in emergency 207, 530–2
Troops—
Criminals, debtors, &c , of 172, 175
Declared illegal 171
History of 169–171, 175, 215
Improperly impressed, discharge of 215
Vessels, requisition in emergency 207, 530–2

Imprisonment
Army Educational Corps instructors, in cases of 594–5
Channel Islands, sentences of, in 598–9
Civil prison, may be undergone in 66, 491
Classification of prisoners 494
Colony, sentences of, in 66, 67, 491 3, 545, 694–6
Commanding officer cannot award 471
Commutation of 29, 463, 485–6, 488, 495
Court-martial, power to award, in cases of contempt 27, 451
Court of summary jurisdiction, powers of, regarding maximum when sitting in occasional court-house 572–3
Day's, how calculated, for purposes of stoppages 548–9, 551
Detention, commutation to, of 29, 463, 486, 495
,, to be awarded instead of, for military offences 29, 464
Discharge with ignominy in addition to 463
Effect of sentence of 491
False (*See* Illegal *below*)
Foreign countries, sentences passed in 66, 492, 694–6

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Imprisonment—*contd*
Forms of orders, power to make rules as to 496
Hard labour, with (q v)
Illegal, action for damages for 136, 147, 153–156
,, *habeas corpus* in relation to 142–147
India, sentences in 66, 67, 492–3, 543–5, 694–6
Isle of Man, sentences of, in 598–9
Military custody, may be undergone in 66, 491
Month, in sentences of, means calendar month 604, 697
N C O sentenced to, deemed to be reduced to ranks 29, 594–5, 758
Not illegal because of informalities in commitment warrant 143, 575–6
Offences punishable by 15, 20, 21, 22, 24, 26, 27, 34, 104, 130–134, 218–19, 429–430, 432, 434–441, 443–58, 553, 558–9, 561–3, 833, 835–6, 858
Officer to be cashiered before being sentenced to 29, 463, 466, 756
Pay stopped during 39, 486, 547–9, 551
Periods of, reckoned as service 213, 502
,, ,, reckoning of, for purpose of maximum 466
Place for execution of sentence . 66, 491–3, 694–6
(*See also* **Prison** *and* **Detention,** Barrack)
Releasing authority 493, 495, 692
Reserve forces, minimum term of 839
Rules as to award of 464, 466, 487, 495
Sentence of, award of, while under suspension of sentence 487
,, date of commencement 67, 486, 487–8, 494–5, 652
,, exceeding 12 months, served in United Kingdom 66, 67, 492–3
,, execution of 66, 67, 491–5, 565, 598–9 694–6
,, for contempt of court-martial 27, 451
,, man of T A .. 858
,, maximum which may be imposed by C M 44, 104, 130, 462, 463, 466, 487, 495
,, maximum which may be imposed by court of summary jurisdiction 572–3
,, suspension of 65, 66, 487–8, 795–808
Severity of 544
Ship, H M 's , award of, on board 823
United Kingdom, in, provisions as to sentences of 66, 491–3
Warrants for 143, 572, 575–6, 654, 696
Incendiary Projectiles, use of, against aircraft 271
Inciting to Commit Crime (*See* **Offences.**)

Indecency.
Acts of 24, 115, 132, 444–5, 708
Charges of, generally to be laid under Army Act . .. 115
,, to be submitted to the Judge-Advocate-General before trial 38, 47, 445, 627, 766
Evidence in cases of .. 77, 86
Indecent assaults (*See* **Assaults.**)
Indemnity, Act of, for protection of persons acting under martial law . 5
Indenture, raising of mercenaries by 172
Indentured Labourers, claims of masters to 216, 516, 555, 607

India.
Adjutant-General (*q v*)
Army (*See* Forces *below*)
Army Act (Indian) 238, 591

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

India—*contd*
Army Educational Corps instructors in, dismissal of 595
,, Reserve officers (Indian), application of military law to 578, 580
Articles of War (Indian) 590
Attestation in 514, 591
British, definition of 602
Civil employment of officers in 239
Commander-in-Chief in (*q v*)
Commissions in Indian Army 238–9
Committing authority in 490, 493, 495 690–1
Commuting authority in 485
Competent military authority in, prescribed officer for 690–2
Complaint by Indian Army officer, procedure 461, 591
,, ,, soldier, procedure 461
Convict, military, in, interim custody of 490
,, ,, ,, removal to U K 66, 67, 489–490
Court of inquest in, prescribed procedure for 545, 692–3
,, requests in, abolished 558
,, summary jurisdiction, meaning of, as respects 604
Courts-martial in, contempt of, by civilian 590–1
,, convening and confirming of 43, 63, 535–6, 590–1, 627, 789–790
,, delegation of power to confirm finding of 63, 789
,, English law applies to 541
,, on natives 590–1
,, proceedings of, custody of 67, 676
,, ,, suspension of 591
Currency equivalent declared by Governor-General 574
Death by violence in prison or detention barrack 545, 692–3
,, sentence, approval of, by Governor-General 65, 66 482
Definition of term 602, 605
Detention barracks in, establishment and regulation of 543–5
,, sentences of, in 66, 67, 492–3, 543–5, 695
Enlistment and attestation for special services 591
,, of European forces for Indian Army, not legal 239, 591
Fines in 562, 574
Forces in—
Indian—
Army Act, modifications of, with respect to 238, 590–1
Auxiliary Force 239
Commissions in 238–9
Constitution and regulations 238–9
Courts-martial (*see above*)
Enlistment (*see above*)
Europeans in, subject to British military law 238–9
Hospital apprentices, application of Army Act to 238–9, 591
Military law (*see below*)
Officer of, complaint by, against his C O 591
,, ,, forfeiture of service of 591
,, ,, reprimand of 591
Regular forces, included in 554, 578, 601
Territorial Force 239
Transfers (*see below*)
Warrant officers of, reduction of 591
Governor-General of—
Meaning of 603

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

India—*contd*
Governor General of—*contd*
Powers of, as to approval of death sentences and penal servitude 65, 482
,, ,, attestation and enlistment for special services 591
,, ,, complaints 461, 591
,, ,, courts-martial 536, 591
,, ,, fines 562, 574
,, ,, insane prisoners, &c 542–3
,, ,, pay of officers, deductions from 546
,, ,, prisons and detention barracks 543–5
,, ,, punishments, commutation, &c , of 485
,, ,, reduction of warrant officers 591
Imprisonment in 66, 67, 492–3 543–5, 694–6
Indian Evidence Act, 1872 541
Indictable offences, meaning of references to, as respects 591
Inquest on death in military prison or detention barrack 545, 692–3
Interpreter, appointment of, in 55
Judge-Advocate-General in 67, 676
Lunacy of person undergoing sentence in 542–3
Marines, Royal, in, provisions as to 585
Medical service in, attestation and enlistment for 239, 591
Military law, British, application of, to Indian forces 238–9, 578, 579, 580, 582, 583
,, ,, Indian, meaning of 590
,, ,, ,, natives subject to 238, 578, 580, 582, 590-1
,, ,, ,, ,, ,, ,, wherever serving 590, 591
Misdemeanour, meaning of, as respects 603
Native of, courts-martial on, convening of 590
,, meaning of term 602
,, Regimental Debts Act not applicable to 878
,, subject to Indian Articles of War 590-1
(*See also* Military Law *above*)
N C Os in, reduction of 594–5
Oath, form of, for natives 635
Officer—
Obstructing civil authority in 567
Penal deduction from pay of 546
(*See also* Forces *above*)
Penal servitude (*q v*)
Prison, civil and penal servitude, definitions of 495
Prisoner, military, removal to U K 66, 67, 492–3, 691, 776–7
Prisons, provisions with respect to 489–493, 495, 543–5, 695
Punishments in, commutation, mitigation or remission of 485
Regimental Debts (*q v*)
Removing and releasing authority in 490, 493, 495, 691–2
Sentences of death and penal servitude in, approval of 65, 66, 482
Special service in, attestation and enlistment for 239, 591
Summary proceedings in, provisions as to 574, 604
Supreme court, meaning of, as regards 603
Transfers of officers to Indian Army 239
Volunteers in 583
Warrant officers in, reduction of 594
Infantry, composition of 220, 231
Infirmity, feigning of (*See* **Disease.**)
Information Bureau.
Nominal roll of wounded and sick to be sent to 299

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Information Bureau—*contd*
Prisoners of war, formation of 288
Privilege of free carriage must be granted to 288
Property of dead disposed of by 305
Information, Military, disclosing or publishing 427–8, 457, 713
Infractions
Of laws of war 281
Remedy for 339–345
Inhabitants.
Medical treatment, not entitled to 298
Occupied enemy territory, in 330–2, 414
Offences against person or property of 68, 430, 431, 476–7, 680, 705, 717
Privileges of those who give assistance to wounded 299
Relations with belligerent forces during armistice 316
When entitled to rights of armed forces 276, 277–9
(*See also* **Civilians**)
Injurious Disclosures (*See* **Disclosures**)
Injury.
To avoid service (*See* **Maiming**)
To property (*See* **Property**)
Innocence, presumption of (*See* **Evidence**)
Inoculation, refusing, not an offence 444
Inquest, Court of (*See* **Court of Inquest**)
Inquiry, Court of (*See* **Court of Inquiry**)
Insanity (*See* **Lunacy**)
Institution
Injury to property of 26, 448–9, 709
Stealing, &c., from 22, 444, 707
Instruments, loss, &c., of (*See* **Equipments**)
Insubordination
Charge of, laying 16, 18, 433–4, 706, 718–9
Disobedience to lawful command (*q v*)
Evidence in cases of 75, 77, 83, 433–5
Grievances not a justification for 16
Language, violent, &c (*See* **Language**)
Mutiny (*q v*), and, distinction between 15–16
Offences of, and punishment for 17 18, 432–6, 706, 719
Provocation not a justification for 16, 61, 433
Reservist, by 578, 833
Insurrection. (*See* **Riot**)
Intelligence, Military
Communicating, disclosing, &c 427–8, 457, 704, 713
Offences under Official Secrets Acts regarding 896–7, 902
Intent, common 107
Intention.
Crime, as element of 17–19, 21, 22, 23, 25, 26, 27, 34, 58, 59, 106, 107, 108, 109, 113, 117, 118, 121, 124–5, 129
Evidence of, when admissible 19, 75, 76, 77, 78, 109
Presumption of 20, 73, 106, 109
Proof of 73, 109, 117, 163
Intercourse between belligerents (*See also* **Enemy**) 3, 305–323
Interim Custody. (*See* **Custody.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

International Agreements
Geneva Convention (*q v*)
Great War, effect of, on . 270, 271, 272
Hague (*q v*)
List of .. 271
On which States they are binding 272
St Petersburg (*q v*)

Internment
Belligerent forces in neutral territory 349–350
Civilian enemy residents 273–4
Convention for 413–4
Prisoners of war 285
Sick and wounded . 351
Troops 349–350

Interpreter
Appointment of 55, 56, 665
Employment of, caution regarding 55
Member of court not disqualified as 56
Oath, administration of, to 52 479–480, 635, 665
,, forms of, for 762
Objection to 52, 635, 665
Solemn declaration by, form of . 763

Intimidation
During trade disputes 248–9
Meaning of 249

Invalided soldier, transfer to reserve or to corps in U K 214, 506, 511

Invasion.
"Martial law" in case of 4
Meaning of 324

Inventory of Kit (*See* **Kit**)

Investigation (*See* **Charge** *and* **Commanding Officer,** Charges)

Ireland
Billeting in 205, 518, 522, 524
Chief officer of police, meaning of 523–4
Chief Secretary, meaning of, as regards Northern Ireland 524
Civil power in, calling out army reserve in aid of 833
County court judge, meaning of, in 604
Court of summary jurisdiction in, constitution of . 573
,, ,, ,, meaning of, as regards 604
Emergency Powers Act, 1920, not applicable to 907
Fines imposed in, application of .. . 573
Impressment of carriages, &c , in 208, 518, 530, 532
Irish Free State—
Army Act, application of, to 605–6
"Beyond the seas," is deemed to be . .. 605
Billets cannot be demanded in 518
"Colony," is deemed to be for purposes of the Army Act .. 605
Forces of the, raising, &c , of 239
Impressment cannot be carried out in 518
Not part of "Ireland" or "United Kingdom" .. 605–6
Lieutenants of counties, appointment of, in . 198
Lord Lieutenant of, meaning of, as regards Northern Ireland 524
Lord Lieutenant of, definition of . . 601

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Ireland—*contd*
Lord Lieutenant of, powers of, as to—
calling out army reserve in aid of civil power 833
courts-martial 536
Lunatic soldiers discharged in, provisions as to 513
Martial law in, 1920-21, examples of military courts 140 145–147
Militia (old) in 190, 198–9
Mutiny Act extended to 11–13
Northern Ireland—
Canteen licences, provisions as to 577
Governor of, powers of, regarding billeting and impressment in emergency 522, 524, 530
,, ,, ,, ,, ,, courts-martial 536–7
Prisons and prisoners in, special provisions as to 598
Railways, conveyance of troops by 825–7
Royal Ulster Constabulary, powers of, regarding billeting in emergency . 522–5
Territorial Army, power to raise units in 236
Prisons and prisoners in, special provisions as to 598
Summary Jurisdiction Acts, meaning of, as regards 603
Territorial Army, no units in 236
Irons, use of 33, 787
Irregular troops, conditions required of 275–7

Isle of Man.
Army Act, application of, to 598–9
,, ,, dates of commencement and expiration in 416
Billeting illegal in 598
Colony, when deemed to be, for certain purposes 598–9, 696, 697
Court of summary jurisdiction, meaning of, as regards 304
Detention, sentences of, in 598–9
Fines, recovery of, in 574
Impressment of carriages illegal in 598
Imprisonment, sentences of, in 598–9
Militia, in relation to 599
Mutiny Act extended to 13
Not deemed as being "beyond the seas" 603, 606
Penal servitude, sentences of in 598–9
Prisons and detention barracks in 598–9
Regimental Debts Act, application of, to 880
Reserve Forces Act, application of, to 839
Rules of Procedure, application of, to 697
Summary proceedings in, provisions as to 574, 604
T R F Act, 1907, application of, to 865
United Kingdom, when treated as part of 598–9, 605

J

Jersey Militia (*See also* **Channel Islands**) .. 240
Joint Trial (*See* **Trial**)
Judge-Advocate
Absence of, adjournment of court on 662, 678
Appointment of 50, 68, 445, 677, 681, 686, 790, 791, 793
,, enquiry by court as to legality of 49, 50, 631
,, invalidity of 677
,, when essential 50, 445, 677

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Judge-Advocate—*contd*
Arraignment conducted by 52, 636
Courts-martial, duties as to signature, &c , of proceedings 55, 59, 62, 649, 652, 653, 657, 675–6
,, ,, field general, appointment of 681, 686
,, ,, general, must have a 50, 677
Death or illness of 678
Disqualification for acting as 477, 632, 677
Duties and powers of 52, 55, 59, 62, 69, 84, 636, 646, 678–9
Duty to accused 54, 57, 646, 657, 678–9
Evidence, failure of accused to give, may comment on 57, 646
,, recording of, by 55, 675, 683
Oath, administration of, to 52, 479, 634–5, 762–3
Objection to, accused has no right of 52, 633, 635
Opinion of, to guide court 69, 678–9
Solemn declaration by, form of 762–3
Summing up by 57, 646, 662, 675, 678, 752
Witness for defence but not for prosecution, competent 478, 666
Witnesses, calling of, power of 678
,, examination of, by 55, 57, 669, 670–1, 678
,, summoning of, by 666

Judge-Advocate-General
Air Force personnel, in case of, Air Council substituted for 588
Charge and summary of evidence, when to be submitted to 38, 47, 442, 445, 623, 627, 766
History of office 181
India, in 67, 676
Judge-advocate, appointment of, by 50, 632, 677
Petition against finding and sentence, reference to 67
Proceedings, copy of, certified by, as evidence 572
,, preservation of, by 67, 135, 539, 676
,, review of, by 135
Re-trial, order for, consultation with 64, 564
Royal Marines, in case of, Admiralty substituted for 67, 585

Judicial Notice.
Active service, of 466
Articles of War, of 30, 496
List of matters of which to be taken 72, 665, 686
Meaning of 72
Rules of procedure, of 496

Jurisdiction
Acting within, but maliciously or with cruelty 135–136, 148, 150–153, 155–156
Acting without, or in excess of—
Actions for damages in respect of 135, 136, 147–160, 679
,, ,, protection of officers, &c , against 164, 574–5
Amenability of C -M and officers to civil courts for 3, 135–164, 414
Confirming authority equally responsible for 136, 147
Criminal proceedings, liability to, in respect of 135, 160–164
Meaning of 136, 147, 163–164
Civil court (*q v*)
Court-martial (*q v*)
Court of Summary (*q v*)
Summary Jurisdiction Acts (*q v*)
Jurisdiction in Homicides Act, 1862 241

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Jury.
Exemption from service on—
Officers and men, Territorial Army 233, 244, 858
,, on full pay and soldiers, regular forces 243–4, 558
Qualified exemption, in case of England and Wales 233, 244
Supplementary reservists when subject to military law 243–4
Trial by, and C -M , difference between 69

Justice
Administration of, use of force in 111
Obstruction of 129, 133

Justice of the Peace
Attestation, persons specifically authorised to act for purposes of, as 215, 219, 514, 587, 588, 837, 853
,, proceedings before 215-16, 503–4, 514, 515
Billeting and impressment of carriages, powers and duties with respect to, of 205, 206, 207, 208, 522, 523, 526, 528–532, 534, 608
Canteen licences, grant of, by 577
Claims by masters to apprentices, &c before 216, 515–6, 555 606–7
Deserters and absentees, warrant for apprehension of 559
Furlough, extension of, by 451, 576
Reservists, requisition for, in aid of civil power 226, 833
Riots, &c , suppression of, responsibility of 246–7, 251, 254–6, 260, 266
Search warrants, grant of, under Official Secrets Acts 898
Troops, requisition for, in aid of civil power 246 254–60, 263, 264, 267, 268

K

Killing
Homicide (*q v*)
Of surrendered combatants, forbidden 281
Prohibited means of 280–1

King, The (*See also* **Crown**)
Accession of, judicial notice to be taken of 72
Appointment of provost-marshal and assistants at home by 42
Billeting in emergency, power to authorise 206, 522
Complaint by officer, submission to 460–1, 591
Courts-martial, convening of, by 43, 474, 535
,, ,, finding and sentence, confirmation by 63, 481, 536, 588
,, ,, ,, ,, ,, withholding of, by 64, 564
,, ,, order for re-trial by 64, 564
Impressment in emergency, power to authorise 530
Lunatic soldiers, in case of, directions by 542–3, 657
Mitigation, &c , by, of punishment 65, 485
Territorial Army, embodiment and disembodiment of 234–5, 855–6
,, ,, orders regarding 232, 850–1
Traitorous or disloyal words regarding 456, 712
Warrants (*q v*)

King's Evidence. (*See* **Evidence**)

King's Regulations.
Copies of, as evidence 81, 568, 586
Disobedience of 436

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Kit.
Apprentice or deserter, of, disposal of 888
Clothing, &c (*q v*)
Deficiency in, evidence as to 448–9 498, 688–9
,, of absentee 448–9 497–8, 688–9
Improper possession of comrade's property 23, 459, 731
Inventory of, taking of 689
Obtaining free kit of necessaries by fraudulent or improper enlistment 440, 455–6, 701, 721

L.

Lance Rank. (*See* **Rank**, acting)
Language.
Abusive, when drunk . . . 25, 456
Coarse, not necessarily insubordinate 58, 59
Improper, which does not amount to insubordinate 434, 459
Insubordinate, charge for using, form of 706, 718
,, evidence in cases of 77, 89
offence of, what constitutes, and punishment 18, 25, 58–9, 61, 432–4
special considerations as to intention, &c 58, 59, 77, 434
Offensive, during judicial enquiry, when privileged 433
Opinion of witness as to, admissibility in evidence 89
Threatening or insulting, by reservists . . 734, 833
,, ,, contempt of C -M by using 27, 451–2, 540, 710
,, special considerations as to intention, &c 58 59, 434
,, special findings on charges of using 17, 432–3, 484
,, to superior officer 17, 25 58, 61, 432–4, 706, 718
Traitorous 456, 712
Violent, not necessarily insubordinate . 58, 59
Larceny. (*See* **Stealing**)
Larceny Act 118
Lascars, enlistment of 217
Law (*See also* **Civil, Common, Court of, Criminal, Martial, Military, Statute**)
Ignorance of, no defence to criminal charge 106
Law and Order, restoration of (*See* **Riot**, &c.)
Law Officers' Opinion, on duty of soldiers called upon to assist police . 268–9
Lawful Command. (*See* **Command** *and* **Disobedience**)
Laws and Usages of War on Land 270–414
Act of indemnity to cover action to prevent invasions, riots, &c 5
Infractions of laws 281
,, ,, remedy for 339–345
Martial law, definition and application of 4, 5
Nature and sources of the laws of war 2, 270–1
Occupied territory, rules as to (*See* **Occupation.**)
Present position of .. 270, 271, 272
Rioters not subject to 2
Legal Adviser.
Communications to, privileged 97–8
Consultation with, accused's rights 48, 625

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Legal proceedings in enemy territory when occupied 328, 333

Letters
For prisoners of war 288–9
From the front, &c., publication of 428
Of administration (*See* **Regimental Debts**)
Proof of receipt of 80, 839
Threatening arson 128
,, murder 116, 133

Levy
En masse 196, 277–9, 339
Feudal, history of 167–169, 172, 173
General, history of 165–174, 197

Libel.
Actions for, examples 157–160
Privilege as defence to 158–160
Publication of sentence of C.-M. not a 157
Threat to publish 122, 133

Licences
For canteens, provisions as to 245 577
,, firearms 243
,, recreation rooms, not required 577

Lieutenants of Counties.
Appointment of 166
Auxiliary forces, jurisdiction as to, re-vested in Crown 194
Deputy, may attest recruit for T.A. 853
Militia (old), commissions in, recommendations for first 194
,, ,, powers of, over 171, 186, 189, 193–4
Presidents of county associations 846
Recruit for T.A. may be attested by 853
Trained bands, command of, by 170
Life Certificate, taking as security or improper possession of 562–3
Liquor Ration, on board ship, stoppage of 548
Loans to belligerents by neutral persons and Powers 348
Local Authorities, absence of members on service 244
Local Government Act, 1888, extract from 870–1
Lock-out. (*See* **Trade Disputes**)
Lock-Up, use of 33, 543 559, 784

London, City of
Chief officer of police, meaning of 523
Militia, in 186–7
Trained bands, in 171, 186–7
Trophy Tax 199, 864

London Gazette. (*See* **Gazette.**)
Lord Lieutenant of Ireland. (*See* **Ireland.**)
Lord Lieutenants of Counties. (*See* **Lieutenants.**)
Losing by neglect arms, equipments, &c. (*See* **Equipments, &c.**)

Lunacy.
Accused, of, at time of commission of offence 88, 105, 503, 542–3, 549, 657
,, ,, ,, trial 53, 542, 636, 657
Army Council's powers with regard to lunatic soldiers 218, 512–3
Consent of a lunatic to offence 109
Criminal Lunatics Act, 1884 543
,, responsibility in relation to 88, 105, 542

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Lunacy—*contd*
Disposal of lunatic soldiers on discharge 218, 512–3
Evidence of 88, 105, 458, 657
Finding of, at trial, provisions in case of 64, 105, 503, 542–3, 549, 657, 745, 753
,, confirmation of 64, 542, 653, 657
,, revision of 653
Manner of ascertaining that a person subject to military law is insane 889
Regimental Debts Act, modification of, in case of 878, 889–890, 893
Removal to asylums of persons undergoing sentence 542–3
Sentence, none, where finding of 654
Temporary 105
Witness, lunatic as a 95

M.

Magistrate (*See* **Justice of the Peace.**)
Mahommedan method of swearing 635
Maiming to avoid service 24, 109, 443–4, 558–9, 707, 724
Maintenance of wife and children by soldier 241, 548, 550, 552, 555–7
Making away with arms, &c. 26, 448–9, 709, 727
Malice
Destruction of privilege by, in case of libel 158–160
Evidence as to 77, 127
In execution of sentence 164
Presumption of 73, 127, 161
Malicious injury to property 127–8, 133
Malicious prosecution or punishment 135–136, 148, 150–153, 155–156, 160–161, 164
Malingering 24, 443–4, 707, 723
Malta Artillery, Royal.
Part of regular forces 240, 578, 601
Persons in, not to be sent to United Kingdom to serve sentence 489–490, 492–3
Service, area of 240
Man, definition of 587, 840, 864
Mandamus, writ of 137–138
Mandated territories, application of Army Act to 599
Manslaughter
Charges, specimen 713, 732
Court-martial, jurisdiction of, in charge of 44, 103, 459–460
Definition and examples of 116–117
Dying declarations as evidence on trial for 85
Provocation may reduce homicide to 117
Punishment for 133, 460
Riot, &c , excessive force in quelling of, may result in 255
Trial for 44, 241, 460
Marauding, a war crime .. . 341–2
Marines, Royal.
Absence without leave 586, 587
Acts relating to 588
Admiralty, exercise as respects, powers exercised by His Majesty as respects land forces 238, 584–5, 587
,, powers under Army Act regarding 44, 67, 238, 416, 584–8

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Marines, Royal—*contd*
Admiralty regulations included in term "King's Regulations" . 586
Army Act, modifications of, with respect to 238, 584–8
,, and Air Force (Annual) Act provisions of, as to 175, 416
,, Council's powers regarding 238, 586
,, transfers to and from (*See* Transfer *below*)
Articles of war for, power of Admiralty to make 584
Attestation of 587, 588
Colony, in, provisions as to . 585
Command of 584
Complaints by officers of 585
Constitution of . 237
Control of 238, 416
Corps, separate, in case of 602
Courts-martial, in case of, convening and confirmation of 44, 584–5, 587–8
,, military, trial by 587
,, proceedings, custody of 67, 676
Deserters from 587
Discharge, provisions as to 238 586
Enlistment of, provisions as to 235, 238, 586 587, 588
Expenses of, included in Admiralty vote 238
Field punishment, rules as to 787
Fraudulent enlistment by 439, 586
History of 237
India and colonies, provisions as to 585
Land, employment on, meaning of term 588
"Man of the," persons included in term 587
Military law, application of, to 238, 586–7
Naval Discipline Act, when subject to 238, 586–7
,, prison deemed a military prison 587
Numbers of 175
Offences committed by 586–7, 588
Pay of, orders as to 585
Precedence of 237–8
Re-engagement of 238, 586
Regular forces, when included in 554, 578, 601, 605
Reserve, enrolment in Class II of, of former 226, 832
Rules of procedure, application to 698
,, orders, &c, Admiralty powers to make 238, 585
Service, continuation in, after 21 years 238, 586
,, forfeiture of 238, 586, 588
,, prolongation of 238, 586
,, terms of 238, 586, 588
Ship, H M 's, offences on board 586–7
Transfer to and from Army 238, 586, 588
Trial of (*See* Courts-martial *above*)
Warrants of Admiralty as to 584–5, 588

Marriage
Abroad, of soldiers 245
Bigamy (*q v*)
Communications during, privilege of 97, 668
False statement as to, on attestation 557
Registration abroad . 245
Without consent of military authorities 241

Married Women's Property Act, 1882 95

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Marshal, Earl .. . 7–9

Martial Law.
Act of Indemnity to cover action taken to restore order, peace, &c . 5
British possession, proclamation in, of 4
Explanation of expression 4, 5
Ireland, in, 1920–21, examples of military courts 140, 145–147
Military Law and, distinction between 4
Parliament alone can establish in British territory 4
Petition of Right, provisions of, as to . 7, 171
Proclamation of . 4, 5
Punishments under, not permissible in peace 7, 11, 171, 416
War, during . . 414

Masters, claims by (*See* **Apprentice** *and* **Indentured Labourers.**)

Mayor.
Officer of auxiliary forces, election, &c , as 592–3
,, regular forces disqualified from serving as 243, 557

Medals (*See* **Decoration.**)

Mediation in War. (*See* **War** *and* **Neutral Powers.**)

Medical Emblem 304–5
Brassard 304–5
Limitation of use 294, 304
Mark adopted as, Red Cross on white ground . 304
Protection of, by legislation .. . 304
Red Cross flag 294, 304

Medical Expert, evidence by 88

Medical Material . 302–4
Convoys . 303
Depôts 303
Fixed medical establishments 303
Marking of 305
Mobile medical units 302–3
Voluntary aid societies, material of 303–4

Medical Men, communications to, not privileged 98

Medical Officer
Certificate of, regarding accused 480, 547, 549, 794
Witness, as . .. 88, 458, 549

Medical Personnel.
Arming of 300
Brassard 304–5
Capture and detention 301–2
Certificate of identity 304–5
Combatants, becoming 300
Convoys, with 303
Harmful acts of 300
Limitations on freedom of movement 302
Must be left behind to take care of wounded 298
Pay and allowances whilst in enemy's hands 302
Privileges of 300
Voluntary aid societies, of 301

Medical Records, Army, privilege from disclosure 158

Medical Units
Armed guard for . 300
Arms, finding of, with . . . 301

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Medical Units—*contd*
Drivers (R A S C) with 300
Flag 294, 304
Horses . 302–3
Privileges of . 300
Members. (*See* **Courts-Martial** *and* **Parliament**)
Memoranda for guidance in relation to Courts-Martial 763–770
Menaces, demanding with 122, 133, 711
Mental Deficiency Act, 1913 . 95
Mercenaries 167, 172, 173
Mercy, Recommendation to (*See* **Recommendation to Mercy**)
Mess
Property, injury to 26, 448–9, 709
Stealing, &c , money or goods belonging to . 22, 444, 707
Military Attachés, treatment of, when captured . 283
Military Convict (*See* **Convict**)
Military Courts.
Act of Indemnity for confirmation of sentences passed by . 5
Civil courts and, may sometimes function at same time 146
,, ,, have no jurisdiction over, in martial law areas 146
Courts-Martial (*q v*)
Explanation of term 5
Origin of 7
Writs against 140, 145–7
Military Custody (*See* **Custody**)
Military Decoration (*See* **Decoration.**)
Military Discipline (*See* **Discipline**)
Military Exigencies
Sittings of court, in case of 661
Suspension of rules, in case of 679, 681, 682, 683, 686
Military Expert, evidence by 88–89
Military Forces (*See* **Forces of the Crown**)
Military funds (India) (*See* **Regimental Debts.**)
Military information, disclosing or publishing 427–8, 457, 713
Military knowledge of court or officer 72, 88, 89, 430, 431, 433, 434, 436, 440, 442, 443, 446, 449, 450, 623, 665
Military Law
Amenability to, charge-sheet to show 623, 699, 702–3
Application to—
Air Force personnel 42, 565, 578, 579, 580, 588–590, 596–7
Auxiliary forces 578, 579, 581, 582, 583–4, 592
Boys at Duke of York's and Queen Victoria Schools 236
Cadets 236, 237
Civilians 2, 578, 579, 580, 582
Colonial forces 240, 578, 579, 580, 581, 582, 583
Indian Army Reserve of Officers . 578, 580
,, Forces 238–9, 578, 579, 580, 582, 583, 590–1
Marines, Royal . 238, 586–7
Militia 578, 581, 582, 583–4
,, Officers 222, 578, 580, 583–4
N C Os . .. 580–2, 583–4
Officers . .. 1, 222, 223, 233, 237, 577–580, 583–4
,, Training Corps .. 237
Pensioners 581, 582, 583–4
Persons not belonging to His Majesty's forces 2, 578, 579, 580, 582
Recruiters, paid pensioner 582

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Military Law—*contd*
Application to—*contd*
Regular forces 455, 578, 579, 580
Reserve forces 229, 578, 581, 582, 583–4
Reserve of officers (including Supplementary Reserve) 222, 223, 578, 580, 583–4
Retired officers 578, 579, 583–4
Soldiers not duly attested 216, 517
,, of regular forces 216, 217–18, 511, 580
Supplementary Reserve 229, 578, 581, 582, 583–4
,, ,, of Officers 223, 578, 580, 583–4
Territorial Army 233, 578, 579, 581, 582, 583–4
,, ,, Reserve 233, 578, 579
Volunteers 579, 581, 582, 583–4
Warrant officers 578, 580–2
Articles of war (*q v*)
Civil Law, and, adjustment of 103, 241, 566–7
,, liability of soldier to, as well as to 1, 2, 11, 103, 241, 460
Code of, necessitated by standing Army 10, 416
Completion of sentence though no longer under 489, 491, 565
Composition of . 1
Courts-martial (*q v*)
Definition and object of 1, 2
History of 6–14
Illegal enforcement of, in time of peace 6, 7, 171
India (*q v*)
Liability to, in respect of status 44, 564–5, 590, 703
Manual of, arrangement of . 3, 4
Martial law (*q v*)
,, ,, and, distinction between 4
Mutiny Act (*q v*)
Nature of 1, 2
Offences under, time limit for trial of 44, 45, 564–6, 639–640, 859
Persons not subject to, military courts no jurisdiction over 2, 4, 7, 136, 147
,, subject to, application of Army Act 417, 541
,, who have ceased to be subject to, trial of, 44, 512, 564–5, 590, 703, 734
Prosecutor in court-martial must be subject to 51, 633
Purpose of 1, 2
Rioters not subject to 2
Military Occupation of Enemy Territory (*See* **Occupation.**)
Military Office, exercise of powers vested in holder of 575, 696, 838, 860
Military Policeman.
Not superior officer of private . . 433
Power of, in relation to Air Force personnel 814
Military Prison (*See* **Prison**)
Military Prisoner. (*See* **Prisoner**)
Military Reward (*See* **Reward**)
Military Savings Banks (*See* **Savings Banks**)
Military Service (*See* **Service**)
Military Service Acts, 1916-18 178, 203
Militia
Channel Islands . 240
Colonial—
Army Act, application of, to 583

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Militia—*contd*
United Kingdom—
Existing—(*i e*, under the T A and Militia Act 1921)—
See **Reserve Forces**, Militia, *and* **Reserve of Officers**, Militia
Defunct—(*i e*, raised under the Militia Acts prior to 1921)—
Abroad (*See* Service *below*)
Acts (*See* **Militia Acts**)
Arms, &c, of 195, 197
Army Act, application of, to 197
,, and, competition for recruits 176, 196
,, enlistment into, from 188, 196, 199
Ballot, by, raising of 176, 187, 188, 189, 190, 196, 197, 198, 199
Barracks, erection of 195
Billeting of 195 207
Bounties 196, 197, 199
Clothing 195
Command of 171, 192–5, 197, 198
Commissions in, nominations by lieutenants of counties to first 194
Conversion of certain units into units of Special Reserve 199, 224, 230
Conveyance of, by railway 209
Cost of, former liability of county to part 168–9, 195, 197
Crown's powers as to 171, 192–4
Death sentence for military offences 195
Desertion from, punishment for 194–5, 198
Disbandment of certain units in 1907 199
Embodiment, failure to appear on 194
,, Parliament summoned on 191, 197
,, provisions as to 191, 194, 197, 198, 199
End of 199
Enlistment into army 188, 196, 199
,, voluntary, provisions as to 188–190, 192, 196, 199
Exemption from service in 189, 200
Families of men embodied, relief of 196
History 171, 174, 176, 185–199
Impressment of carriages for 209
Ireland, in, history of 190, 198–9
Legislation of 1907 as to 199
Local, account of 186, 188, 196–8
,, ballot, raising by 197
,, embodiment, meeting of Parliament on 197
,, end of 197–8
,, military law, subject to 197
,, numbers 197
,, training of 197
London, City of, special position of 186–7
Lord-lieutenants (*See* **Lieutenants of Counties**)
Military law, application of, to 193–5, 197
Numbers, provisions as to 190–1, 197
Officers, appointment, &c of 193–4, 197, 198
,, property qualification of, abolished 193, 197
,, qualified to sit on any court-martial 194
,, status of 194
Parliament summoned on embodiment of 191, 197

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Militia—*contd*
United Kingdom—*contd*
Defunct—*contd*
Pay of 193, 195
Quota, fine for not raising 189, 197, 199
Quotas, provisions as to 168–9, 189–191, 197, 198
Raising and maintenance 176, 189–190, 195–6, 198–9
Recruiting, competition with Army 176, 196
Re-enlistment 192
Reserve 178
Riots, local militia called out for suppression of 197
Scotland, in, history of 190, 197, 198
Secretary of State's powers with respect to 194 196
Service—
Abroad only under voluntary offer 192
Area of 191–2
Conditions of 189–192, 197, 198
Period of 189, 192, 197, 198
Stannaries, Regiment of Miners 187
Storehouses 195, 199, 867
Substitutes for balloted men, when allowed 189, 196, 197, 198
Tower Hamlets 187
Trained bands developed into, under Stuarts 171, 174, 186
Training, absence from 194
,, annual, period of 191
Trophy money 195
Volunteer 188–190, 192, 196, 199
Militia Acts.
Account of 185–199
Repeal of 186, 188, 198, 199
Militia Storehouses 195, 199, 867
Mines, land, use of, not forbidden in war 280
Minors.
Enlistment of 216
Wills of 242
Misconduct.
Discharge for (*See* **Discharge.**)
Producing or aggravating disease (*See* **Disease**)
Misdemeanour
Accessories after fact are principals in 108
Attempt to commit, conviction of, on charge of 108, 130
Conviction of, when charged with felony 71
Meaning as respects Scotland and India 603
Official Secrets Acts, under 897, 898, 900–2, 904–5
Table of 130–134
Misprision by court 164
Mitigation of Sentence (*See* **Punishment**)
Month means calendar month 604, 697
Motors. (*See* **Carriages**)
Mule included in term "Horse" 532, 604
Municipal Office
Army reservist, exemption from serving 834
Officers disqualified from holding 243, 557
,, exempt from serving 244
,, of auxiliary forces and 592–3
Munitions, Ministry of 184–5
Murder.
Attempt to . 117, 130

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Murder—*contd*
Consent is no defence to 109
Conspiracy to 118, 131
Court-martial, before, form of charge for 713, 732
,, jurisdiction of, in case of charge for 44, 103, 459–460
Death caused by excessive or illegal punishment 160–161, 164
,, form of, immaterial 116
,, sentence must be imposed by C.-M. for 29, 60, 460
Definition of 116
Dying declarations as evidence on trial for 85
Evidence of character, intention, &c., on trial for 75, 76
India, in, approval required for death sentence for 65, 482
Letters threatening to 116, 133
Manslaughter (*q. v.*)
Premeditation not always essential 116
Prima facie presumption of, in case of killing 73, 116
Provocation as excuse 117
Riot, &c., excessive force in quelling of may result in 255
Trial of charge of, special provisions for 241
Wounding with intent to, conviction of unlawful wounding 71, 134
Musters, commissions of 169–171, 186

Mutiny
Charge of, forms of 706, 717–8
,, framing 16
Civilians, offences by, tried by civil court 432
Conspiring to cause, or joining in 16, 78, 431–2 626, 706, 717–8
Definition of 15–16
Disobedience may amount to 17, 432
Evidence in case of 16, 78, 83
Grievances or provocation no justification for 16
Information to C.O. regarding, failure to give 16, 432, 706, 718
Insubordination (*q. v.*) and distinction between 15–16
Mutineers, armed, included in term "enemy" 602
Offences relating to 16, 431–2 706, 717–8
Punishment of, provisions as to 10–13, 16, 432
Suppress, obligation to use utmost endeavour to 431–2
Trial may be at any time 44, 45, 564–5, 566

Mutiny Act
Articles of War (*q. v.*)
Channel Islands, extended to 13
Colonies and foreign countries, extended to 12–14
Courts-martial, power to constitute, given by 12, 13
Crown's powers under 11–14
First 6, 10, 11
History of 6, 10–14
Ireland, extended to 11–13
Isle of Man, extended to 13
Offences and punishments under 10–13
Replaced by Army Act 7, 14
Second . .. 11
Succession of annual Acts till 1878 11–14

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

N

National Defence Act, 1888 200, 210, 830–1, 860
National Registration Act, 1915 178
National Service, Ministry of 184–5

Native Officers
In Colony, confirmation of finding and sentence, on 63, 791
In India, subject to Indian military law 238, 590–1

Natives
Corporal punishment, infliction of, on 545
Courts-martial on Indians, convening of 590–1
Employment of coloured troops in war 279
Enlistment of 217, 515
Imprisonment, execution of sentences of 492–3
Oath, form of, for 480, 635
Offences against, trial of 445
Penal servitude, execution of sentences of 489–490

Naval Discipline Act
Application of, to forces when on board H M 's, ships 598, 818
,, ,, Royal Marines 238, 586–7
Orders in Council made under 42, 598, 818–824
Provisions of, regarding discipline when naval and military forces acting together 597, 809

Naval, Military and Air Forces acting together disciplinary relations 42, 596–7, 809–810, 813–7

Naval Prison (*See* **Prison**)

Navy.
Army and, acting together, disciplinary relations 42, 596–7, 809–810
Deserted from, false statement of having 450–1, 710
Dismissal from, or dismissal with disgrace from—
enlisting in regular forces 28, 218–19, 454–5, 712
,, T A 853–4
Enlistment, fraudulent, into 21, 439
,, improper ,, Army from 439–440
Evidence of service or discharge from 568
Forfeiture of seniority of rank in 590
Mutiny or sedition in 16, 431–2
Officers and N C Os of Army, power of command over personnel of 42, 597, 809–810
Officers and petty officers of, power of command over military officers and soldiers 42, 596–7, 809–10, 818–824
Supplementary reservists, enlistment into 229
Territorial Army members ,, ,, 235

Navy, Army and Air Force Institutes, stealing, &c , from 22, 443, 444, 707

Necessaries, Regimental (*See* **Equipments** *and* **Kit**)

Necessity, when an excuse 106, 427

Neglect (*See* **Conduct, &c , to Prejudice of Good Order, &c.**)

Negligence.
Actions for 156–7
Offences committed through 106, 110, 117

Negroes, enlistment of 217, 515

Neutral Persons
Belligerents, joining . 347
In occupied territory .. 352
Loans to belligerents 348

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Neutral Persons—*contd*
Rights and duties . . . 352
Trade with belligerents .. . 347–8
Neutral Powers
Captured war material in neutral territory . 350
Diplomatic agents of, in a siege 291–2
,, ,, ,, in occupied territory 352
Good offices and mediation by .. . 340
Impartiality 348
Intelligence agents 348
Internment of belligerent forces in neutral territory 349–350
Loans to belligerents . 348
Neutrality, general duties of . 345
Neutral territory and military operations 346
,, ,, , recruiting 347
,, ,, ,, supplies 347–8
,, ,, ,, transmission of information 348–9
Posts and telegraphs in neutral territory 348
Prisoners of war in neutral territory 350
Rights and duties of 345–353
Sick and wounded in neutral territory 350–1
Wireless installations in neutral territory . 348–9
Neutral Railway Material in a theatre of war 352–3
Neutral Territory (*See* **Neutral Powers**)
Newspaper Correspondents (*See also* **Reporters**)
Can claim to be treated as prisoners of war if captured . 282
Military law, application of, to 580
New Zealand, Dominion of, forces of the, raising, &c., of . 239
Night
Disguised at, offence . .. 124, 132
Housebreaking tools, possession of, at 123, 132
Meaning of term 122, 123, 124
Offences at 123–124, 132
Non-Combatant troops, members of armed forces 276
Non-Commissioned Officers
Accounts of, supervision of, by superiors .. . 23, 443
Acting N C O included in term N C O 465, 595, 601
,, reprimand by C -M 465, 595
,, reversion of, to permanent grade or ranks 37, 39, 465, 470, 472, 594, 595, 758
Admonish, power of company, &c., commander and C O, to 35, 39, 470, 823
Air Force personnel, power of command over .. 42, 597, 813–7
Appointment, removal from .. . 39, 595
Army Act, special provisions of, as to . .. 594–5
Arrest, powers of . 467
,, rules as to, in case of . 33
Auctioneer, employment as, under Regimental Debts Regulations .. 883–4
Charges against, commanding officer's power to deal with 24, 35, 36, 39, 469, 470–2, 594–5
,, company, &c., commander's power to deal with 35, 469
,, investigation of 35, 468–9
Civil court report as to conviction by, of 567, 595
Commanding officers' powers as to punishing 24, 35, 36, 39, 469, 470–2, 594, 595

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Non-Commissioned Officers—*contd*
Company, &c , commanders' powers as to punishing 35, 469
Confinement of soldiers, duties in relation to, of 33, 34, 446–7, 467–8
Court-martial, custody at 51
,, right to claim trial by 470, 595
,, sentences by, on 29, 463, 465, 594–5
Definition of term . . 601
Detention, sentenced to, deemed reduced to ranks 29, 594–5, 758
Drunkenness of 24, 39, 470, 471, 594
Extension, re-engagement and continuance of service 212, 509
Field punishment cannot be awarded by C O to 39, 469
,, sentence of, by C -M involves reduction to ranks 29, 594–5, 758
Imprisonment, sentenced to, deemed reduced to ranks 29, 594–5, 758
Lance (*See* Acting *above*)
"Man," included in term (in case of Reserve and T A) 840, 864
Military custody in case of 33
,, law, application of, to 580–2, 583–4
Minor punishments 37, 39, 470–1
Naval personnel, power of command over 42, 597, 809–810
Pay, detention of, by 457
,, forfeiture of, cannot be awarded by C O to 39, 469
Penal servitude, sentenced to, deemed reduced to ranks 29, 594–5, 758
Punished more severely than private concerned in same offence 61
Punishment, summary (*See* C O *above*)
Rank, reduction in 463, 465, 567, 594–5, 758
,, ,, ,, date of effect 465, 595
,, relative, in case of naval, military and air forces 597, 809, 814
,, seniority of, forfeiture of 29, 463, 465, 594–5 651, 758
Ranks, reduction to 29, 463, 488, 567, 594–5 758
,, ,, ,, suspension of sentence does not affect 488
Re-engagement and continuance of service of 212, 509
Reprimand or severe reprimand, sentence by C -M 463 465, 595, 758
,, of, by C O or company, &c , commander 35, 39 470
,, ,, on board H M 's ship 823
Reversion to permanent grade from appointment (*See* Acting *above*)
Sentences on, forms of 758
Service, continuance in 212, 509
Ship, on board (*See* **Ship**)
Soldier, striking or ill-treating a 28, 457, 713
,, when included in expression 457, 470, 578 601
Summary punishment (*See* Commanding Officer *above*)
Superior officer, when included in expression 601
Wife and children, maintenance by 556
Non-Confirmation. (*See* **Confirmation**)
Northern Ireland (*See* **Ireland**)
Notices
Reserve forces, affecting, provisions as to 838–9, 869
Territorial Army, affecting, provisions as to 856–7, 869
Numbers.
Air Force, Royal 415–6
Aliens permitted to enlist 217, 514–5
Army Reserve 224, 225, 832, 841, 863
,, standing 175, 415

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Numbers—*contd*
Excess or deficiency not to affect operation of A A 175, 417
Militia 863
Territorial Army 202, 850, 851
Troops to be maintained, stated annually in A and A F (A) Act 175, 415
When numbers of reserve forces not included in those authorised in A A 842, 863
Nuncupative Will (*See* **Will.**)

O.

Oath
Accused must be present when court take 52, 634
Administration of, procedure 52, 479 480, 634–5, 664, 669, 682, 762–3
Affirmation included in term 603, 604
,, substitution of, for 95, 504, 635
Allegiance, of 215, 504
Children, evidence of, admissible, though not on 83, 95, 114
Confession on 93
Court of inquiry, administration by 496, 497, 687, 689
Courts-martial, president, members and officers attending, for 52, 479 480, 634-5, 664, 682, 762-3
,, taken by members of, effect of . 479
Declaration (*q v*)
Definition of 603, 604
Evidence cannot be on before court sworn 634
,, on, right of accused to demand 36, 37, 41, 470, 473, 617-9, 622
False, punishment of . 127, 552–3
Form of 52, 762–3
Incompetence to take 479
Indian method of swearing 635
Interpreter, in case of, provisions as to 52, 479, 635, 665, 762
Judge advocate, in case of, provisions as to 52, 479, 634–5, 762
Judicial enquiries, evidence in, must be on 70
Mahommedan method of swearing 635
Manner of taking 763
Master claiming apprentices, &c , form of 515-6, 606-7
Natives, administration to, of 480, 635
Objections to 479
Officers under instruction, in case of 52, 479 635, 762
One, for trial of several offenders successively 52, 664, 682
Refusal to take 27, 451–2, 539–540, 710
Religion, swearing of persons according to their 95, 634–5
Scottish method of swearing 52, 635
Shorthand writer, in case of, provisions as to 52, 479, 635, 665, 762
Solemn Declaration. (*See* **Declaration**)
Summary of evidence, at 37, 497, 617–9
Witnesses, provisions as to 55, 83, 95, 114, 470, 473, 479–480, 498, 617–8, 635, 643, 669, 682, 763, 768
Obedience, by inferior, duty and limits of 18, 152–4, 162–3, 434–5, 444
Objections by accused (*See* **Courts-Martial**, objections)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Obstructing
Course of justice 129, 133
Or impeding military duties 558–9
Police, when arresting officer or soldier 241 458, 567, 713

Occupation of Enemy Territory.
Active service in relation to . 599
Administration 3, 326–330
Allegiance of inhabitants 326
Army of Occupation, 1918 179
Authority, exhibition of 325
Banks 338
Billeting 334–5, 337
Censorship 329
Collective punishment 331, 344
Commanding officer's position in 3
Commencement, test of 325
Commercial intercourse 329
Courts of law 328, 333
Definition 324
Duties and powers of occupant 3, 326, 414
Education 329
Effectiveness of 324
Effects on population 330–2, 414
Finance 328–9
General effects 324, 326
German instructions for the Governor-General of an occupied province 412–3
Inhabitants, allegiance of 326
,, obedience of, limitation on 330
,, offences against person or property of 68, 430, 431, 476–7, 705, 717
,, personal services of 331–2
,, rights and duties of 330–2, 414
International agreement as to 2
Invasion not necessarily occupation 324
Legal proceedings 328, 333
Maintenance of occupation 325–6
Medical service . 330
Neutrals 352
Officials, position of 332–3
Payment for services 332
Police duty . 330
Postal matters . 329
Press, control of .. 329
Proclamation of occupation 325
Property (*q v*)
Punishment, collective, during 331, 344
Rates, collection of .. 328
Religious observances 329
Reprisals . . 331, 344
Requisitions of personal services of inhabitants 331–2
Sanitary duties 330
Schools and educational establishments 329
Suspension of certain laws and privileges 327
Taxes and rates, collection of .. . 328
Test of occupation . 325
Transportation, restrictions on means of 329

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Occupation of Enemy Territory—*contd*
Troops, behaviour of, during 414, 431
,, safety of, during 414

Offences (*See also* various kinds of)
Abroad, trial of 12, 67, 68, 162 414, 476–7, 567
Accessory before and after fact to (*q v*)
Accidents, responsibility 109–110
Active Service, on (*q v*)
Aggravated, dealt with by general court-martial 48
Agreements to commit 129
Aiding and abetting 107, 126, 553
Air Force Act, against 589, 590
Allied country, in, trial of 414
Alternative not to be stated in same charge 624 699
Arrest, erroneous order during, does not affect liability for 33
Articles of war, power to create offences under 30 496
Assisting in, responsibility for 107
Attempts to commit (*q v*)
Billeting (*q v*)
Charge (*q v*)
Children, by 105
Civil, generally no limitation of time for trial of 640
,, law, against 1, 21, 103–5, 113–134, 241, 459–460, 554, 567, 624–5, 713, 732–4
,, special findings on charges of 130–4 484
,, time limit for trial of 45 114 566 639, 640
,, triable by court-martial (*See* **Courts-Martial,** civil offences)
Classification of 15
Cognate (*See also* **Charge,** alternative)
,, conviction of one on charge of another 17, 20, 23 58, 71, 120, 122, 130–134, 438, 443, 483–4
Common intent, responsibility in case of, for 107
Compulsion, committed under 106
Condonation of 45, 53 639–640
Consent to responsibility 109, 113, 114, 115
Conspiracy (*q v*)
Criminal responsibility (*q v*)
Disposition to, as evidence 74, 75, 77
Doubt as to whether facts proved constitute 47, 647–9
Drunkenness, during 25, 26, 106, 433, 441, 456
Enemy, in relation to (*See* **Enemy**)
First, lenient treatment for 61
Foreign stations, on, removal for trial 45
Good order and discipline, offences against (*See* **Conduct to Prejudice**)
Habitual, increased punishment for 29, 61
Ignorance, through 106
Inciting to commit 107, 132
Informants as to, privilege of withholding information as to 97
Inhabitants, against (*See* **Inhabitants**)
Innocent agent, committed through 107
Insanity in relation to (*See* **Lunacy.**)
Instigating, responsibility for 107
Intention in relation to (*See* **Intention**)
Investigation of .. . 31, 34–38, 467, 468–470, 472 616–621

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Offences—*contd*
Joint, degrees of criminality in . 61
Knowledge of intended 108
Less, conviction of, on charge of greater 17, 20, 58, 71, 108, 130–4, 438, 443, 483–4
Marines, Royal (*q v*)
Military, miscellaneous 28, 456–9, 712–3
,, service, in respect of 15 426–431, 704–5
Minor . 33, 35, 36, 40
,, charges for, when may be dropped 47
Motive for . 78, 109
Necessity as excuse for committing 106
Negligence, committed through 106, 110, 117
Official Secrets Acts, under 895–906
Omission, acts of, responsibility for 112
Pardon of, may bar trial by C -M 45, 53, 639
Place of commission of, liability to military law in respect of 45, 565
Preparation for 61, 78, 108
Prevalence of, punishment during 61, 104
Provocation (*q v*)
Punishment (*q v*)
Repetition avoided by service abroad 213
Reserve, Army (*See* **Reserve Forces**)
Same, re-trial for, when illegal 40, 41, 44, 45, 53, 470–3, 564, 567, 618, 639
,, ,, ,, ,, permitted 45, 64 480, 483, 564 566–7, 637, 662, 677
Serious, trial of, by civil court 104
Several, evidence of one as proof of another 76, 77
Sexual . 113–115
Ship, on board (*See* **Ship.**)
Similar, evidence as to 75, 76, 77
Soldiers, by, forms of charges . 699–735
Substance of, must be proved . 71, 72 643
Tables of 105, 130–134
Territorial Army (*q v*)
Threats of accusations of 122, 133
Time and place of, material in some cases 72
Offences against the Person Act, 1861 95
Offender. (*See* **Accused.**)

Office.
Execution of, meaning . . 433
Military (*See* **Military Office**)
Municipal (*See* **Municipal Office.**)
Parochial (*See* **Parish Offices.**)

Officer
Accounts, supervision of, by 23, 443
Actions for damages against 135–136, 147–160, 164, 574–5
Agents, prohibition on officers acting as 244
Air Force Act, when subject to 42, 589, 597, 813
,, ,, attachment to 42, 588–590, 810–13
,, ,, personnel, power of command over 42, 597, 813–7
Alien not capable of being 217, 515
Arrest—
Abroad 31
Civil police, by, evidence of 569–571

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Officer—*contd*
Arrest—*contd*
Close 31
Court-martial cannot be demanded 32
Exercise during 31
Guard, piquet, P M , &c , may be under charge of, during 31
Inferior may order superior into, in certain cases 32, 435, 467
Investigation should precede 31
Method of 31
Military custody includes arrest 31, 467
Nature of, to be conveyed in writing 31
Open 31
Order for, generally written 31
Re-arrest on same charge 32
Release from, order for 32
Report of to superior military authority 32 468
Restrictions during 31
Sword, deprived of, when under 31
Witness, attendance as, when under 31
Attestation before an 215, 514, 587, 588, 837 853
Bankruptcy of, assignment of pay, &c 552
Billeting (*q v*)
Cashiering of (*q v*)
Charge against, dismissal by C O 35, 469, 470, 621
,, ,, ,, competent authority 41, 472–3 621
,, ,, investigation into 31, 35, 469 472, 621 686
,, ,, summary disposal of (*See* Summary disposal *below*)
Citizens, position of officers and soldiers as 1, 103, 241–5, 246, 564–5
Civil courts, control over illegal acts of 3, 135–164, 255 261, 414 574–5
,, ,, invoking aid of, by 135–136, 147, 164, 574–5
,, law, liability under 1, 103, 160–164, 241–5, 246, 460, 567
,, power, position when employed in aid of (*See also* **Force**) 246–7, 251–2, 254–69
Commanding Officer (*q v*)
,, ,, cannot punish an 39, 470
Commissions (*q v*)
Common law rights of, assertion of, in civil courts 135–136, 147, 155
Company directorships, restrictions as to holding of, by 244
Complaints, procedure 460–1, 585, 591
Contracts, liability for 157
Corps, appointment to 221, 568
,, liability to serve in any 221
County council, eligible as member of 243, 557
Court martial—
Composition of, on trial of 46, 475–6, 630–1
Custody of, at 51
District, cannot try 43, 44, 104, 452, 474
Field general, can try 68, 680
General, can try .. 14
Officers attending for instruction and in waiting at (*See* **Courts-Martial.**)
Remand for . . 469, 472–3
Right to claim trial by 32, 41, 473
Summary disposal of charge bars trial by 41, 45, 473, 639

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Officer—*contd*
Court of inquiry on charge against 35, 621
,, ,, presence at, where character affected 687
Criminal proceedings against 3, 135, 160–164, 414
Crown, subject to will of 137, 141, 142
Defending accused (*See* **Defence**)
Definition of, in Army Act 577–8, 601, 604–5
,, ,, Regimental Debts Act 879
Delegation of authority to another (*See* **Delegation**)
Deputies approved by Army Council for purpose of s 138 (8) and s 145 (2), Army Act 557
Dismissal (*q v*)
Drunkenness of 24, 442
,, on parade 32
Effects of deceased (*See* **Regimental Debts**)
Elections (*See* **Parliament**)
Embezzlement and theft, prevention of, responsibility for 23, 443
Evidence as to appointment, corps and rank of 568
False accusation by 27, 450, 710
Finding and sentence on, confirmation of 63, 789, 791, 792
G O C (*q v*)
Imprisonment, sentence of cashiering to precede sentence of 29, 463, 466, 756
Improper conduct of, towards accused, inquiry into 47
Indian Army (*See* **India**)
Junior may order arrest of senior in certain cases 32 435, 467
Jurisdiction, acting without or in excess of (*See* **Jurisdiction**)
Jury, service on (*See* **Jury.**)
Justice of the peace, may be authorised to act as 215, 514, 587, 588, 837, 853
King, The, right of appeal to 460–1
Licence duty for soldier servants, exemption from 243
Malicious acts by 135–136, 148, 150-153, 155–156, 160–161
Military custody means arrest in case of 31, 467
,, knowledge of 72, 88, 89, 430 431, 433, 434, 436, 440, 442, 443, 446, 449, 450 623, 665
Military law,application of, to 1, 222, 223, 233, 237, 577–580, 583–4
Militia (*See* **Militia** *and* **Reserve of Officers**,—Militia)
Native (*q v*)
Naval Discipline Act, when subject to 598, 818
,, forces, attachment to 42, 597 809–810
,, personnel, power of command over 42, 597, 809–810
Obstruction, &c , of, in execution of duties 558–9
Officers Training Corps (*q v*)
Offices, public or municipal, not to be held by regular 243–4, 557
Oppression by, abroad, trial for 162
Parliamentary candidature, &c (*See* **Parliament**)
Pay—
deductions from 462, 464, 546, 551, 552
when prisoner of war 287
Penal servitude, sentence of cashiering to precede sentence of 29, 463, 466, 756
Persons subject to military law as 43, 577–580, 605
Petition by, against finding and sentence of C -M 67, 135
Precedence of, when regular, reserve and territorial serving together . 233
Prescribed (*q v*)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Officer—*contd*
Press, communications to, restrictions on 244
Prohibition, writ of, issue to 140
Protection of, against civil actions 164, 574–5
Provocation of subordinate by superior 16, 61, 433
Publication of books, &c , by 244
Punishment, scale of, for 28–29 462–7
"Qualified" for convening or confirming general court-martial 536–7
Rank, forfeiture of seniority of 41, 462, 463, 465, 473–4, 589 590, 651, 757
,, restoration of seniority of 463
Rank of, evidence of Army List, &c , as to 568
,, in Army 221
,, relative, in case of naval, military and air forces 597, 809, 814
Rates, when exempt from 243
Recruiting system, old, pecuniary interest in 176–7
Redress of wrongs, procedure 460–1, 585, 591
Refusal by, to deliver up soldier to civil power 241 458, 567, 713
Reprimand, sentence of, on 41, 462, 463, 473 591, 757
Reserve of Officers (*q v*)
Resignation, no right of 137, 221
,, T A , from 232
Retired, application of military law to 578, 579, 583–4
,, liability to recall 222
Riots, &c , responsibility when troops called out 246–7, 251–2, 254–69
,, ,, special duty to suppress 249
Rules of Procedure, application of, to persons subject to military law as 697
Scandalous conduct of 21, 29, 60, 442, 707 722
Sentence on, forms of 756–7
Service, forfeiture of 41, 462, 473–4, 591
,, restoration of forfeited 463
,, with any part of army, liable to 221
Severe reprimand of (*See* Reprimand *above*)
Sheriff (*q v*)
Ship, on board (*See* **Ship**)
Social misconduct of 442
Soldier, ill-treating or striking a 28, 457, 711
,, servants, licence duty not payable for, by 243
Subordinates, liability for acts of 156–7
Summary disposal of, and Warrant Officers, under S 47—
Abstract of evidence, copy for accused 473, 621
Air Force personnel, of 473–4
Bar to trial by court-martial 41, 45, 53, 473, 639
Civil court, case dealt with by, bar to 473
Court-martial, accused's right to 41, 473
,, ,, remand for trial by 472–3, 621
,, ,, trial by, is a bar to 473
Dismissal of charge 41, 472–3, 621
Evidence before 41, 452, 472–3, 621–2
Oath or solemn declaration, same as for a court-martial 473, 622
Object of 473
Offences which may be dealt with 41, 473
Officers empowered to deal with 41, 472

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Officer—*contd*
Summary disposal of, and Warrant Officers, under S 47—*contd*
Officers subject to 41, 472
Pay of warrant officers, power to order deductions from 547
Procedure 41, 472–4, 621–2
Punishments, cancellation remission, &c , of 135, 474, 622
,, which may be awarded 41, 473–4, 591, 593–4
Remand by C O for 469, 621
Summary of evidence, copy for accused 473, 621
Superior, Air Force officers and N C Os as 596–7
definition of 433, 601, 622
disobedience to 17, 18, 434–5, 706, 719
may be ordered into arrest by junior 32, 435, 467
military policeman is not a 433
naval officers, &c , as 596–7
provocation by 16, 61, 433
right to give a command 18, 434
striking or threatening 17 25, 61, 432–4, 706, 718
Supervision of persons in positions of trust by 23, 443
Supplementary Reserve (*See* **Reserve of Officers**)
Sword of, removed when put in arrest .. 31
Territorial Army (*q v*)
Tolls, exemption from . 209, 243, 553–4
Transfer, liability to 221
,, to Indian Army 239
Trial of, custody of, at 51
,, ,, for offences of oppression abroad 162
Volunteer (*q v*)
Voting at parliamentary elections (*See* **Parliament**)
Waiting, at court-martial (*See* **Courts-Martial**)
Warrant (*q v*)
Wills of (*See* **Wills**)
Woman as 605
Officers' Commissions Act, 1862 860, 869
Officers Training Corps.
Cadets 237
Constitution of 236–7
Military law, officers subject to 237
Object of . 236
Officers 237
Organization 237
Official Secrets Acts 895–906
Omission, acts of, responsibility for 112
Operations, surgical 109, 112, 444
Opinion
As to guilt not to be stated by investigating officer 36, 37
Conduct of accused, as to 89
Counsel not to state, as to matter of fact 56, 674
Court of inquiry, of, as to returned prisoner of war 687
Drunkenness, as to, witnesses must give reasons for 445
Evidence, not generally admissible as 74, 88–90
Experts, of, as evidence . 88, 89
Law Officers' (*q v*)
Of confirming officer, evidence of 686
,, convening officer, statement and effect of 46, 68, 475–7, 627–8, 630–2, 680–1, 686

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Opinion—*cont.*
Of judge-advocate as to point of law, court to be guided by 69, 678–9
,, members of court-martial (*See* **Courts-Martial, Members**)
Opium, drunkenness includes intoxication from 24
Order and Discipline, offences against (*See* **Conduct to the Prejudice**)
Orders, &c (*See also* **Command and Disobedience**)
Admissibility as evidence 81, 88, 136, 568
Army 568
Complaints regarding 18
Criminal liability of subordinate when executing 163
Decoration (*q. v.*)
Delegation by military authority of power to issue 575–6, 838, 860
Execution of 17–18, 111, 152–154, 156, 162–163
Garrison, general, standing &c., neglect to obey 19, 436, 706, 720
General, declarations as to active service to be published in 600
Ignorance of, when no excuse for offence 436, 442
Militia 863
Misapprehension of 436, 442
Proof of 436
Provisions as to 575–6, 696–7
Refusing to obey (*See* **Disobedience**)
Regimental, notification in, of absence without leave 39
Reserve Forces 837–8, 863
Signing of 575–6, 838, 860
Territorial Army 232, 849–850, 851, 864
Validity of 575–6, 696
Ordinances of War (*See* **Articles of War**)
Ordnance, Board of 180, 181
Outlawry, forbidden .. 281
Overseer
Meaning of, in R. F. Act 865
Publication and service of notices by 839, 857

P

Parade
Attendance at, when under open arrest 33
Failing to appear at place of 21, 26, 440–2, 707
,, ,, ,, ,, owing to drunkenness 26, 442
Pardon. (*See* **Offence**)
Parish Offices, exemption from service 233, 244, 593, 834, 858
Parlementaire . 306–10
Approach of 306–8
Authorisation to, should be in writing 307
Conduct of 308
Detention 309
In enemy's lines 309
Inviolability 306
Misconduct 309–10
No obligation to receive 307–8
Party accompanying 308
Treatment of 309
White flag, improper use of, by 310
,, ,, use of, by 306–7

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Parliament
Act of, necessary before T A is ordered abroad 203
Acts of, judicial notice to be taken of 72
Army, control over by Army and Air Force (Annual) Act 2, 11, 14, 174–5, 179, 415
,, ,, ,, ,, history of 168–175
Army Reserve, control over numbers of 224
Assembly of, not required when Section A reserves called out 227, 510, 841, 863
,, on embodiment of Territorial Army 234, 856
,, when reserve forces called out 227, 834–5
Candidature of officers and soldiers for 244
Convicts, military, removal to U K , declaration regarding, to be laid before 489
Elections for, right of voting at 244, 593, 858
,, ,, ,, to be placed on absent voters list or vote by proxy 244
,, ,, ,, ,, ,, register of electors 244
Emergency Powers Act, regulations under, may be altered by 907
Field punishment rules to be laid before 464
Martial law established only in U K , by Act of 4
Members of, may receive Reserve commissions 863
,, ,, T A commissions 233, 593, 858
restrictions on officers and soldiers as candidates 244
Orders and Orders in Council as regards Reserve and T A to be laid before 838, 851, 855, 860–1, 864
Peers and M Ps not exempt from arrest 32
Prison rules to be laid before 514
Prisoners, military, removal to U K , declaration regarding, to be laid before 492
Proclamation of emergency, occasion of, to be communicated to 906
Regulations for Army Reserve to be laid before 838
,, ,, T A to be laid before 850–1
Rules of Procedure to be laid before 496
Schemes for county associations to be laid before 847
Territorial Army, embodiment of, rights of 234, 856
Vote at elections (*See* Elections *above*)
Warrants, Royal, under Regimental Debts Act to be laid before 875

Parole
Breach of 288
Making known or giving, unlawfully 429–431, 705
Prisoners of war 287–8
Pass, leave, possession of false 459, 731
Passports 322–3
Patriotic Fund, transfer to, of unappropriated residues of property 894
Patrol, leaving (*See* **Post**)
Pawnbrokers, purchasing stores, &c , from soldiers, liability of 499–500 561–3
Pawning, Regimental Property, &c (*See also* **Territorial Army**) 26, 448–9, 499–500, 709, 727
Pay
Acceptance of, effect of . 216, 517–8
Actions to recover (*See* Recovery *below*)
Assignment of . . 241, 552
Debts, private, cannot be seized for . .. 241, 555

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Pay—*contd*
Deductions from, and forfeiture of—
Absence without leave 37, 39, 40, 472, 546–9, 551
Acting or lance rank, deprivation of, does not involve "forfeiture" 37
Active service, on, by C -M 463, 466, 548, 551
,, ,, ,, C O 38 469, 471, 548, 551
Actual loss, may not exceed 548, 550
Affiliation orders, on account of (*See* Wife *below*)
Army Council s powers with regard to 498, 546, 548, 550, 551, 556–7
Arrest (*See* Custody *below*)
Authorised, only to be made 464, 545
Auxiliary forces, ex-members of, in cases of 548
Barrack damage, as contribution towards 547 8
Civil court no jurisdiction to remedy 135, 137
Commanding officer's power to order 35, 38, 39, 40, 469–472 547, 548, 549–551
Commencement of forfeiture 471 620
Competent military authority, power of, to award 498–9 549
Court-martial, soldier's right to, in cases involving 35, 37, 470, 472, 621
Custody, periods in, during 39, 40, 547, 549
Damage, loss, &c , making good 40, 104, 472, 546–551, 624–5, 701–2, 757
Day, how reckoned for purposes of 548–9, 551, 697
Debts, private, for, illegal 241
Desertion, during 39, 498–9 543 547–9
Detention, in case of 39, 486, 547–9, 551, 620
Facts justifying, to be stated in particulars 440 445, 456, 550 624–5, 701
Field punishment in case of 39, 40, 471, 486 547, 549
Fines, of sums required to pay 40, 518 550
Fraudulent or improper enlistment in case of 440, 456 498–9, 549
Hospital, while in 39, 40, 547 549
Imprisonment, in case of 39, 486, 547–9, 551
India, in 546
Joint liability, in case of 551
Liquor ration, in respect of 548
Maintenance of wife and children (*See* Wife *below*)
Maximum permissible 548, 550
N C Os , C O cannot award forfeiture in cases of 39, 469
"Occasioned by," meaning of 546
Officers, of 462, 464, 546, 551, 552
Pay unlawfully retained, &c , making good 546
Pay Warrant provisions regarding (*See* **Pay Warrant**)
Penal servitude, in case of 39 547–9
Prisoner of war, of 39, 40, 547 549
Remission of 456, 486, 551
Reservist, in case of 456 552 839
Sentence invalid, does not affect automatic 686
,, suspension of, no automatic forfeiture during 486
Several awards of, effect of 548, 550, 551
Ship, award of, on board 547–8, 823
Soldier, of . 39, 40, 463, 464, 466, 469–472, 547–551
Stolen property, in respect of 445, 500
Sums other than pay liable to deductions 551–2

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Pay—*contd*
Deductions from, and forfeiture of—*contd*
Warrant officers, of 41, 465, 473, 547, 556, 593
Wife's and children's maintenance 241, 548, 550, 552, 556–7
Deferred, assignment of 552
,, forfeiture of 464, 650, 758
Detaining unlawfully 457, 546, 713
False oath or personation as to 552–3
Fraudulently obtaining 553, 833
Good conduct, forfeiture of 464, 466, 602
Grievances regarding, civil courts have no jurisdiction in 135, 137
Inclusion in, of other sums for purposes of deductions 551–2
Issue of 176–7, 180
List, making false entries in 449, 709
Mandamus, writ of, refused, in action concerning 137
Marines, Royal, of, orders regarding 585
Medical personnel, when in enemy's hands 302
Officers, when prisoners of war 287
Ordinary, meaning of 546, 548
Prisoners of war, soldier 39, 40, 287, 547, 549
Recovery of, not possible by civil actions 137
Signing in blank of documents relating to 450, 710
Supplementary Reserve 230
Supplementary Reserve of Officers 224
Territorial Army, officers of 232
Warrant (*See* **Pay Warrant**)
Withholding of, in case of doubt 551
Paymaster (*See* **Regimental Debts**)
Paymaster-General, duties of 180, 181
Pay Warrant, provisions as to forfeitures and deductions 40, 464, 466, 548, 549
Peers (*See* **Parliament**)
Penal Servitude
Active service, on 66, 488–9, 690
Army Educational Corps instructors, in case of 594–5
Articles of war, punishment under, by 30, 496
Channel Islands, sentences of, in 598–9
Colony (*See* India *below*)
Committing authority 190, 495, 690–1
Commutation of 485–6, 488, 495
Convict (*q v*)
Courts-martial—
District, cannot award 44, 104, 474
Field general, passed by, sentence of 481, 684–5
Discharge with ignominy in addition to 463
Effect of sentence of 488–9
Foreign country, sentences of, passed in 66, 490, 691–2
Forms of commitment 771–4
,, orders as respects, power to make rules as to 496
India and colonies—
Approval of sentence of, required in 65, 482
Civil custody, in 490
Interim custody 490, 690
Removing authority in 490, 495, 691
Sentences passed in, where served 66, 67, 489–490, 495
Transfer of military convict to colony 489
Isle of Man, sentences of, in 598–9

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Penal Servitude—*contd*
Life, for, power of C -M to award 464
Maximum term awardable by C -M 464
Military convict (*See* **Convict**)
,, prison, when sentence of, may be served in 66 488–9
Minimum term to be awarded by civil court or C M 104 5 130 462 464
N C O sentenced to, deemed to be reduced to ranks 29 591–5, 758
Offences on active service punishable by 15, 408–9 432 434
,, other, punishable by 17 20 21 22, 26 34 122 123, 125, 127, 130–134, 432 434 437 439, 442, 446 460 904
Officer must be cashiered before being sentenced to 29 463 466, 756
Orders relating to 49,
Pay, forfeiture of, while serving 39, 547–9
Prison (*q v*)
Prisoner (*See* **Convict**)
Release from, order for 490–1, 692
Sentence—
Award of new, while under suspension of sentence 487
Commencement, date of 67, 486 487–8, 494–5 652
Confirmation and approval of 63, 65, 481–2 681–5
Executed in United Kingdom with exceptions 66, 67 489–490
Execution of 66 67 488–491, 495, 565 598–9
Remission of 66 488, 689 690
Suspension of 65, 66, 487–8 795–808
Treatment of convict during sentence of 491 544
Warrants for 143, 572, 575–6, 654, 696

Penalties (*See* **Punishment**)

Pension
Army reservist, of, after being called out 838
Assignment of 241 552
Forfeiture of service towards 464, 758
Obtaining by fraudulent means 553
Wound and disability, exemption from income tax 243
Pension and Yeomanry Pay Act, 1884 553
Pensioners
Form of charge against 702
Military law, application of, to 581, 582, 583–4

Pensions, Ministry of .. 184–5

Perjury
By person not subject to military law 127, 540
,, ,, sworn .. 114
Charge of, framing 126
Court-martial, when triable before 127, 452
Definition, offence and punishment 126, 133
False oath with respect to pension, &c 127, 552–3
,, swearing as to belief is 89
Witnesses requisite to prove 27, 83 126

Permits .. 322–3

Personation
Definition and punishment 127, 133, 552–3, 833–4
Under Official Secrets Acts 901

Persons not belonging to the Forces. (*See also* **Civilians**)
Army Act, special provisions of, as to 595–6
Charges against, framing of 623

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Persons not belonging to the Forces—*contd*
Commanding officer, cannot be punished summarily by 36, 470 578, 596
,, ,, who is, as respects 596
Courts-martial trial by 595–6
Military law, application of to 2, 578, 579, 580 582
Offences by, punishment of 595–6
Petition against finding and sentence of C -M 67, 135
Petition of Right, 1628 7, 171 203
Petitions of Right, pay cannot be recovered by 137
Picketing during trade disputes 248–9
Pillage forbidden 293

Piquet
Extra, as punishment 39, 471
Leaving (*See* **Post**)
Officer under arrest may be under charge of 31
Pirates included in term "enemy" 602

Plea.
Convening officer, reference to 53 637
Evidence in support of 53, 637–9
"Guilty" and "Not Guilty," difference in procedure 54–57, 69, 638, 640–1

"Guilty," alteration to "Not Guilty" 54, 638–9, 641, 747
,, court cannot accept, if death penalty involved 54, 638, 683
,, effect and consequences of, to be explained to accused 54, 638
,, form of proceedings on 746
, memoranda on forms, &c 769
,, misunderstanding of plea 54, 638–9, 641, 747
, on first of alternative charges, procedure 52, 638
,, procedure on 54, 638–9, 640–1, 686, 746
In bar of trial, confirmation of 64, 639–640
, procedure on 53, 54, 639–640, 686, 745–6
Jurisdiction of court, to (*See* Special *below*)
Mixed procedure on 54, 640–1
"Not Guilty," form of proceedings on 747–8
,, meaning of 638–9
, memoranda on forms, &c 769
,, procedure on 55–57, 642–6, 686 747–8
, withdrawal of 57, 642
Recording of 53, 638
Refusal to make a 53, 638, 745
Special, to jurisdiction of court 53, 634, 637, 683, 686, 745
Unfit to make a 53, 657, 745
Unintelligible 53, 638, 745

Plunder.
Breaking into house, &c , in search of 429, 431, 705, 716
Leaving C O to go in search of 429, 431, 705, 716

Poison
Evidence as to 88
Gas (*See* **Chemical Warfare.**)
Use of, and poisoned weapons forbidden in war 280

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Police
Air Force, power of in relation to military forces 814-5
Arrests of officers and soldiers by, evidence of 569–571
Assaulting 113 130 435
Assisting, use of force when (*See* **Force**)
Authority, definition of 206, 604
Billeting, duties and powers as to 205, 206, 453, 518 524, 534, 592, 608
Chief Officer of, meaning of **523–4**, 906
Constable—
Billeting (*see above*)
Definition of, in Army Act 604
Deserters and absentees, apprehension and disposal of, by 559 560, 569-571
Exemptions from serving as 834
Impressment (*see below*)
Official Secrets Acts, powers under 898–9
Service of notices, &c., to reserve forces by 839
,, ,, ,, T A, by 857
False name to, giving 459
Impressment, duties and powers as to 207, 208 454, 526, 528–9, 531, 534
Interfering with in vicinity of prohibited place 902
Law Officers' opinion on duty of soldiers called upon to assist 268–9
Military Policeman (*q v*)
Obstruction of, when arresting officer or soldier 241 458 567, 713
Occupied enemy territory, in 330
Questions by, and statements to, rules as to 91 92
Police Station, confinement in 33 543 559, 784
Political Meetings, attendance of officers and soldiers at 244

Poor
Assignment of pension to guardians 552
Overseers of, service of notices by, to reservists 839
,, ,, ,, men of T A 856–7
"Posse Comitatus" 165

Post
Abandoning, &c 426–7, 704–5
Drunkenness on 15 429–431, 701, 705
,, time to be stated in particulars of charge 701
Leaving 15, 428–431, 705, 716
Meaning of 427, 430
Posting, proof of, when necessary 430
Sleeping on 15, 75 429–430, 705, 717

Postal Service
Neutral, use of 348
Occupied enemy territory, in 329
Telegraph service (*q v*) 505
Posting a soldier, meaning of
Post Office employees, transfer to reserve immediately on enlistment 841
Preferential charges (*See* **Regimental Debts**)

Prescribed
Meaning of in Army Act 603
,, in Regimental Debts Act 880
,, in Reserve Forces Act, 1882 .. 840
,, in T R F Act .. 864

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Prescribed—*contd*
Officer for committing, removing, &c , authority 495, 690–2
,, competent military authority 495, 690–2
,, mitigating, &c , punishment after confirmation 65–66, 485–6, 689, 690
Officer, in case of complaints 461, 689
Rules of procedure, power to make, regarding 496

President of Court-Martial
Absence or death of 480, 628–9, 653, 662–3, 749
Actions against (*See* **Actions**)
Air Force officer as 475, 476, 477
Appointed by convening officer 46, 68, 136, 475–6, 478, 480, 627, 680–1, 736–7
Arraignment, when conducted by 52, 636, 682
Casting vote of 62, 480, 663, 684
,, ,, none in case of finding 59, 480, 663, 683
Chaplain may not be 476
Charge-sheet, convening order and summary sent to and produced by 49, 627, 636
Convening officer may be president of F G C M 68, 476, 680
,, ,, ,, not be ,, G C M , or D C M 476
Duties and responsibility of 54, 55, 59, 62, 479, 480, 633, 657–8, 666–7, 683, 686, 742
Duty to accused 54, 644, 657
Evidence, recording of, by 55, 675, 683
Ineligibility or disqualification of 50, 631–2
Name of, to be inserted in convening order 46, 49, 476, 632
New, appointment of 51, 478–9, 480, 628–9, 653–4
Objection to 51, 478–9, 633, 742
Offences before C -M by civilian or counsel, certifying as to, by 540, 541
Privilege of 158–159
Proceedings, responsibility of, for 55 676
,, signing, dating and transmission of, by 59, 62, 494–5, 649, 652, 653, 657, 675, 676
Qualifications for 46, 68, 475–6
Questions to witnesses by 55, 57, 658 670–1
Rank of, court must enquire as to 50, 136, 631
Rank required for, in case of—
District court 46, 475, 628, 631–2
Field general court 68, 476–7, 681
General court 46, 475–6, 628, 631–2
Warrant officer, in trial of 476, 594
Signature by, of sentence 62, 652
Swearing of 52, 479–480, 634–5, 682, 762–3
Vote of (*See* Casting Vote *above*)

Press.
Communications to, by officers and soldiers . 244
Control of, in enemy territory when occupied 329
Correspondents (*See* **Newspaper Correspondents**)
Reporters at courts-martial (*See* **Reporters.**)

Presumption.
Of guilt or innocence . . 58, 72, 73, 74, 647
Of intention. 20, 73, 106, 108

Pretences (*See* **False Pretences.**)
Printer, Government. (*See* **Government Printer.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Prison.
Abroad, removal of prisoners from one to another (table) 694–5
Air Force, committal to 494, 817
Civil—
Confinement in, "civil custody" includes 494
Definition of 495
Deserters and absentees, custody of, in 543, 545, 559
India and colonies, in, provisions as to 492, 545, 694–6
Soldier confined in, treatment of 490, 494
Soldier on march, &c , may be confined in 33, 543, 784
Transfer to, from military custody 490, 493
Use of, for military prisoners and convicts 66, 490–3 543, 545
Colonial, provisions as to 67, 489–493 495, 545, 694–6
Committal orders (*q v*)
,, to, during suspension of sentence 487–8
,, ,, power to defer, pending suspension of sentence 487
Committing authority (*q v*)
Confinement in, restrictions in case of India and colonies 492
,, temporary 33 543 784
Death by violence in military, in India 545 692–3
Detention, sentence of must not be served in 66, 491
Escape from (*See* **Escape**)
Governor of, actions against 148
,, ,, duty of, to receive prisoners, &c 543, 545
,, ,, powers of 543, 816–7
Hospital, removal to 494
Indian, provisions as to 489–493, 495, 543–5, 695
Ireland, in, special provisions as to 598
Military—
Active service on 544–5
Admiralty cannot establish 587
Air Force personnel in, discipline of 816–7
Definition of 494, 587
Establishment and regulation of 543–5
Rules as to, power to make 543–4
,, to be submitted to Parliament 544
Use of, for military convicts 66 488 544
,, ,, ,, prisoners 66, 491–3
Naval, deemed a military prison 587
Northern Ireland, in, special provisions as to 598
Offences committed in, punishment of 544–5
Penal servitude, committal of military convict to 488–491
,, ,, definition of 495
,, ,, in U K , removal of military convict to 66, 67, 489–490
Provisions, general, as to 543–5, 598
Releasing authority 490, 493, 495, 692
Prison Acts, regulations under 544

Prisoner, Military. (*See also* **Accused, Detention, Convict** *and* **Custody**) 491–2, 782
Abroad, may be sent for service 514–5
Active service, on, rules as to punishment of 817
Air Force prison staff, power of, in relation to 598–9
Channel Islands, in, provisions as to 494
Classification of, rules as to 67, 491–3, 545, 694–6
Colonies, in, provisions as to 491–3 654, 691, 774–5, 776–7
Commitment of

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Prisoner, Military—*contd*
Commitment of, power to defer 487
,, ,, validity of warrant 143, 575–6, 696
,, ,, when sentenced abroad 492–3, 572, 690–1, 694–6
Custody, interim, of 493, 690, 784
,, military, delivery into 493
Definition of 494
Escape of 26, 447, 466, 708, 726
Foreign country, in, provisions as to 492-3, 694-6
Friend (*See* **Accused**)
Habeas corpus, writ of, for production of 142–147
Hard labour, may be kept to . 494
Imprisonment (*q v*)
India, in, provisions as to 67, 492–3, 545, 694–6
Insane, provisions as to 542–3
Ireland, in, special provisions as to 598
Isle of Man, in, provisions as to 598–9
Military law, application to, until completion of sentence 491, 565
Penal servitude (*See* **Convict, Military**)
Release of, by *habeas corpus* proceedings 142–7
,, improper 445–6, 708, 726
,, on suspension of sentence 487
,, order for 493–4, 495, 692, 780
Removal of, abroad, for service 491–2, 782
,, authority for 493, 495, 691
,, from abroad to serve sentence in U K 66, 67, 492–3, 599, 776–7
,, ,, prison for embarkation, form of order 782
,, ,, prison, &c , to another prison, &c 493, 495, 694–6, 783
,, ,, prison to asylum, and *vice versa* 542–3
,, restraint during 493
,, to a colony 491, 492–3, 694–6
,, to a prison or detention barrack outside U K , not generally permissible 491–3
Rules as to punishment, &c , of 543–5
Ship, on board, restraint and custody of 493, 576, 820
Sick, conveyance to and from hospital of 494
Transfer of (*See* Removal *above*)
Treatment of 494, 544–5

Prisoners of War
Aiding enemy, after being taken 427, 704
Armistice, capture during 315
Arms of 283–4
Bicycles of 284
Burials of 290
Censorship of letters, &c 289
Charitable societies for assisting 289
Civilians who are liable to be made 282
Court of inquiry on recovered 40, 687–8
Debts, retention of prisoners of war until they have paid 290
Employment of, by State, on payment . 286–7
Escape (*q v*)
Exchange of. 289
Execution of . 285
Field glasses of . .. 284
***Habeas corpus*, not applicable to.** 145

[*References on pages* 118 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Prisoners of War—*contd*
History sheets . 288
Horses of 283–4
Indulgences as regards property .. 284
Information bureau (*q v*)
Internment . 285
Interrogation of 283, 294
Leaving ranks without orders, to secure 428, 704
Legal position 286
Letters and presents 288–9
Maintenance 286
Maps of 284
Military papers of 283–4
Neutral territory, in 350
Offences by 284–6, 427
Parole 287–8
Pay—
forfeiture while 39, 40, 547, 549
officers 287
rank and file, no obligation to pay 287
Persons who may claim privileges of 282
Private property of 283–4
Punishment, collective, of 286
,, for attempted escape, &c 284–5
,, illegal, by captive officers 467
Religious observances 289–290
Repatriation 290
Rules regarding treatment of, present position of 282
Searching of 286
Taken, and failure to rejoin 428, 704
,, during armistice 315
,, through neglect, &c , offences 428, 704
Wills and burials 290
Wounded and sick 283, 299

Privilege (*See* **Communications, Documents, Public Policy** *and* **Witness**) 552

Prize Money, deductions from

Probate (*See* **Will**)

Procedure, Rules of (*See* **Rules of Procedure**)

Proceedings of C -M (*See* **Courts-Martial**)

Process, Civil (*See* **Civil Process**)

Proclamations
Emergency Powers Act, under . 248, 906
Evidence of 81, 87
Of active service 599–600
,, Duke of Wellington (1815) 412
,, martial law (*See* **Martial Law**)
,, occupation of enemy territory 325
Reserve, Army, calling out (*See* **Reserve Forces**)
Riot Act, in 251–2, 254–5, 263, 268
Territorial Army, embodiment of (*See* **Territorial Army**)

Procurator fiscal, powers of, in summary proceedings 573–4

Procuring (*See* **Prostitute**)

Professional Communications (*See* **Communications, Privileged**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Prohibited place, meaning of .. 897
Prohibition, Writ of 138–140, 146
Projectiles, explosive. (*See* **Explosive projectiles.**)

Promotion
Grievances regarding, civil courts have no jurisdiction in 135
Trafficking in, offence and penalty . . 561, 713
Promulgation (*See* **Finding and Sentence**)
Proof, burden of (*See* **Evidence.**)

Property
Abandoned, cannot be stolen . 119
Abroad, offences against 68, 430, 431, 476–7, 680, 705, 717
Active service, on, damage or destruction of 428, 704, 715
Comrade's, improper possession of 23, 459, 731
,, injury to 26, 448–9, 709
Damaging, &c., and stoppages for 26, 40, 448–9, 472, 546–550, 701, 709, 757, 758
,, public or regimental goods 442, 709
,, &c., Territorial Army, by member of (*See* **Territorial Army**)
Deceased soldiers' (*See* **Regimental Debts**)
Defence of, use of force in . . 111
Embezzlement (*q v*).
Enemy—
Battlefield, found or captured on 339
Billeting in private dwellings 334–5, 337
Compensation for damage to, not claimable 334
Destruction of . 335
Local governments, of 338
Of doubtful ownership 338
Private and personal, categories of 335–6
,, ,, rules as to 333–7
Public 337–8
Rent for use of, not claimable 334
State property, moveable 338
,, real 337
Treatment of 333–9
Extortion (*q v*)
Fraudulent conversion (*q v*)
,, misapplication (*q v*)
Garrison mess or institution, of, theft of . .. 444
Improper possession of 459
Injury to (*See* Damaging *above*, *and* Malicious *and* Offences *below*)
Lost, possession and theft of 23, 119
Making away with, damage to, or loss of public or regimental 26, 448–9, 546, 709, 727
Malicious injury to . 127–128, 133
Navy, Army and Air Force Institutes (*q v*)
Offences in relation to 26, 447–9, 459, 709, 727
"Owner" of. . 118, 500
Prisoners of war, of 283–4
Public, wilfully injuring (*See* Damaging *and* Offences *above*)
Rates (*q v*)
Stealing (*q v*)
Stolen. (*See* **Stolen Property**)
Territorial Army units . . 861
Unappropriated residues of, transfer to Patriotic Fund .. 894

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Prosecution
Burden of proof rests on . 58, 72, 73, 124, 128
Felony, of, offences in connection with 129
Malicious 152–154
Procedure before court-martial 55–57, 636–643
Prosecutor (*q v*)
Soldier not liable for expenses of 550
Witness (*q v*)

Prosecutor.
Accused, abstention of, from giving evidence, may not comment on 56, 645, 658, 667
,, cannot object to 633
,, may be identified by 650
Address by 54, 55, 56 642, 643–6, 658–9, 675, 683
Charges, alternative, withdrawal of, by 52, 638
,, explanation of, by 57, 642
Convening officer cannot be 633
Counsel on behalf of, rules as to 49, 541, 633, 672–4
Court-martial finding and sentence, cannot confirm 633, 684
,, may not be member of 46, 68, 477–8, 629, 681
,, ,, ,, present when court closed 661
Documents, production of, by 59, 643
Duty and rights of 53–4, 55, 56, 59, 60, 84, 90, 94, 480, 633, 642–6, 650, 658–9, 744
Evidence as to character, &c (*See* **Character**)
,, given by defence, may comment on 56, 643, 645
,, outline of, by 55 642
,, rules as to giving, by 59–60, 642–3 666, 669, 673, 768
,, summing up of, by 56, 643–5
Judge advocate, cannot be 477, 677
,, ,, right to consult 678
Military law, must be subject to 51, 633
Must not refer to irrelevant matter 645, 658
N C O may act as, where production of documents only is necessary 633
Prosecution (*q v*)
Reply of 56, 644–6, 659, 662
Restrictions on 56, 57, 60, 74, 75, 642–3, 645, 658
Selection of 633
Threats or promises to accused for confession 91
Witness, as 59–60, 642–3, 666, 669, 673, 768
Witnesses, calling and examination of, by 55, 57, 59, 60, 642–3, 665–6, 669, 670–1, 683
,, cross-examination by (*See* **Witness**)
,, of accused, not entitled to list of 49, 666

Prostitute.
Procuring to become 83
Rape on . . 114

Protectorate, British.
Included in term "Colony" 602
Inhabitants of, enlistment of 217, 515

Provisions (*See* **Stores** *and* **Supplies.**)

Provocation.
Accused should plead "not guilty" 54, 638, 641
Evidence of 433, 641, 658

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Provocation—*contd*
Murder reduced to manslaughter by . 117
Offences committed with or without, punishment 61
Punishment may be mitigated by 16, 61, 433
Superior officer, by 16, 61, 433

Provost Marshal.
Appointment of 41, 42, 171, 431, 499, 790, 791
,, during manœuvres 42
, home and abroad 41,42
,, on mobilization 42
,, proof of 431
Arrests by 41, 499
Assistant, appointment, duties and powers of 41, 42, 499, 787
Custody of persons by 31, 33, 34, 41, 446, 467, 499
Duties and powers of 41, 42, 499, 787
Field general court, cannot be member of 68, 478, 681
,, ,, , ,, confirm finding and sentence of 684
Impeding, offence of 430–1, 705, 717
Punishments, cannot award 41, 499
,, execution of, by 41, 499
Refusing to assist, offence of 430–1, 705
Provost Serjeant 41
Public Authorities Protection Act 164
Public Buildings (*See* **Buildings**)
Public Policy, privilege for reasons of 97
Public Servant (*See* **Servant**)

Punishment (*See under* the various kinds, and offences)
Active service offences, increase for, of 2 15, 20, 428–430, 432, 434, 437, 445
Amount of, fixing 25, 60-62, 105, 106, 464, 663-4
Army Act, must conform to 60, 464, 651
Articles of war, under 6, 12–14, 30, 496
Cancellation of summary award 135, 472, 474, 622
Civil court, by, after punishment by military law 566–7
,, offences, punishments awardable by C -M , for 104, 130–4, 460
Collective—
Occupied enemy territory, in 331, 344
Prisoners of war, of 286
Combined 29, 60, 64, 471, 483, 486
Commanding officer (*q v*)
Commencement of 67, 466, 486, 487–8, 494–5, 565, 620, 652, 653
Commutation—
After completion of sentence 692
Authorities for purposes of 64, 65, 485–6, 488, 590, 654–5, 689, 690
Cashiering (*q v*)
Confirming authority, powers of 29, 64, 485–6
Death, sentence of (*q v*)
Field punishment to rank next below detention for purpose of 464
General service, to 213, 214, 465 486, 506–7
Meaning of 486
Mitigation and remission in addition to 485, 654–5
On partial confirmation of finding 654–5
Partial, is illegal 486
Principles governing exercise of power of 29, 64
Two punishments in place of one 486
Company, &c , commander (*q v*)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Punishment—*contd*
Corporal, actions for damages for 149
,, discontinued 30, 463, 544, 545
,, former powers to inflict 12, 13, 30
,, on natives 545
Courts-martial, awarded by, to be regarded by civil court 566–7
,, ,, by, scale and rules of 12, 13, 15, 25, 28–30, 44, 60–65, 68, 104–5, 130, 460, 462–7, 474–7 593–5, 684, 787
Degrees of, where several offenders 61, 664
Deterrent, as a 61, 62
Difference of opinion of court as to, procedure 663–4
Exceptional, in addition to sentence 650
Excessive, civil or criminal proceedings for 3, 136, 149, 150, 160-164
,, confirming authority may vary sentence 64, 655–6, 686
,, jurisdiction exceeded by 136
,, variation of summary award 135, 472, 474, 622
Field punishment (*q v*)
First offenders, of 61
Foreign ruler, under order of, prohibited 464, 467
Grievances, as bearing upon amount of 16
Increase of, during prevalence of crime 61
,, for habitual offenders 61
,, for instigator of offence 61
,, for offences against inhabitants 431
,, for premeditated offence 61
,, not because of electing trial by district court 61
,, when not permissible 40, 63, 472, 481, 483, 564, 566, 620, 653, 685
,, when permissible 653, 656
Invalid, cancellation of 135, 472, 474, 622
,, substitution of (*See* Substitution *below*)
Limits of 44, 68, 104–5, 462–7, 684
Lower than maximum, power to award 28, 29, 60, 105, 463
Martial law, under, in peace time, illegal 11, 171,416
Maximum 28, 29, 60, 104–5, 130, 462–3, 466
Minor, C O 's power to award 35, 37, 39, 40, 469, 470–2
,, company, &c , commander's power to award 35, 40, 470, 472
Mitigation of—
After completion of sentence 692
Authorities qualified to mitigate 64, 65, 485–6, 488, 590, 654–5, 689, 690
C O 's powers 472, 620
Confirming authority, powers of 64, 485–6, 654–5
Evidence, address or statement by accused, in 54, 60, 640–1
Meaning of 486
On partial confirmation 654–5, 686
,, passing valid, in place of invalid sentence 654–5
Principles governing exercise of power of 64, 564
Remission and commutation in addition to 485
Re-trial, on 564
Revision of sentence, by .. 483
Nature and quantum of, majority of court decides .. 663–4
Object of 60, 61
Offences under Official Secrets Acts 896–8, 901–5
Offender cannot be tried again by military law for same offence after 40, 44, 45, 53, 470, 471, 473, 564, 567, 639

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Punishment—*contd*
Place of trial not to affect . 566
Prompt, reasons for 104
Provocation may be ground for mitigating 16, 61, 433
Provost marshal cannot award 41, 499
Remission of—
After completion of sentence 692
Authorities qualified to remit 64, 65, 485–6, 488, 590, 654–5, 689, 690
Commutation and mitigation in addition to 485
Confirming authority, powers of 29, 64, 485–6, 654–5
Does not extend to automatic forfeitures 486, 656
Meaning of 486
Minor or summary punishments 135, 472, 620, 622
Pay, deductions, &c , from, in case of 456, 486, 551
Suspended sentence, in case of 487, 488
To be granted before release 490–1, 493–4
When to be granted 135, 487, 564
Re trial, in case of 564
Rules of procedure, power to make, regarding 496
Scale of (*See* Courts-martial *above*)
Ship, H M 's, summary punishments on board 819, 820, 823
Substitution of invalid for valid by confirming authority 486
,, valid for invalid 65, 496, 653, 655
Summary—
Accused may elect C -M instead of 24, 33, 35, 37, 40, 61 155, 469, 470, 472 595, 617, 621
Active service, on 38, 466, 469, 471, 787
Barred by conviction or acquittal by C -M or civil court 40, 470, 471–2, 567
Bars re trial by C -M 40, 44, 45, 53, 470, 471–2, 473, 639
Cancellation or reduction of 135, 472, 474, 622
C O , award by, of 24, 25, 35–40, 469–472, 593, 617–621, 693, 839, 840, 858–9
,, ,, ,, no appeal from 40, 135
,, detachment, powers of 40, 694
Company, &c , commander, award by, of 35, 40, 470, 472
Convening officer's power to effect 47
Drunkenness, in case of 24, 25, 35, 38, 39, 469–471, 594, 618, 823
N C Os , of 24, 35, 36, 39, 469, 470–1, 594
Officers (*q v*)
Persons not belonging to forces not to be subjected to 36, 470, 578, 596
Reservists, of 839, 840
Ship, H M 's, on board 819, 820, 823
Territorial Army, in case of 593, 858–9
Warrant officers, of 35, 470, 593–4, 621
(*See also* **Officer**, Summary disposal)
Table of . 105, 130–134
Time limit for award of . 566
Twice, for same offence, illegal 40, 44, 45, 53, 470–2
Two, for same offence (*See* Combined *above*)
War crimes .. . 340–3
Warrant authorising, issue of .. 572, 575–6
Warrant officers (*q v*)
Purporting, meaning of expression 570
Purveyance, Crown's right of 166, 203, 207

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Q

Quarrel.
Arrest of superior by inferior in case of a 32 435, 467
Insubordination, &c , when concerned in a 18 435, 706, 719
Quarter, refusal of, forbidden 281
Quartering (*See* **Billeting**)
Quarters.
Breaking out of . 18, 435–6, 706
Officer under close arrest may not leave 31
Quitting of, during arrest 34
Quashing of Convictions
Air Force personnel attached to Army and *vice versâ* 590
Civil courts, by 140–141, 145–146
Confirming authority, powers of, regarding 65
Grounds for 65, 75, 76, 135, 140, 458, 641, 656
Re-trial after 564
Queen Mary's Army Auxiliary Corps 179
Queen Victoria School 236
Questions (*See* **Witness**)
Quotas under Militia Acts 168, 189–191, 197, 198

R

Radio. (*See* **Wireless**)
Railroad, definition in Regulation of Forces Act 828
Railway Regulation Act, 1842, extract 825–6, 860
Railway Regulation Act, 1844, extract 826–7, 860
Railwaymen, transfer of, to reserve immediately on enlistment 841
Railways
Conveyance of troops, stores, &c , by 209–210, 825–830, 838
Enemy territory, in, seizure of 335
Fares, &c , regulation of 825–6 829, 831–2
Hostages on trains 345
Malicious injury to 127, 130, 133
Neutral railway material, treatment of, in war .. 352–3
Obstruction of 128, 133
Power to claim precedence for military traffic on 210, 830–1
Power to take possession of, in emergency 209–210, 827–8
"Railroad" (*q v*)
Statutes relating to, extracts from 825–832
Warrants (*q v*)
Railways Act, 1921, extract from 831–2
Range, omission to give warning during firing at . . 112
Rank.
Acting or lance, deprivation of, by C O 37, 39, 470, 472, 594, 595
,, ,, ,, ,, ,, C -M cannot award 465, 595, 758
Army and regimental, may be different . . 221
Forfeiture of seniority of 29, 41, 462, 463, 465, 473–4, 593–5, 651, 757–8
,, ,, ,, in Air Force 473–4, 589
,, ,, ,, in Navy 590
,, ,, ,, power of Army Council to restore . 463
Grievances regarding, civil courts have no jurisdiction in .. 135
Proof of, by Army List or Gazette 568

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Rank—*contd*
Reduction in 463 465, 567, 593-5, 758-9
,, ,, date of effect 465, 595
Relative, in cases of naval military and air forces 597, 809, 814
Supplementary Reserve of Officers on appointment to 223
Temporary, forfeiture of seniority of 465
Territorial Army, on appointment to 232

Ranks
Leaving the, on active service 428, 704, 715
Penal servitude, imprisonment, &c , of N C Os involves reduction to the 29, 594–5, 758
Quitting without urgent necessity 440–1, 707
Reduction to the 29 463, 465, 470–2, 567, 593–5, 758
,, ,, ,, date of effect 465, 595
,, ,, ,, in case of instructors, Army Educational Corps 594–5
,, ,, , not affected by suspension of sentence 488
,, ,, to be specified in sentence 595

Rape
Court-martial, when triable by 44, 103, 459–460
Evidence in trial for special rule as to 86
Offence and penalty 113, 114, 134, 460, 713
Women and boys conviction of, for 114

Rates
Collection of, in enemy territory when occupied 328
Exemption from where occupation is in respect of office 243

Rations
Improper disposal of 443
Liquor, stoppage of deduction from pay in case of 548

Rebellion (*See* **Riot, &c** ,—Insurrection)

Receiving stolen goods 22, 76, 124, 134, 444–5, 499–500, 708, 733

Recommendation to Mercy
Acquittal, may amount to 481
Communication of to accused 480, 684
Exceptional use of 62
Finding, in relation to 481
Proceedings of court, record in, of 62, 480, 652, 684 759
Promulgation of 65, 480, 684
Reasons for, to be recorded 62, 652
Restoration of service in relation to 62, 502, 652

Records
Entries in, admissible as evidence 88, 568-570
Medical, privilege of .. 158

Recreation Rooms may be used for music, dancing, &c , without licence 577

Recruit.
Absconded 215, 498, 503–4
Attestation (*q v*)
Bounties (*q v*)
Discharge, purchase of, by (*See* **Discharge**)
Drunken, not to be enlisted 503
False answer by (*See* **Attestation**)
Notice paper to be given to 215, 503

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Recruiter
Duties of, on securing recruit 503–4
Irregular enlistments by 219, 456, 712
Paid pensioner, subjection to military law 582
Regulations as to 514
Rewards for 177

Recruiting (*See also* **Enlistment**)
Army and Militia competition between 176, 196
Army Council's powers as to 177, 514
Expenses of 176–7
Former methods of 172-3, 175–7
Great War, during 178–9, 185
Neutral territory, in, forbidden 347
Present methods of 177, 179
Regulations, contravention of 456, 712
Territorial Army, organized by county associations 848
Unlawful 219, 456, 516, 712

Red Cross (*See* **Medical Emblem**)

Redress of Wrongs (*See also* **Complaints**)
Civil court, jurisdiction of, as to 135–137, 141 142, 152–156, 164, 574–5
Officer, in case of 460–1, 591
Soldier, in case of 461–2, 689

Reduction in Rank (*See* **Non-Commissioned Officers** *and* **Rank.**)

Re-engagement
Army Council's powers as to 211, 508–9 517
Declaration on, admissible as evidence 567–8
Error in, claim to discharge for 517
Forfeiture of service during 20 213, 499, 502, 508 566
Marines, Royal 238, 586
Militia 862
N C Os, in case of 212, 509
Reservists, in case of 225, 226, 229 832, 862
Soldier, in case of 211, 212, 508
Supplementary Reserve 229, 862
Territorial Army 234, 852
Warrant officers, in case of 212

Refusal to deliver up to Civil Power 241, 458, 567, 713

Regimental, meaning of, in Army Act 602

Regimental Books
Confession of desertion, &c., to be entered in 498
Declaration of court of inquiry as to absence of soldier to be entered in 497–8, 688–9
Records in, as evidence 59, 81, 88, 448, 498, 568–570, 649–650, 689, 755–6
,, ,, dispute as to accuracy of 570
,, ,, signature of 570
What books are 570

Regimental Conduct Book and Sheets. (*See under* **Conduct**)

Regimental Debts.
Absence without leave, modification of Act in case of 878, 887–8
Active service, regulations under the Act to provide for 892–3
Acts of 1893 and 1919, and Regulations 872–895
,, forfeiture under 464
Administration, letters of 243, 879

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Regimental Debts—*contd*
Administrator-General in India, delivery of effects to, &c 879, 882, 887
Administrator, official, duties 876–7
,, ,, meaning as respects India 879
Apprentices, application of Act in case of 878, 887–9
Assets, property when not 876
Casualty returns 885
Channel Islands, application of Act to 880
Charges, preferential, decision of questions as to 873, 879
,, ,, payment of 872, 873, 877, 883, 892
,, ,, unpaid payment by Secretary of State 874
Claims against deceased (*See* Debts, *below*)
Committee of adjustment, composition, appointment, and assembly 881–2, 887, 888, 889, 893
,, ,, duties and powers of 872–3, 876–8, 882–5, 887, 889
,, ,, effects, delivery of, to Administrator-General, by 887
,, ,, standing, in case of active service 892–3
Creditor, position of 877
Debts, payment, &c , of 243, 872, 873, 874, 879, 882 884, 887–9, 892
Definitions in Act of 1893 and regulations 879, 883
Desertion, modification of Act in case of 878, 887–9, 893
Duty, provisions as to 243, 872, 876
Effects, collection of, on death 243, 872, 873, 892
,, difficulty in realising in India 887
,, money in possession of paymaster at his death not considered 878
,, not money, disposal of 875
,, proceeds of sale 888
,, sale of, by auction, &c 883–4
,, ,, certificate of particulars 885
,, sending of, to next-of-kin, or representative 883
,, unappropriated, transfer to Patriotic Fund 894
Felons, modification of Act in case of 878, 888–9
Funeral expenses 872, 883
Illness, expenses of last . 872
India, Administrator-General 879, 882, 887
,, application of Act to 876, 878–9, 882–891
,, ,, ,, natives 878
,, casualty returns from 885
,, death in, claims against deceased, payment of 879, 890–91
,, ,, form of notice for publication as to disposal of effects 890
,, ,, of person not a soldier 879
,, deduction of arrears of subscription to military funds 879
,, duty not payable where surplus or residue under £100 876
,, inventory and account of property, procedure 882, 885
,, payment of debts of deceased 884
,, Secretary of State for, provisions as to 879, 888–90, 892–3
,, surplus, remittance of 884, 886, 891
Intestacy, declaration of 877
Inventory of property, deposit and inspection of 877
,, preparation and disposal of . 882, 884–5
Isle of Man, application of Act to 880

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Regimental Debts—*contd*
Kit, disposal of 888
Lunatics, modification of Act in case of 878, 889–90, 893
Medals and decorations, disposal of 875, 886–7
Next of-kin or representative, payment to 885
,, ,, sending of effects to 883
N C O 's commission for selling effects by auction 884
Patriotic Fund, transfer to, of unappropriated residue of effects 894–5
Paymaster, Army, modification of Act in respect of 878, 879, 887
,, discharge of 876
,, disposal of surplus by 873–4, 875, 879, 885, 892
Personal estate, definition of 872
,, ,, sale to pay preferential charges, &c 873, 875
Property when not assets 876
Regulations under Act 875, 881–893
Representation, definition of 879
,, when unnecessary 874, 876
Representative saving for rights of 877
Residue, disposal of, by Secretary of State 874–6, 886–7, 894
,, undisposed of, application of 875, 893–5
Savings bank, regimental, sums deposited in 888
Secretary of State, discharge of 876
powers 873–879, 886–90 892–4
Securities, shares, &c , disposal of 883
Ship, assembly of committee where death on board 882
Soldiers' effects fund, grants to widows and children from 894
Royal Warrant establishing 893–5
Surplus lodged with paymaster 873, 884, 892
provisions as to disposal of 873–5, 876, 878, 879, 881, 885–6, 887, 889 891
,, remittance of undisposed 874, 875
Validity of payments sales, &c , under Act 876
Will, original, deposit and inspection of, &c 877–8, 880, 885
Regimental Exchanges Act, 1875 561
Regimental Goods, damage to, theft or embezzlement of (*See* **Damage, Embezzlement** *and* **Stealing**)
Regimental Institute (*See* **Institute**)
Regimental Necessaries (*See* **Equipments** *and* **Kit**)
Regimental Orders (*See* **Orders**)
Regimental Property (*See* **Property**)
Regimental Savings Banks (*See* **Savings Banks**)
Regiments, territorial titles of, origin of 174
Registration, National 178
Regular Army Reserve of Officers (*See* **Reserve of Officers**)
Regular Forces
Auxiliary forces when treated as 583–4, 592, 598
Command of 194, 497
Constitution, &c , of 220–1, 240, 605
Definition 601, 605
Indian forces, when included in 554, 578, 601
Malta Artillery, Royal, is part of 240, 578, 601
Military law, application of, to 455, 578, 579, 580
Reserve forces when included in 227, 578, 583–4, 601, 605, 835
,, officers never form part of 605
Royal Marines included in 554, 578, 601, 605
Supplementary Reserve when included in 229, 578, 583–4, 601, 605

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Regulation of the Forces Act, 1871 827–8, 860
Releasing Authority 490, 493, 495, 692
Religion, swearing of persons according to (*See* **Oath**)
Religious Observances
In enemy territory when occupied 329
Prisoners of war, of 289–290
Religious Scruples, no excuse for disobedience 18, 434
Remand
Absence of witness justifies a 616
Commanding officer s power to, for C M 35 38, 469, 619, 686
Deserters and absentees, of by civil court 559–560
Evidence reduced to writing in case of 617
Remission of Sentences (*See* **Punishment**)
Removal of accused (*See* **Accused**)
,, prisoner (*See* **Prisoner**)
Removing Authority
For sentences of imprisonment and detention 493, 495, 691–2
, penal servitude 490 495, 691
Officers prescribed as 691–2
Repatriation of Prisoners of War. (*See* **Prisoners of War**)
Reporters (*See also* **Newspaper Correspondents** *and* **Press**)
Admission to, and conduct at courts-martial 51, 153
Shorthand writer (*q v*)
Reports
Confidential privilege of .. 97
False statements in 449, 709
Neglect to send 450, 709
Spreading reports calculated to create alarm, on active service 15 428, 704
To superior authority, how to be made 697
Representation of the People Act, 1918 244
Reprimand or Severe Reprimand
In case of N C O , by C O 39, 470
,, ,, ,, by company, &c , commander 35
,, ,, ,, by C -M 463, 465, 595, 758
,, ,, ,, on board H M 's ship 823
,, ,, officer 41, 462, 463, 473, 757
,, ,, officer of Indian Army 591
,, ,, warrant officer 41, 465, 473, 593, 759
Reprisals
Collective punishment 344
For hostile acts of inhabitants 331, 335
Forms of 344
General principles 343–4
Nature of 343
Procedure before 343–4
Requisitions
At home (*See* **Billeting** *and* **Impressment**)
In theatre of war, &c —
"Contributions," . 337
Fixing of prices for supplies requisitioned 337
Method of making 336
Payment for 336
Private property, food and fuel supplies, &c 336
,, ,, of direct military use 335
Property of prisoners of war 284

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Res Gestæ, rule as to statements forming part of 84–86, 88, 90

Reserve Forces
Army Reserve—
Abroad, permission to reside 227, 512, 842, 843
Absence without leave 833, 835–6, 837
,, ,, court of inquiry 837
,, ,, definition 835
,, ,, form of charge 735
, , procuring commission of offence 836
,, record of 837
Appointment to military body, provision as to 838
Army Reserve Force, definition of 840
Army service, re-entry on 227, 501
Attachment of reservists to regular or auxiliary forces 226, 834
Attestation on enlistment provisions as to 837
Calling out for annual training 226, 605, 834, 837
, ,, in aid of civil power 226, 605, 833 835
,, , on permanent service 227, 510, 601 605, 834 5
,, , extent of liability to serve in case of 227, 510, 835
,, ,, failure to attend 833, 835, 837
,, ,, , provisions as to T A 234, 855-6
,, ,, provisions as to transfer &c 227, 835
Care of reservists, duty of county associations 848
Channel Islands, offences and punishments in 839
Charge sheet, framing of 623, 702, 734–5
Civil power, calling out in aid of 226 605, 833, 835
Class I (excluding Militia and Supplementary Reserve)—
composition, &c , of 224–26, 832
divisions of 224, 832, 842
liability, by agreement, for permanent service without proclamation 841
numbers 224, 832
numbers when not included in forces authorised by Army Act 842
Section A
calling out of 227, 510, 841
numbers 225 841–2
regulations as to 225, 227
service, period of 225
,, ,, ,, when called out 227, 842
Section B
regulations as to 225
service, period of 225
Section C abolished 224
Section D
enlistment and re-engagement 226
regulations as to 226
Service, area of 224
Supplemental 832, 842
Training, annual, period of 226, 834
Class II —
composition, &c , of 226, 832
numbers 224, 832
service confined to United Kingdom 224, 832, 835

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Reserve Forces—*contd*
Army Reserve—*contd*
Class Z 179
Commanding officer, summary punishment by 839–40
Constable, exemption from serving as 834
Corps, appointment and transfer to 227, 835
Court of Inquiry, provisions as to 837
,, summary jurisdiction, trial of offences by 833–4, 836, 838–40
Courts-martial, liability to trial by 44, 578, 833, 836, 839–40
,, time limit for trial by 44, 564–5, 840
Creation of 178
Desertion 835
,, inducing reservist to commit offence of 836
Discharge, certificate of 226
Enlistment abroad 843
,, by man of, reckoning of prior service 503
,, fraudulent, into 21, 439
,, improper, into regular forces 445, 455–6, 503, 730
,, into, by man of T A 854
,, procedure and term of service 226, 832, 837
Evidence, provisions of Army Act as to, applied to 840
Exemption from parish offices, &c 834
,, ,, tolls, &c 209, 838
Fines, minimum amount 839
Forfeitures and stoppages of pay 456, 552, 839
Identity or life certificate of reservist, taking as security 562–3
Imprisonment, minimum term of 839
Insubordinate behaviour 578, 833
Isle of Man, offences and punishments in 839
Language, threatening, &c, using to officer 734, 833
"Man" of, term includes W Os and N C Os 840
Medical examination 227
Military Law, application of, to 229, 578, 581 582, 583–4
,, ,, men subject to at all times in a modified sense 578
Notices, service and publication of, provisions as to 838–9
Numbers 224, 225, 832, 841–2, 863
Offences and punishments 552–3, 833–6, 839–40
,, by, time limit for trial of 44, 564–5, 840
,, evidence of . . 834
,, triable by courts-martial 578, 833, 836
Orders and regulations as to, power to make 837–8, 863
Parliament, assembly of, when called out 835
,, candidature for, by reservists 244
Pay cannot be stopped for maintenance of family or civil debt 552
,, offences in respect of 833
Pension of, on return from army service .. 838
Permanent service, liability to (*See* Calling out *above*)
Personation 127, 552–3, 833
Powers vested in holder of military office, exercise of 838
Proclamation calling out . 227, 510, 834–5
Railway, conveyance by 209, 828–830
Re-engagement, procedure and terms of service 225, 226, 832
Regular forces, forms part of, when called out on permanent service . 227, 578, 584, 601, 605, 835
Regulations as to . . 227, 837–8, 863

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Reserve Forces—*contd*
Army Reserve—*contd*
Regulations, non-compliance with 578, 833
"Reserve" in Part II of A A means Class I 518
Retention of reservists in time of war in army service 227, 510, 835
Sections A, B, C, D (*See* Class I, *above*)
Service, certificate of 217, 225, 226
,, false statement as to service in or discharge from 450–1, 552, 710
,, retention in (*See* Retention *above*)
,, when called out, period of 227, 510, 835
Tolls, exemption from 209, 838
Training, failure to attend 735, 835, 837
,, period of 226, 834
Transfer to, after colour service 225–26, 511–2
,, before expiration of term of colour service 211, 218, 225, 501–2, 511
,, certificate of service given on 217, 225, 512
,, conveyance free to home on 218, 511–2
,, during emergency 212, 510
,, if invalided or unfit to serve abroad 214, 218, 511
,, illustrations of 225
,, immediately on enlistment 841
,, reckoning of service, for 212–13, 502–3, 566
Transfer when called out, provisions as to 227 835, 838
United Kingdom, reservists to obtain permission to quit 227
When not reckoned in number of forces authorised by Army Act 842
Definition of 601
Militia (*formerly Special Reserve*)—
Calling out, for annual training, courses, &c 862
,, ,, on permanent service, liability to, without proclamation 863
,, ,, ,, ,, power of 863
,, ,, ,, ,, proclamation ordering ceasing of 862
Corps, appointing, &c, to, and posting, &c, within 863
Court-martial, composition of, for trial of militiaman 46, 630
Discharge from, enlistment into regular army effects 862
Enlistment into 224, 235, 513, 854, 862
,, ,, army from 862
,, ,, of men discharged from regular forces 513
Isle of Man, in relation to 599
Military law, application of, to 578, 581, 582, 583–4
Numbers liable to be called out on permanent service without Proclamation 863
Offences, evidence of . 863
Officers (*See* **Reserve of Officers**, Militia)
Power to form battalions, &c, of militia . . 863
Raising of, in abeyance . 224
Re-engagement 862
"Reserve forces" includes . . 601
Service, area of . 863
,, extension of .. 862
,, permanent, liability to . . 863
,, revocation of agreement . 863
,, terms of . 862
Special Reserve, creation of 178, 199, 202, 224, 862

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Reserve Forces—*contd*
Militia (*formerly Special Reserve*)—*contd*
Special Reserve re-named "Militia" in 1921 178, 186, 199, 224, 867
Supplementary Reserve (*see below*)
Training, attachment during 862
,, calling out for 862
,, period of 862
Special Reserve (*See* Militia *above*)
Supplementary Reserve (*See also* Militia *above*)
Absence without leave, form of charge 735
Administration of 228
Age limit 229
Air Force, enlistment into 229
Army Reserve, Class I, is part of the 224, 229
Bounties 230
Calling out of 229, 230
,, ,, in aid of civil power 229
Categories, division into 228
,, transfers to other 230
Charges, form of, and note 702, 703, 735
Composition of 228
Court-martial, composition of, for trial of member of 46, 630
Creation of 178, 224, 228
Discharge from 229, 230
,, ,, certificate given on 230
Enlistment into 228–9, 235
,, ,, after discharge with disgrace 455
,, ,, Regular Army, Air Force or Navy from 229
Jury service, when exempt from 243–4
Liabilities of 229
Military law, subjection to 229, 578, 581, 582, 583–4
"Militia," is legally 224
Navy, enlistment into 229
Object of 228
Officers (*See* **Reserve of Officers**)
Organisation of 228
Parliament, candidature for 244
Pay and allowances 230
Re-engagement in 229
Regular Army, enlistment into 229
,, forces, when part of 229, 578, 583–4, 601, 605
Regulations for the 229
Re-posting on change of residence 229
Service, area of, when called out 229
,, period of 228–9
Territorial Army units, affiliation or attachment to 228, 229–30
Training, liability to 228, 229
Transfers to other categories 230

Reserve Forces Acts
Reserve Forces Act, 1882 178, 224, 510, 832-840, 862–3, 868
,, ,, 1890 841, 868
,, ,, 1899 842, 868
,, ,, 1900 842, 868
,, ,, 1906 227, 843, 868
,, ,, and Militia Act, 1898 227, 510, 841–2, 863, 868

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Reserve of Officers.
(Regular Army Reserve of Officers.)
Army service, recall for, liability to 222
Commissions in 222, 863
Composition of 222–4
Emergency, liable to recall for 222
Forms of charges 702–3
Indian regulations, officers retiring under, not liable to recall 222
Liability of retired officers to service in 222
Military Law, application of, to 222, 223, 578, 580, 583–4
Militia (*formerly Special Reserve of Officers*)—
Constitution of 222
Military law, subjection to, at all times 222, 578, 580, 583–4
Precedence of, in relation to T A 233
Regulations governing 222
Officers voluntarily joining 222
Parliament, candidature for 244
,, members of, may receive commissions in 863
Regular forces, reserve officers never form part of 605
Special Reserve of Officers (*See* Militia *above*)
Supplementary Reserve of Officers—
Adjutant of Supplementary Reserve unit, status of 630
Appointments in 223
Calling out of 223
Categories, division into 223
Commissions in 223
Establishment of 222
Gratuities, grant of 224
Liabilities of officers in 223
Military law, when subject to 223, 578, 580, 583–4
Objects of 222–3
Outfit allowance 224
Pay and allowances 224
Precedence of, in relation to T A 233
Rank on appointment to 223
Regular Army Reserve of Officers, service in, after removal from 223–4
Removal from, on attaining age limit 223–4
Service, area of, when called out 223
,, period of 223–4
Training, liability to undergo 223

Reserve, Territorial Army (*See* **Territorial Army Reserve**)

Resignation (*See* **Officer.**)

Retirements
From regular forces, liability of officers to recall 222
,, ,, ,, trafficking in 561, 713

Review of sentence (*See* **Finding and Sentence**)

Revision of finding and sentence (*See* **Finding and Sentence.**)

Reward, Military, &c
Assignment of . **552**
Definition . **602, 605**
Evidence as to, on conviction **650**
Forfeitures **464, 466**
Personation in relation to. **553**

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Riot, Insurrection, Unlawful Assembly, &c. (*See also* **Civil Power.**)
Civil and military law, troops subject to, when employed in 2, 246, 259
Civil power (*q v*)
Common law doctrine regarding suppression of 246, 251, 255–6, 259, 267
Crimes incident to 253
Crown, powers of, in case of 4
Disturbances, types of, and differences between 247–8, 252–3
Featherstone riot, report of committee, on 267–8
Firing on crowd, responsibility and justification for 247, 252, 254–6, 259, 263, 265, 267–9
Force, use of (*See* **Force**)
Haldane's (Lord) evidence on employment of troops 256–267
Insurrection, definition of 252, 253
,, example of 252
,, "martial law" in case of 4, 146
,, punishment for .. 253
,, suppression of 146, 252, 254, 255
Law officers' opinion on employment of troops 268–9
Legal position of troops employed in 2, 246, 256
Magistrate, absence of, responsibility of officer 247, 268, 269
,, should accompany troops 267–8
Magistrate's responsibility when troops employed 246–7, 251, 254–6
Officers, responsibility of, when troops employed 246–7, 254–69
,, special duty regarding suppression of 246
Opinion of law officers on duty of soldiers called upon to assist police 268–9
Riot Act, account of 250–1
,, proclamation under, form and effect of 251, 263
,, ,, when reading or interval unnecessary 251–2, 254–5, 263, 268
Riot, definition of 250, 252, 253
,, example of 250
,, punishment for 251, 253
,, suppression of (*see also* Suppression *below*) 251–5
Rioters, apprehension &c, of 251–2, 254
,, armed, included in term "enemy" 2, 602
,, subject only to civil law . .. 2
Sedition (*q v*)
Suppression of, duty of assisting in 165, 246, 251–2, 255–6, 259, 267
,, responsibility for 246–7, 251, 254–69
,, special duty of officers 246
,, use of force in (*See* **Force**)
Trained bands formerly used to suppress 171
Troops assisting civil power, legal position of 2, 246, 256, 581
,, employment of 246–8, 254–269
,, requisition for, by civil authority 246, 254–60, 263, 264, 267, 268
Unlawful assembly, definition of . 249–50, 252, 253
,, ,, example of 250
,, ,, suppression of (*see also* Suppression *above*) 250, 253, 254

Robbery.
Assault with intent to commit 122, 134
Definition, offence, and punishment 122, 134
Forms of charge for, before C.-M 713, 733

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Robbery—*contd*
Stealing, conviction of, on charge of 122
Violence, with 122 134, 713, 733
Roll, Muster, making false entries in 449 709
Route
Billeting is authority for 205 6, 518 9
Definition of 205
Falsification or forgery of 449, 555 709
Impressment of carriages, is authority for 208 526
Order substituted for, in case of auxiliary forces 207 592
Railway, conveyance of troops by, is authority for 209 526, 879 880
Signing of 205-6, 518
Royal Air Force (*See* **Air Force**)
Royal Artillery, Engineers, &c (*See* **Artillery, Army Service Corps, Engineers, &c**)
Royal Flying Corps 185
Royal Marines (*See* **Marines**)
Royal Warrants (*See* **Warrants**)
Rules of Procedure
Admiralty, power of, to make 585
Application, extent of 6[illegible]7
Army Act, not to contain anything inconsistent with 496–7 697
Cases unprovided for in 696
Channel Islands application to 697
Commencement of operation 697
Construction of 696-8
Courts of Inquiry, in relation to 496, 687–9
Crown, power of, to make 496-7
Deviations from, resulting in injustice to accused 483
Evidence, copies of, as 568
Forms in, deviations or omissions from not to invalidate 696
,, note as to use of forms of charges 699-703
,, notes may be added by Army Council 6[illegible]
,, rules as to use of 696 7
Isle of Man, application to 697
Judicial notice of 496
Marines, Royal, application to 585 698
Meaning of expressions used in 696–7
Military office, exercise of powers vested in holder of 696
Parliament, to be laid before 496
Repeal, alteration, &c , of 496
Suspension of, for military exigencies 679, 686
,, form of declaration 741
Ruses 293–5
Definition 293
Improper 294
Legitimate 294
Use of flags, uniforms, &c 295

S.

Safe-conducts 322
Safeguard.
Forcing a 429, 431, 705, 716
Meaning of 323, 431

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

St Petersburg, Declaration of, 1868 353–4
Sale of Horses, Motors, &c, prohibition in emergency 532–3
Sanitary Services in occupied enemy territory (*See* **Occupation of Enemy Territory**)

Savings Banks
Forfeitures under Acts relating to military 464
Regimental, deposits in 888
Scandalous conduct of officer 21, 29, 60, 442, 707, 722
School, soldier absenting himself from 440, 707

Scotland
Attestation in 514
Billeting in 205
Chief officer of police, meaning of 523
County court judge, meaning of, in 604
Court of Session is a "superior court" 603
,, summary jurisdiction meaning of, as regards 604, 606
Ferries in 209 554
Fines, imposition, &c, in 573–4
Impressment of carriages in 208
Lunatic soldiers discharged in, provisions as to 512
Militia (old) in 190, 197, 198
Misdemeanour meaning of as respects 603
Oath, administration of in 52, 635
Sheriff Substitute (*q v*)
Summary Jurisdiction Acts, meaning of, as regards 603, 606
,, ,, Court definition 604, 606
Summary proceedings in 573 4 603–4, 606
T R F Act, 1907, application of to 865
Witnesses in, competency of 573
Scutage 168, 173
Seamen's and Soldiers' False Characters Act 219, 517, 553
Search Warrants (*See* **Warrants**)

Seconding
Officers and airmen to Army, disciplinary provisions 42, 565, 578 579 580 588–590
Officers and soldiers to Air Force, disciplinary provisions 12 588 590
Trial of persons who have ceased to be seconded 565 590
Secretary at War, history of office 180 1
Secretary of State, definition of term 601

Secretary of State for War
Army Council, President of 184
History of office 181–2
Powers with regard to—
Active service 600
Field punishment 30, 463
Marines, vested in Admiralty in certain cases 585
Military convicts and prisoners 67, 489–490, 491–2 494, 544, 598
Militia 862
Prisons and detention barracks 543–5, 598
Regimental debts 873–9 883, 886, 888 890, 892–4
Reserve, Army 226, 833–4, 837–8
Rules of Procedure 496
Territorial Army 232, 847–8, 850, 861
Responsibility to Parliament and Crown 179, 182
Warrant authorising punishment, &c 572, 576

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Securities.
Disposal of, under Regimental Debts Act 883
Forgery of . 125, 132
Inducing execution of, by force or fraud . 124, 131

Sedition
Charge of framing . 706
Civilians, by, tried by civil court 432
Definition 16
Offences relating to and punishment for . 16 431 2 706
Self-defence, use of force in 111, 433 641
Seniority, forfeiture of (*See* **Rank**)
Sentence. (*See* **Finding and Sentence**)

Sentinel.
Guard, member of, when liable as a 430
Leaving post before being relieved 15 429-431, 705, 716
Misbehaviour of 15, 72 429-431, 705, 716, 717
Post, meaning of 430
Posting, proof of, when necessary 430
Sleeping or drunkenness on post 15 75 429-431 701, 705, 717
,, ,, ,, evidence of previous offence not admissible on charge of 75
Soldier only can commit offence as a 15
Striking or forcing a 429 431 705 716

Servant.
Embezzlement by 22, 120, 131
Neglect or ill-treatment of 112
Officer exempt from licence duty for soldier 243
Possession of master's property 120
Public, embezzlement by 120, 131
,, liability for contracts 157
,, liability for wrongful acts of subordinates 156-157
,, offences committed abroad by, liability for 162
Theft by . 120

Service
Abroad, as a punishment 213, 214
,, early history 167, 169, 171, 172
,, in case of T A (*See* **Territorial Army**)
,, prolongation of service 211, 212, 509
,, soldier undergoing imprisonment or detention may be sent on 491-2, 782
Active (*q v*) .. 242
Actual military . .. 473-4
Air Force, forfeiture of, not to be awarded . 501
Army, meaning of 227, 501
,, re-entry on, by reservist 177
,, Service Act, 1847, provisions of, as to 217, 225, 226, 512, 513
Certificate of 211 214, 225, 501, 502-3, 506, 507
Change of conditions of 167-8
Composition, payment of, in lieu of 175
Compulsory, abolished 178-9
,, during Great War . 211, 212, 508-9
Continuance in, after 21 years
Custom of the (*q v*)
Death on, grants to widows, &c , from Patriotic Fund 894
Deputy, by 168

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Service—*contd*
Detention, periods of reckoned as 213, 502
Documents, &c., relating to, admissibility as evidence 59, 88, 568, 570, 649–650
Dominion forces, in 239
Enforcement of and penalties in early times 173
Evidence as to 59, 88 568 570, 649–650, 754
Exemplary manner in, meaning of 566
Extension of 211, 501–3
False statement as to 450–1, 552–3, 710
Forfeited, provisions as to 20, 212–13, 462, 464, 466, 498–9, 502–3, 508, 543, 566, 586 656
,, restoration of 62, 213, 463, 499 502–3, 508, 566, 652
Forfeiture of, in case of officers 41, 462, 463, 473–4, 591
,, ,, ,, T A 235, 857
General, commutation of punishment to 213, 214, 465, 486, 506–7
,, ,, ,, confirming authority cannot exercise power of 486
,, enlistment for 213, 505
History of, in early times 165–170, 172–173
Imprisonment, periods of, reckoned as 213, 502
Marines, Royal (*q v*)
Military—
Forms of charges in respect of offences . 704–5
Offences in respect of 15, 426–431 704–5
Militia (*q v*) (*See also* **Reserve Forces** *and* **Reserve of Officers**)
Particulars of (*See* Evidence *above*)
Period of 137 177–9 211, 212, 217, 500–1, 513
Permanent calling out on (*See* **Reserve Forces**)
Prolongation in time of war &c 211, 212 227, 509, 510, 586, 835, 853
Recall to, liability of retired officers 222
Reckoning of 20, 211, 212, 213, 501, 502–3 508, 566, 857
Records of, entries in 88, 507, 568–9, 649–650
Reserve forces (*q v*)
Retention in (*see* Prolongation *above*)
Short, introduced 177
,, resumed after Great War 179
Special Reserve (*See* **Reserve Forces** *and* **Reserve of Officers**)
Supplementary Reserve (*See* **Reserve Forces** *and* **Reserve of Officers**)
Termination of, power of Crown 137, 217, 500, 513
Territorial Army (*q v*)
Transfer during (*See* **Transfer**)

Sexual Offences and Assaults 113–115, 130, 131, 132, 134

Shamming death or wounds, as treachery 281

Sheriff
Head of the shire levy 165–166
High, field officer T A not required to serve as 233, 858
Officer of auxiliary forces as 592–3
,, regular forces disqualified from serving as 243, 557
,, T A exemption during embodiment 233, 593, 858

Sheriff Substitute, judicial duties take precedence in case of T A officer 233

Shilling, acceptance on enlistment 215

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Ship.
Active service on board 599, 600
Air force and military personnel together on same transport, discipline of 812 813, 816
Army Act, application of, to persons subject to military law on board ships 599
Auxiliary forces on board H M s ships 598
Colonial forces on board 537
Convict, military, on board 490, 820
Court-martial, military, not held on board ship commissioned by H M 599 819
,, ,, on board, provisions as to 45, 477 537, 538 599
Crew of hired transport not subject to military law 582
Death on board, committee of adjustment on property 881-2
Discipline and command on board H M 's ships, Orders in Council 42 598 818-824
Duties when under close arrest on 34
Good order and discipline of, acts against 818-9
H M 's, powers of commanding officer of, in relation to officers and soldiers 547, 818-824
Hospital, how distinguished 304
Marines on board H M 's, provisions in Army Act as to 586-7
Military custody of persons on board 490, 493, 576 819-820
Naval Discipline Act, application of, to land forces on board ship commissioned by H M 42, 598 818-824
N C Os , on board H M 's ships, summary punishment of 823
Offences on board 45, 477, 599 818 824
Pay of soldiers stopped for offences on board 547-8 823
Prisoners, military, on board 493 820
Punishments on board H M 's ships 819 820 823
Sentences on board, execution of 599
Setting fire to 127 130
Soldier in confinement on, employment on fatigue duties 34
,, on board *en route* for war considered on active service 600
Shoot, attempt to 113
Shorthand Writer
Evidence recorded by, need not be read over to witness 56, 670
Oath, administration of, to 52, 479-480, 635 665, 762
Objection to 52 635, 665
Reporters (*q v*)
Solemn declaration by, form of 762-3
Sick (*See* **Wounded**)
Sickness
Caused by offence, pay stopped during 39 547, 549
Feigning (*See* **Disease.**)
On furlough, provisions as to 576
Siege
As legitimate means of warfare 290-3
Unwarrantable abandonment of 427
Sign
Buildings, public, hospitals, &c , on 292
Irregular combatants, for 276-7
Medical emblem (*q v*)
Signals, Royal Corps of.
Composition of 220, 228, 231
Signal section, Hong Kong 240

[References on pages 418 to 610 are to the Army Act, and references on pages 611 to 786 to the Rules of Procedure]

Slander, actions for 157–160
Sleeping on Post, sentinel 15, 75, 429-430, 705, 717
Smart Money, not now payable 215
Smoking, stoppage of, as punishment on H M 's ships 823
Sodomy 86, 115, 130, 134

Soldier
Actions against (*see* Civil Process *below*)
Agents, prohibition on soldiers acting as 244
Air Force Act, when subject to 42, 589, 597, 813
,, ,, attachment to 42 588–590, 810–13
,, ,, officers and N C Os , powers of command over 42, 596-7, 814–7
Army Act, continues subject to, till transfer to reserve 511
,, ,, continues subject to, wherever serving 417, 541
Arrest (*q v*)
Billeting (*q v*)
Borrowing money from, by superior 459
Charges against (*See* **Charge**)
Children (*q v*)
Citizen, status as a 1, 2, 103, 241-5, 246
Civil and military law, liability to of 1, 103, 241, 460, 566–7
,, courts, invoking aid of by 135–136, 147, 164, 574–5
,, employment of, restrictions as to 244
,, power, position of, when employed in aid of 2, 246, 251–2, 256
,, prison, may be confined in, when military accommodation not available 33, 543, 784
,, process, exemption from, of 241, 554–5, 567
,, ,, service of, on 556
Civilian, liability as, to military law 564–5
,, status as 1, 103 241-5, 246
Commands, lawful, &c (*See* **Command** *and* **Disobedience**)
Common law rights of, assertion of, in civil courts 135–136, 147, 155
Complaints by, procedure 461–2, 689
Confinement (*q v*)
Corps, appointment to (*See* **Corps**)
Court-martial, district, right of trial by 24, 33 35, 37, 40, 61, 155, 469, 470, 472, 617, 621
Court of inquiry, presence at, where character affected 687
Creditors of 241, 554–5, 877
Criminal process, amenability to 241, 566–7
Debts, private, of 241, 552, 554–5
Definition of term 578, 601, 605
Desertion (*q v*)
Detention (*q v*)
Discharge (*q v*)
Disgraceful conduct of, offences and penalties 24, 442–5, 707–8, 722–5
Domicile or settlement, cannot change while in service 241
Effects fund, Royal Warrant 893–5
Effects of (*See* **Regimental Debts**)
Elections, presence and voting at (*See* **Parliament**)
Enlistment (*q v*)
Grievances, redress of (*See* Redress of wrongs *below*)
Ill-treating a 28, 457, 713
Imprisonment (*q v*)
Invalided, transfer to reserve or to corps in U K 214, 506, 511
Irons, when may be used 33, 787
Jury service, exemption (*See* **Jury.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Soldier—*contd*
Legal position of 1, 103, 241, 246
Lunatic (*See* **Lunacy**)
Marines, Royal, transfer to (*See* **Transfer**)
Marriage, abroad 245
,, false representation as to, on attestation 357
,, without consent of military authorities 241
Military custody in case of, means confinement or open arrest 33
,, law, application of, to 1, 216, 578 580–2
Naval Discipline Act, when subject to 598 818
,, forces, attachment to 42, 597 809–810
,, officers and petty officers, power of command over 42 596–7 809-810, 818–824
N C O , when included in expression 457 470, 578 601
Obedience, duty of 18, 152–154, 434–5 444
Obstruction, &c , of, in execution of duty 558-9
Offences (*q v*)
,, committed only by, rules as to charge for 709
Office, private soldier does not hold 216
Parliamentary elections (*See* **Parliament**)
Pay (*q v*)
Penal servitude (*q v*)
Pension (*q v*)
Personation of (*See* **Personation**)
Persons receiving pay as 216 517-8
Persons subject to military law as 578 580–2
Petition by, against finding and sentence of C M 67, 135
Posting a, meaning of 505
Press, communications to restrictions on 244
Prosecution, not liable for expenses of 550
Publication of books, &c , by 244
Punishment (*q v*)
Rates not personally exempt from 243
Recruit (*q v*)
Redress of wrongs 461–2 689
Re-engagement of 211 212 508
Retention in service after expiration of term 211 212 509-510 835
Riot, &c , position when employed in suppression of 246, 251–2 256
Rules of Procedure, application of, to persons subject to military law as 697
Service (*q v*)
Ship, on (*q v*)
Status of 1, 103, 241–5, 246
Striking a 28, 457, 713
Summary punishment of (*See* **Punishment**)
Tolls, exemption of, from 209, 243, 553–4, 838
Trade restrictions on engagement in 244
Transfer (*q v*)
Voting at elections (*See* **Parliament**)
Warrant officer, when included in term 465, 578, 601, 605
Wife of (*See* **Wife**)
Wills (*q v*)
Witness before court of law, not exempt from attending as 555
Soldiers' Effects Fund, Royal Warrant 893–5
Solemn Declaration (*See* **Declaration**)
South Africa, Union of, forces of the, raising, &c , of 239

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Special Reserve (*See* **Reserve Forces**)
Special Reserve of Officers (*See* **Reserve of Officers.**)
Spying (*See* **Espionage**)
Stage Plays, licences unnecessary for recreation rooms . 577
Standing Army (*See* **Army**)
Standing Orders (*See* **Orders**)
State Affairs, communications as to, privileged . .. 97
Statement by Accused (*See* **Accused**)
Statements, Defamatory (*See* **Libel**)
Statements, False, offences in relation to 27, 219 450–1 461, 462, 576, 709, 727–8
Station beyond the Seas, meaning of expression 603
Statute Law, defined 2

Stealing
Attempted 119
Bailee, by 22, 119–120, 134
"Carries away," meaning of 119
Charges of form and framing of 443–5, 707, 713, 723, 724, 733
Civilians, from 21
Comrade (*see* Person subject to military law, *below*)
Consent of owner 118
Definition of 22, 118–9
Dog, offence and penalty for 121
Dwelling-house, in a 123, 134
Embezzlement (*q v*)
conviction of, on charge of stealing and *vice versâ* 23, 71, 120 443, 444, 483–4
Evidence on charge of 23, 73, 75, 76, 124, 444
False pretences and distinction between 118, 121
,, conviction of, on charge of simple 122
Finding, by 119
Fraudulent conversion and, difference between 119–120
, misapplication (*q v*) and, difference between 22
,, , conviction of, on charge of stealing 23 443 444 483
Greatcoat of comrade 444
Improper possession of property of comrade, charge for where no evidence of 23, 459
Intention essential 22 23 118–119
Lost property, possession and theft of 23, 119
Making away with and, distinction between 448
Military offence, when to be treated as 21, 22
Mistake of owner, by 119
Money, meaning of 443
Offences and penalties 21 22, 23, 118 120, 134 442–5, 499–500, 707–8, 713
Ownership of property 118, 444
Part owners, by 119
Person subject to military law, from 21, 22, 23, 444, 707, 724
Prevention of, officers' responsibility for 23, 443
Receiving, conviction of, on charge of 124
Regimental or public money or goods 21, 22, 442–5, 707, 723–4
Robbery (*q v*)
Servant, by 120
Stolen property (*q v*)
Theft not necessarily a felony 455
Things "capable of being stolen" 118

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Stealing—*contd*
Things not subject of, at common law 121
Trick, by 119

Stolen Property.
Pawning or sale of 499–500, 561–3
Possession of 124, 561–3
Receiving 22, 76, 124, 134, 444–5, 499–500, 708, 725
Restitution of 499–500, 651
Stoppages in respect of 445, 500
Value of articles to be stated in charge 445
Stoppages (*See* **Pay,** Deductions)

Stores, &c.
Conveyance on railways (*See* **Railways**)
Corrupt dealings in respect of . 26, 447, 709
Court of inquiry on loss of 443
Equipments (*q v*)
Impressment of (*q v*)
Improper possession of, by civilians 561–3
Loss, &c , of, through negligence . 459
Money granted for expenditure on 180
Obliterating marks on 125, 131
Purchase of, in neutral States in war, not forbidden 347–8
Purchasing, &c , from soldiers, penalty 561–3
Signing document regarding, in blank 450, 710
Stratagem (*See* **Ruses**)
Strikes. (*See* **Trade Disputes.**)

Striking
Custodian 435, 706, 719
Intention, as element in offence of 481
Military police (N C Os) when arrested for drunkenness 433
N C O , by N C O 457
Officer ordering arrest in consequence of quarrel, &c 18, 435, 706, 719
Sentinel 429, 705
Soldier 28, 457, 713
Special findings in charges of 17, 432, 484, 649
Subordinate on duty 151
Superior officer 17, 25, 61, 432–3, 706, 718

Subordinate
Assault on .. 151
Borrowing money from 459
Criminal liability of, when acting under orders 156, 163
Wrongful acts or negligence of, liability of superior for 156–157
Subpœna duces tecum, writ of 79
Subpœna to civilian witness (*See* **Witness,** Civilian)
Suicide, attempting to commit 117, 457–8, 713, 730
Summary conviction, meaning of 516
Summary Disposal of Charges against officers, warrant officers and soldiers (*See* **C O , Officer,** *and* **Punishment,** summary)
Summary Jurisdiction Acts. (*See also* **Court of Summary Jurisdiction**)
Meaning of .. 603, 606
Proceedings under . . 572–3
Summary of Evidence
Accused may decline to be sworn . . . 619
,, presence of, during taking of . .. 37, 617

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Su nmary of Evidence--*contd*
Adjournment by C O for taking down 36, 37, 617, 619, 686
Admissibility of, as evidence . 37, 87, 93, 102, 618–9, 628
Caution of accused before making statement 37, 87, 93, 617–9
Civilians, offences by, during taking of . 539–540
,, power to call, as witnesses at (*see* Witness *below*)
Commanding officer, decision of, on 38, 619
,, ,, evidence before, and, discrepancies between 38, 102, 620
,, ,, powers of, after taking 38, 619
,, ,, presence of, during 37, 617–9
Copy of, accused to be given 48, 473, 621, 625, 679, 686
,, ,, to accompany application for C -M 38, 794
,, ,, to be laid before C -M 38, 49, 631
Court-martial, evidence at, and, discrepancies between 38, 87, 102, 628
,, ,, president, to be sent to 38, 49, 627
,, ,, production before 38, 49, 628, 631
False evidence at 87, 452, 540
Judge-Advocate-General, submission to, in certain cases 38, 47, 442, 415, 623, 627, 766
Memorandum as to 763–5
Oath, evidence may be taken on 37, 497 618–9
Officer taking down, appointment by C O 37, 617 619
,, ,, may not be member of D C M , or G C M 47, 478, 629
Statement by accused at, admissibility of, at trial 37, 87, 93, 618–9, 628
,, ,, no cross-examination of 37, 618–9
,, written, by witness, inclusion in 618–9
Taking, mode of 37, 38, 617–9
Use of, at summary disposal of officer or W O 41, 473, 621–2
,, at trial 37, 38, 54, 87, 93, 102, 618–9 628, 640
Witnesses, civilian, at 539–540, 618 9, 667
,, cross-examination by accused 37, 617–9
,, may be sworn .. 37, 497, 617–9

Summary Powers
Active service (*q v*)
Commanding officer (*q v*)
Disposal of charges (*See* **C O , Officer** *and* **Punishment**)
Summary Proceedings (*See* **Court of Summary Jurisdiction**)
Summary Punishment (*See* **Punishment**)

Summing-up
Judge advocate, by 57, 646, 662, 675, 678, 752
Prosecutor, by 56, 643–5
Record of, in proceedings 675
Summons, form of, to civilian witness . . 618, 666, 761

Sunday
Exclusion in reckoning time 468, 616, 697
Inclusion in reckoning time 468, 697
Sitting of courts-martial on 661

Superior Authority.
Arrests of officers and W Os to be reported to . 32, 468
Meaning of, for purposes of A A , s 57A 488
Penal servitude, imprisonment, and detention, power to commute, mitigate or remit 488

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Superior Authority—*contd*
Punishments, summary, cancellation, remission, &c , of, by 135, 472, 474, 622
Reference to, by C O 32, 35, 36, 38, 39, 468, 469, 471, 498, 617-9
,, ,, confirming officer 64, 65, 482, 652, 684–5
,, ,, convening officer 47, 627, 682
,, ,, where confirmation withheld 64, 482
Reports and applications to, how to be made 697
Suspension of sentences, powers regarding 65, 66, 487–8
Superior Court, definition of 603
Superior Officer (*See* **Officer**)
Supplies
Assisting enemy with 427, 704
Corrupt dealings in respect of 26, 447, 709
Injuring persons bringing 430, 431, 705, 717
Irregular detention of 430–1, 705
Purchasing, &c , from soldiers, penalty for 561–3
Supreme Court, definition of 603
Surrender
In War (*See* **Capitulations**)
Justification for 427
Of absentees, &c 20, 39, 560
,, ,, evidence of 569–571
Of post, &c 426–7, 704
Surrendered combatants may not be killed 281
Suspension of Arms. (*See* **Armistice**)
Suspension of Sentences (*See* **Finding and Sentence**)
Sutlers (*See* **Camp Followers**)
Swear, meaning of expression (*See also* **Oath**) 603, 604
Sword, &c , removed when officer put in arrest 31

T.

Tank Corps, Royal, composition of . 220, 231
Taxes.
Collection of, in enemy territory when occupied 328
New, imposition forbidden by occupant of enemy territory 329
Trophy (*q v*)
Telegraph and Telephone Service.
Injury to . 128
Neutral territory, in, use by belligerents 348–9
Occupied enemy territory, in 329, 335
Telegrams, production of, may be required under Official Secrets Acts 903
Wireless (*q v*)
Telegraphists, transfer to reserve immediately on enlistment 841
Territorial and Reserve Forces Act, 1907 178, 199, 202, 224, 230, 844–866, 867, 868–9
Territorial Army and Militia Act, 1921 . 199, 230, 867
Territorial Army (*See also* **Auxiliary Forces.**)
Abroad, service, provisions as to 203, 233
Absence from drills or training 235, 859
,, ,, duty 859

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Territorial Army—*contd*
Absence without leave on embodiment or during training 441, 857
Adjutant, status of regular officer as 630
Administration of 202, 231, 846–8
Army Act, application of certain sections of, to 592, 853, 857, 858, 859
Army Council, powers and duties of 231, 232, 234–5, 849–50, 856, 857
Associations (*See* **County Associations**)
Attestation, false answer on 235, 859
,, of recruits 853
Billeting of 206, 207, 524, 592
Calling out (*see* Embodiment *below*)
,, of special service section 234, 854
Civil courts, offences triable by 235, 857–9
Civil rights and exemptions 233 244, 592–3, 858
Command and training, duties vested in military authorities 202, 231, 847
Commanding officer, discharges by 236, 852–3
,, ,, summary dealing by 858–9
Commissions 232, 851, 869
,, M Ps, acceptance by 233, 593, 858
,, qualifications for 232, 851
,, resignation of 232
,, right of president of county association to nominate to first 232, 851
Composition of 230–1, 850
Corps, appointment to, &c 233, 850–2
,, of county, meaning of 602
County Associations (*q v*)
units raised and administered by 202, 231, 848
County joint associations (*q v*)
Courses of instruction 232
Court of inquiry in case of absence from duty 859
,, summary jurisdiction, offences triable by 235, 857, 858–9
Courts-martial—
composition of, for trial of member of T A 46, 236, 630
district, power of convening, &c, may be delegated to divisional commanders 538
liability to trial by 44, 235, 857, 858, 859
offences triable by 235, 857
time limit for trial by 44, 45 564–5, 859
Creation of T F 202, 230, 846
Damage to articles issued (*see* Property *below*)
Desertion 235, 857, 859
Discharge 235 236, 852–3, 857
Dismissal from service 29, 593
Drills (*see* Training *below*)
Embodiment and disembodiment 206, 233, 234–5, 855–6
,, failure to attend on 235, 857
Enactments, application of 860, 895
Enlistment 233–4, 592–3, 852
,, attestation on (*see* Attestation *above*)
,, fraudulent, of men of 21, 235, 439, 721, 859
,, ,, into 21, 439
,, into, of men discharged with disgrace from Army or Navy 734, 853–4

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Territorial Army—*contd*
Enlistment into regular forces, Militia, or Navy, of 235, 854
,, men disqualified 233–4
Equipment, loss, damage, &c , of (*see* Property *below*)
Evidence in proceedings under T R F Act 859
Fines 235 857–9
,, for articles lost, damaged or destroyed 235, 857
,, ,, non-attendance at drills or training 235, 857
,, to be paid to county associations 858–9
Forms of charges and note 702–3, 734
General List 231, 237
Government and discipline 232, 850–1
Great War, employment overseas during 203
History of 202–3
Horses for, provision of 848
Imperial service agreement 203
Impressment of carriages, &c , for 209, 532, 592
Imprisonment 858
Inefficiency, discharge for 236
Ireland, no T A units in 236
Juries, officers and men exempt from serving on 233, 244, 858
Loss of articles issued (*see* Property *below*)
Man of, meaning 864
Military law, application of 233, 578 579, 581, 582, 583–4
,, liability to, in respect of status 564–5, 859
,, office, exercise of powers vested in holder of 860
Misconduct, discharge for 236, 852–3
Mobilisation of, supply of requirements on 848
Municipal office, election, &c , of officers to 592–3
Notices, service and publication of 856–7, 869
Numbers 202, 850, 851
Offences—
civil courts, when dealt with by 235, 857–9
courts-martial, when dealt with by 235, 857–9
enlistment, in relation to 235, 853–4
failure to attend on embodiment 235, 857
,, fulfil training conditions 235 857
false answer on enlistment into regular forces 439, 859
property, in relation to 235 857
trial of, and application of penalties 44, 45, 235, 858–9
Officers, age limit 232
,, appointment of (*see* Commissions *above*)
,, authorised to issue billeting requisitions 524, 592
,, civil rights and exemptions of 233, 244, 592–3, 858
,, military law, subjection to 233, 578, 579, 583–4
,, pay and allowances of 232
,, precedence of 233
,, resignation and retirement of 232
,, training of 232
Officers Training Corps, appointment, &c , of officers to, from 237
Orders and regulations as to, power to make 232, 849–50, 851, 864
,, in Council relating to 234, 854–5, 860–1, 864, 868–9, 870
Outfit grant 232
,, ,, refund of 232
Parish offices, officers and men exempt from serving 233, 244, 593, 858
Parliament, Act of, to be passed before T A is sent overseas 203

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Territorial Army—*contd*
Parliament, Address against embodiment of whole force 234, 856
,, assembly of, when whole force is to be embodied 234, 856
,, candidature for, by T A member 244
,, member of, may accept commission without vacating seat 233, 593, 858
,, vote at elections, right of person to 593, 858
Pawning of articles issued (*see* Property *below*)
Pay and allowances 232, 850
Permanent staff, constitution of 851
Personation of man in 127, 552
Posting of men of 233, 850–2
Proclamations on embodiment and disembodiment of 234–5, 855, 856
Property, loss, damage or destruction, &c , of, liability for 235, 857
,, of units 861
Recruiting for, County Associations charged with 848
Re-engagement 234, 852
Regular forces, when treated as 583–4, 592
Regulations for 232, 849–50
Reserve (*See* **T A Reserve.**)
Resignation and retirement (*see* Officers *above*)
Rifle ranges, buildings, camps, &c , for, provision of 848
Separation allowance, payment of, to men of 848
Service, area of 203, 851, 854, 861
,, false statement as to service in or discharge from 450–1
,, forfeiture of 235, 857
,, Imperial, agreement for 203, 854
,, prolongation of 853
,, term of 233, 851, 852
Sheriff, election, &c , of officers as 592–3
,, officer exempted from office, during embodiment 233, 593, 858
,, High, field officer not required to serve as 233, 858
,, Substitute, judicial duties have precedence 233
Ships, H M's , embarked on board, subject to Naval Discipline Act 598
Special service section 234, 581, 854
Supplementary Reserve, Category B, attachment of, to 228, 229–30
Title, changed in 1921 . 202, 230, 867
Tolls, exemption from 860
Training—
annual, exemption from 234, 855
,, failure to attend, fine 235, 857
,, holidays for, arrangements for 848
,, period of . 232, 234, 855
county associations have no power over 231, 848
preliminary, failure to attend, fine 235, 857
,, period of 232, 234, 854–5
Transfer of man of, not permissible without his consent 851
Trial of man of (*see* Civil Court, Court-martial, *and* Offences *above*)
Units, affiliation, &c , of Supplementary Reserve, Category B, to 228, 229–30
Units, postings to (*see* Posting *above*)
Yeomanry and volunteers, transfer of, to , 202, 230, 860–1

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Territorial Army Reserve
Constitution of 231, 851
Military law, application of 233, 578 579
Power to form 231, 851
Territorial Cadet Force (*See* **Cadet units**)
Territory, enemy occupation of (*See* **Occupation**)
Theft (*See* **Stealing**)
Thegns 166–7
Threatening Language (*See* **Language**)
Threats
Escort, to 435–6
Offences and punishments for 116, 122, 128, 133
,, committed under 106
Superior officer, to 17, 25 58, 61, 432–4 706, 718
To induce confession 91
Time, reckoning of 468 697
Tolls
Exemption of officers and soldiers from 209, 243, 553–4, 838
,, ,, ,, T A from 860
,, Reserve Forces 209 838
Ferries in Scotland half-rates for 209, 554
Offences by collectors 531, 554
Turnpike 209, 553
Vessels when exempt from 209, 531
, when not exempt from 554
Tools, casting away in face of enemy 427, 704
Tower Hamlets Militia 187
Tracer projectiles, use of, against aircraft 271
Trade, restrictions as to engagement in 244
Trade Disputes.
Acts relating to 247–9
Employment of troops in connection with 248
Intimidation and picketing during 248–9
Train Wrecking, when permitted in war 280
Trained Bands 170–1, 174, 186–7
Training
Of Supplementary Reserve (*See* **Reserve Forces** *and* **Reserve of Officers**)
Of Territorial Army (*See* **Territorial Army**)
Traitorous Words, use of 456, 712
Tramways, power to take possession of, or claim precedence for military purposes over 210, 828, 831
Transfer
Amalgamation of corps, or transfers of units on 214, 507
Compulsory 213, 214, 227, 505, 506–7
,, during Great War 178
Conditions of service, change of, on 506–7
Consent, by 213, 505, 507
Deserter, of 214, 507
Indian Army, to 239
Marines, Royal, to and from 238, 586
Meaning of term as applied to soldier 505
Officers liable to 221
Punishment for offence, as 213, 214, 221, 465, 506–7
Reserve, Army (*See* **Reserve Forces.**)

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Transfer—*contd*
Re-transfer 214, 506
Units, of 214, 507

Transport
Crew of hired, not subject to military law 582
Impressment (*q v*)
Seizure of, in occupied enemy territory 335
(*See also* **Ship**)

Treacherous communications 427, 704

Treachery
Forbidden in war 280–1, 293
Offence of, on active service 426–7, 429–430, 704

Treason
Court-martial, trial by 44, 103, 459–460, 713
Evidence, on charge of 77, 78, 83
High (*See* **Riot, &c** , Insurrection)
India, in, approval required for death sentence for 65, 482
Offences and punishment 128, 134, 460, 713
Prevention of, use of force in 111
War—
espionage 297–8, 341–2
explanation of 297, 341
of parlementaire 309–310
Warrant of arrest for, use of force in executing 111
Witnesses requisite 83

Treason Felony 44, 103, 128, 134, 459–460, 713

Trespass
Deliberate, may amount to malicious injury 127
Use of force in case of 111–112

Trial (*See also* **Courts-Martial**)
Absence of member during 52, 663
Adjournment of (*See* **Courts-Martial**)
After ceasing to be subject to military law 44, 512, 564–5, 590, 703, 734
Awaiting, confinement in detention barrack &c 33, 785
,, release from arrest whilst 33, 472
Begins when court sworn in 52
Change of place of, not to prejudice accused 45
Continuity of 480, 661–2
Custody of accused at 51, 668
Delay in bringing accused to 446–7, 467–8, 616 619, 620, 627
Dispensed with, on confession 498, 506 547, 549
Duty of judge-advocate, president, prosecutor at (*see* under those headings)
Insane persons (*See* **Lunacy**)
Joint, evidence against fellow accused 49, 53, 83–84, 93–94, 626, 659, 668–9
,, ,, and address 659
,, notice of, given to each accused 626
,, of several persons, for one offence 49, 53, 626, 659, 664, 682
Marines, Royal (*q v*)
New, for same offence, when illegal 40, 41, 44, 45, 53, 470–3, 564, 567, 618, 639
,, members of previous trial may not serve on 47, 478, 564, 629
,, order for 64, 564
,, when charge altered or added to 53, 636–7

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Trial—*contd*
New, when conviction is quashed 564
,, ,, court dissolved before finding 480, 662
,, ,, ,, illegally constituted 564
,, ,, finding not confirmed 45, 64, 483, 564, 637
,, ,, judge-advocate unable to attend 678
,, ,, proceedings lost 677, 686
,, ,, special plea to jurisdiction allowed 637
Nullity of 64, 65, 483, 564, 656, 662, 677
Officer (*q v*)
On any charge, where more than one charge-sheet 48, 659–661
Order on separate charge sheets 48, 659, 660
Place of 45, 565, 566
,, ,, for offence under Official Secrets Acts 899, 905
Plea in bar of (*See* **Plea**)
Procedure before commencement of 49–52, 55, 631–5
Recommencement of, power of convening officer to order 53, 836
Remand for, procedure 38, 469, 472, 619
Removal for 45
Reserve forces (*q v*)
Re-trial (*see* New *above*)
Rules of procedure, power to make, regarding 496
Second (*see* New *above*)
Separate, accused's right to 49, 52 53, 94, 626, 659–660, 682
Several charge-sheets, on, procedure 48, 52, 659, 660–1, 682, 769
,, persons in succession by one court, procedure 52, 61, 626, 664 682, 768
Ship, on board (*See* **Ship**)
Summary, of officer or W O (*See* **Officer**, summary disposal)
Suspension of 662
Territorial Army (*q v*)
Time for 661
,, limit for commencement of 44, 45, 53, 114, 564-6, 639–640, 859
Warrant officer, summary trial of, under s 47 (*See* **Officer**, summary disposal)
Trinoda necessitas 165
Troops, use of, in aid of civil power (*See* **Civil Power**)
Trophy Money 195
Trophy Tax 199, 864
Truce, flag of (*See* **Flag**)

U.

Uncivilized Nations, warfare with .. 272
Undefended Localities, bombardment of 290
Uniforms.
Unauthorised use of 459, 900–1
Use of enemy's . 295, 296
Unit.
Explanation of term . . 221
Transfer of, to another corps . . 214, 507
United Kingdom
Committing, releasing, and removing authority for . 490, 493, 495, 690–2

[References on pages 418 to 610 are to the Army Act and references on pages 611 to 786 to the Rules of Procedure]

United Kingdom—*contd*
Confirmation of findings and sentences in 63, 788–9
Definition of 605
Execution of sentences passed in 66, 488–495
Mitigation, &c , of sentence by G C M in 66
Quitting of, by reservists 227
Removal from, of persons sentenced in 489, 491, 492 695
,, to, of persons sentenced elsewhere 66, 67, 489–493 599
Re-trials in, orders for 64, 564
Transfer to corps in, of men unfit for service abroad 214 506
Unlawful Assembly (*See* **Riot, &c**)
Unnatural offences (*See also* **Sodomy**) 24, 444–5
Usages of War on land (*See* **Laws and Usages of War on Land**)
Uttering.
Forged documents 126, 132, 734
,, notes or counterfeit coins 76

V

Vaccination, refusing, not an offence 444
Vagrancy Acts 95
Vehicles
Impressment of (*See* **Impressment**)
Service, negligent driving of actions for damages 156–157
,, unauthorised driving of 157
Venereal Disease, concealing aggravating, &c 436, 444
Verdict (*See* **Finding**)
Vessels
Exemption from tolls (*See* **Tolls**)
Impressment of (*See* **Impressment**)
Viceroy of India. (*See* **India,** Governor-General)
Victualling Houses. (*See* **Billeting**)
Definition 519
View of place by courts-martial (*See* **Courts-Martial**)
Violations
Of laws of war 341
Of neutral territory 346
Violence
Custodian, to 435, 706, 719
Drunkenness, caused by 25 433
Offences in relation to 17, 18, 430, 432–3 435 453, 484, 706, 718–9
Offering, meaning of 433
Prevention of, use of force in 111
Robbery with (*See* **Robbery**)
Self-defence, in 111, 433, 641
Special findings on charges of using 17, 432–3, 484, 649
Superiors, to 17, 25, 432–3, 706, 718
Violent language (*See* **Language**)
Voluntary Aid Societies 301, 303–4
Volunteer Acts.
History of 199–202
Remain in force although volunteers not now raised in U K 202
Volunteers (*See also* **Auxiliary Forces**)
Billeting of 592
Charges, forms of 703
Colonial, application of Army Act to ,, ,, ,, 583

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Volunteers—*contd*
Courts-martial, composition of, for trial of member of 46, 630
Dismissal, punishment by 29, 593
Fencibles 198, 199
Friendly Societies Act, 1896, provisions of, as to 895
Great War, new force raised during 179 202
History of 171, 174, 175, 179, 199–202
Impressment of carriages, &c 592
India, in, application of Army Act to 583
Legislation of 1907 as to 202
Military law, application of, to 579, 581, 582, 583–4
,, liability to, N C Os and men to be warned regarding 581
Militia service, exempted from 200
Offences by, when subject to military law 593
Officers, military law, application of, to 579
Power to raise, still exists 202
Property of, transferred to county associations 861
Training with regular forces 581
Transfer of units to T F in 1908 202, 230, 860–1
Votes (Court-martial)
Casting, of president of court 59, 62, 480, 663, 684
Equality on finding and sentence 59, 62, 480–1, 663, 683–4
How taken 59, 62, 663–4
(*See also* **Courts-Martial,** Members)
Voting at Parliamentary Elections (*See* **Parliament**)

W

War
Active service (*q v*)
Articles of (*q v*)
Civil population and military, relations between, in time of 414
Correspondents (*See* **Newspaper Correspondents**)
Crimes (*see below*)
Judicial notice to be taken of 72
Laws and usages of, on land (*q v*)
Legitimate warfare, means of securing 339–345
Limitation of means of carrying on 279
Means of carrying on 3, 279–295
Mediation in 340
Retention in army service of men about to be discharged 211, 212, 227, 509–510, 835
Sovereign, against (*See* **Treason**)
Treason (*q v*)
Usages (*See* **Laws and Usages of War on Land**)
War Crimes 340–3
War Office
History of 182–5
War Treason (*See* **Treason.**)
Warrant Officer.
Acting, reversion to permanent rank 594
Army Act, modifications of, as to 593–4
Arrest of 33
Charges against, dismissal of 35, 41, 469, 470, 472–3, 621
,, ,, investigation of 35, 469, 470, 472
C O cannot punish 35, 39, 136, 470, 593–4
Court-martial on 44, 45, 46, 465, 476, 593–4
,, right to claim 41, 473, 595
,, summary disposal bars trial by 41, 45, 473, 639

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Warrant Officer—*contd*
Dismissal of 465, 593
Fines, award of 465, 593
Indian Army, power of Governor-General 591
Man, included in term, in Reserve Forces Act 840
Military law, application of, to 578, 580–2
"N C O ," in relation to term 593–4, 601, 605
Officer, included in term, in Regimental Debts Act 879
Pay, deductions, &c , from 41, 465, 473, 547, 556, 593
Punishment, summary, of (*See* **Officers**, summary disposal)
Punishments which may be awarded to 29, 41, 44, 465, 473, 476, 593–4, 759
Rank, forfeiture of seniority of 41, 465, 473–4, 593, 651
,, reduction in 465, 591, 593–5
Re-engagement 212
Reprimand or severe reprimand of 41, 465, 473, 593, 759
Soldier, when included in term 465, 578, 601, 605
Summary disposal of, under s 47 (*See* **Officer**, Summary disposal)
Superior officer, when included in term 601
Transfer to another corps 506, 507
Wife and children, maintenance by 556
Warrants
Arrests, for, use of force in executing 111
,, without 559, 560, 562
Commitment, provisions as to, and forms of 143, 572, 575–6, 654, 696, 771–786
Courts-martial, Admiralty, powers of, to issue 44, 584–5, 588
,, for convening and confirming 43, 47, 63, 475, 535–8, 599
,, forms of 788–793
,, granted to C -in-C , India 43, 63, 789–790
,, ,, governors of colonies 43, 536–7
,, ,, O C troops on board ship 599
Deserters and absentees, apprehension of, on 559
Evidence, admissibility as 81, 88, 568, 585
Railway, offences regarding 445, 459
Royal, Admiralty's powers as respects Marines 585
,, admissibility as evidence 81, 88, 568, 585
,, defining meaning of Corps 602, 605
,, making regulations under Regimental Debts Act 875, 881–893
,, soldiers' effects fund 893–5
Search 559, 562, 898
Signing and validity of 575–6, 696
Washington, Treaty of, 1922 271
Watchword.
Making known, or giving wrong 429–431, 705
Meaning of 430
Water.
Contamination of 280
Restoration of supply to enemy 427
Weapons (*See* **Arms**)
West African Frontier Force, Royal . 240
White Flag. (*See* **Flag.**)
Widows and children of men dying on service, grants from Soldiers' Effects Fund . 894
Wife.
Alimony, payment of 557
Communications between accused and, privileged , ,97, 668

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Wife—*contd*
Desertion of, soldier cannot be punished for 241, 555
Evidence of 36, 37, 95, 97, 562, 563, 616, 617, 619, 622, 645, 646, 658, 667–8, 686
,, Judge-Advocate may comment on omission 646
,, prosecutor may not comment on omission 645, 658, 667
Maintenance of, arrears of payments under order, provisions as to . . 557
,, liability of soldier for 241, 555–7
,, pay, stoppage from for 241, 548, 550, 552, 556–7
,, service of process for 556
Of lunatic soldier, provisions as to, on discharge 218, 512
Questions to accused, criminating his wife . 97
Rape on 113
Witness, as (*See* Evidence *above*)
Will
Acts relating to . . 242
"Actual military service," definition 242
Forgery of 125, 132
Nuncupative . 242
Officers and soldiers, of, in actual military service . 242–3
,, ,, probate of 243
Original, deposit and inspection of probate of 877–8, 880, 885
Prisoner of war 290
Probate included in "representation" 879
"Soldier's" 242–3
Wireless
Control of, in time of war, rules for 349
Messages, production of, may be required under Official Secrets Acts 903
Stations in neutral territory 348–9
Witness
Abroad, attendance not compulsory in U K 540, 667
Absence of, adjournment of court, or investigation 616, 626, 662, 667
,, civilian 539–540, 667
,, when subject to military law 27, 451, 710
Accomplice (*q v*)
Accusation, false, against . 658
Accused, as 56, 57, 94, 96–97, 452, 562, 563, 616, 618, 622, 643, 645–6, 650, 665, 667–9
, failure to give evidence as . 56, 57, 645, 646, 658, 667
, for, procedure 56, 57, 102, 643–6, 669, 670, 683
, inability of, to examine 657, 678
not bound to give a list of 49, 666
, refusal to answer questions . 668
, right to call 36, 54, 56, 60, 74, 471, 616, 625, 640–6
, ,, communicate with 48, 625, 679
, ,, cross-examine . 36, 37, 55, 59–60, 471, 616–9, 622, 642, 645, 650, 657, 666, 669, 670, 683
, to be informed as to his rights regarding 48, 56, 625
,, when entitled to information as to 679
,, wife of, as (*See* **Wife.**)
Affirmation (*See* **Oath**)
Arrest, attendance of officer under, as a . 31
,, on civil process, privilege from, of 539, 667
Attendance of, cost of . 666–7
, officer responsible for . 626, 666–7
,, procedure for securing 539, 540, 618, 625–6, 666–7, 761

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Witness—*contd*
Attention of, direction of, to particular persons or things 100
Attesting, when required to be called 79
Belief of, as evidence 88, 89
Character, as to (*See* **Character**)
Child 83, 95, 96, 114
Civilian, attendance of, as 539, 540, 618–9, 666–7
,, ,, ,, at summary of evidence 539, 618–9, 667, 761
,, cannot be compelled to attend court of inquiry 688
,, contempt of court by 540, 590
,, form of summons to 618, 666 761
,, misconduct of 539–540, 590–1
,, non-attendance of 539–540, 667
,, perjury by 540
Compellable, accused and wife not 37, 94, 95, 97, 667–8
Competency and credibility of distinction between 96
,, rules as to 94–96
Corroboration of 58, 83, 84, 95, 114, 126, 445, 452
Court of inquiry (*q v*)
Court-martial, member of, competent witness for defence only 46, 95, 478, 666
,, power to call 57, 102, 647, 666, 671
,, ,, ,, question 55–57, 102, 650, 670–1
,, when allowed in court 51, 669
Credibility of, questions affecting 94, 96, 101, 674
Credit of, impeaching 101, 102, 674
Cross-examination of 36, 37, 55 57, 59, 60, 90 94, 101–102, 471, 616–9, 622, 642–4, 649–650, 657–8, 666, 668–670, 683
,, of accused 56, 57, 94, 96–97, 643–4 650, 668–9
,, ,, as to character 60, 96, 626, 650, 658, 668–9
,, ,, when not permitted 37, 57, 618, 644–6, 668–9
Deaf and dumb person not incompetent as 95
Declaration (*q v*)
Document, attestation and identification of, by 79, 80
,, refusal to produce 27, 79, 96, 451, 539–540, 710
Evidence, dissuading from giving 129
,, explanation or correction of, by 56, 101, 670
,, reading of, by 89
,, ,, over of, to 56, 617, 670
Examination by counsel, rules as to 55, 56, 57, 672–4
,, in-chief 55, 99–101, 670
,, rules as to 36, 55, 56, 88, 89, 99–102, 670–1, 683
Expenses of 48, 666–7
Field general court-martial at 683
Handwriting, as to 79, 83, 89
Hostile, treatment of 100–101
Incompetency as, instances of 95
India, proceedings against, in 590–1
Interpreter (*q v*)
Judge-advocate, competent for defence only 478, 666
,, ,, power of, as to calling of 678
Lunatic as 95
Material, absence of, may invalidate proceedings 667
Notes, reference to, by .. 89, 90
Notice of intention to call, when to be given .. **666**

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Witness—*contd*
Number requisite in certain cases 58, 83–84, 126, 452
Oath (*q v* , *also* Swearing *below*)
Opinion of, as evidence (*See* **Evidence**).
Perjury (*q v*)
Previous statements, cross-examination as to 101–102,658
Privilege of accused as 96–97
,, as to criminating answers does not extend to civil liability 97
,, as to information as to commission of offences 97
, communications during marriage 97, 668
confidential reports, &c , as to 97
,, court-martial, duty of, regarding questions of 98, 99
, court of inquiry proceedings 93, 97, 157–158, 688
, criminal acts, does not extend to . 98
, medical records, Army . 158
none in case of doctors and clergymen .. 98
, on considerations of public policy .. 97
,, professional communications . 97–98
,, rules as to 96–98, 101, 541, 665
,, waiving of, by 97
Prosecutor, called and examined by 55, 57, 59, 60, 642–3, 665–6, 669, 670–1, 683
,, ,, as . 59–60, 642–3, 666, 669, 673, 768
,, ,, by, may not be member of court 46, 68, 477–8, 629, 681
Questions to, by accused 57, 669, 670
,, by court 55–57, 102, 650, 670–1
,, ,, of inquiry 687
,, by judge advocate 55, 57, 669, 670–1, 678
,, by president . 55, 57, 658, 670–1
,, by prosecutor 55, 57, 669, 670
,, discrediting . 101,102,674
,, entered on proceedings whether answered or not 98
,, examples of proper and improper 99, 100
,, improper 89, 96, 99–101, 670
,, involving incriminating answers 96, 668
,, leading, rules as to .. 55, 99–101, 670
,, mode of putting . 669, 670
, not directly bearing on issue, allowed in cross-examination . 101
, objection to 665, 669, 670, 674–5
, refusal to answer 27, 101, 451, 540, 668, 674, 710
, right of refusal to answer 89, 93, 96–97, 101, 665, 668
, suggestive (*see* leading *above*)
to test veracity 101
Recalling of 57, 102, 647, 664, 671, 751
Re-examination of . 55, 56, 57, 102, 670
Refreshing memory . 89, 90
Religious belief of, immaterial . .. 95
Rule s to directing attention of, to particular persons, &c .. 100
Scotland, summary proceedings in, competency of .. 573
Soldier not exempt from appearing as, before civil court .. 555
Solemn declaration (*See* **Declaration.**)
Statement, written, inclusion in summary of evidence .. 618–9
Summary of Evidence (*q v*)
Summoning of (*see* Attendance *above*).

[*References on pages* 418 *to* 610 *are to the Army Act, and references on pages* 611 *to* 786 *to the Rules of Procedure*]

Witness—*contd*
Swearing of 55, 83, 95, 114, 479–480, 498, 635, 643, 669, 682, 763, 768
Sworn, accused may demand witness to be 36, 37, 41, 470, 473, 617–9, 622
,, refusing to be 27, 451, 539–540, 710
Verbal request for production of documents not obligatory on 667
Wife, as (*q v*)
Withdrawal of, when not under examination 51, 669
Writing by, in court, for purpose of comparison 89
,, reference to, by 89, 90
Women
Billeting (*q v*)
Enrolment for service during Great War 179
Offences against 83, 86, 113–114, 131, 132, 134, 460
Officers, as 605
Workhouse, reception of lunatic soldier in (*See* **Lunacy**)
Wounded
Arms of 301
Assistance from inhabitants 299
Care of, obligatory 298
Convoys 303
Exchanges and releases 299
Inhabitants who are, no obligation to tend 298
Neutral territory, in 350–1
Nominal rolls to be sent to enemy 299
Prisoners of war, liable to be made 283, 299
Protection on battlefield 299
Taking to rear, leaving ranks on pretence of 428, 704, 715
Treatment of, dealt with by Geneva Convention 298, 358–367
Wounding
Self, negligently .. 459
With intent 71, 134, 733
Writing, reports to be made in 697
Writs
Certiorari 140–142, 145–146
Habeas corpus 142–147
Mandamus 137–138
Prerogative 135
Prohibition 138–140, 146
Subpœna duces tecum .. 79

Y.

Year, meaning of .. 604
Yeomanry
Acts relating to, repeal of 202, 867
Constitution, present, of, in T A 230
History of 199–202
Ireland, in 201, 202
Legislation of 1907 as to 202
Military law, application of, to 201
Militia Acts, application of, to 201
Numbers of, no restriction as to 200
Power to raise, cessation of 202, 867
Property of, transferred to County Associations 861
Transfer of units to T F in 1908 202, 230, 860–1
Yorkshire, Ridings deemed separate counties for purposes of T R F Act 864

Printed under the authority of His Majesty's Stationery Office,
By Wyman & Sons, Ltd Fetter Lane London, E C 4.

लाल बहादुर शास्त्री राष्ट्रीय प्रशासन अकादमी, पुस्तकालय
L B S National Academy of Administration, Library
मसूरी
MUSSOORIE
यह पुस्तक निम्नांकित तारीख तक वापिस करनी है ।
This book is to be returned on the date last stamped

दिनाक Date	उधारकर्त्ता की सख्या Borrower's No	दनाक Date	उ की सख्या Borrower' No

लाल बहादुर शास्त्री राष्ट्रीय प्रशासन अकादमी
L.B.S National Academy of Administration
मसूरी
MUSSOORIE
पुस्तकालय
LIBRARY

अवाप्ति संख्या
Accession No. 107443

वर्ग संख्या
Class No 343.01

पुस्तक संख्या
Book No. Mau

RAM BAGH, PATIALA.

Holts Branch - - -, WHITEHALL PLACE, S.W.1.

Partners

MARTIN DRUMMOND VESEY HOLT,
ARTHUR VAVASOUR BARBER

Current and Deposit Accounts opened on the usual terms

The Bank has Agents or Correspondents in all the principal cities and towns throughout the World, and can provide Banking facilities **wherever desired**

Letters of Credit and **Circular Notes** issued **Currency Drafts** supplied, and **Remittances** and **Telegraphic Transfers** made to all parts

Foreign Currency Accounts opened

Securities held on Customers' behalf

Dividends, Annuities, etc., received, and **Coupons Collected**

The Bank has a special department to advise and assist customers on questions relating to **Income** and **Super-tax**

Navy and Prize Agents Salvage Claims preferred

THE DUTIES OF EXECUTORS AND TRUSTEES UNDERTAKEN.

Full particulars can be obtained on application to —

THE TRUSTEE DEPARTMENT,
3 and 4, WHITEHALL PLACE, S.W.1.

1210 Wt 8253—8063/102 50m. 1/29 Wy. & S., Ltd.