

"entitled class" has created the erroneous impression that there is a special class, enjoying fewer privileges than the exemptees, but greater than those who are neither exemptees nor members of the "entitled class." There is of course no such special class. The term is merely intended to comprise all those whose means and status *prima facie* connote respectability and therefore justify the presumption that they are fit and proper persons to possess arms. While therefore no mention will be made of an "entitled class" in the statutory rules, at the same time the Government of India are anxious that the qualifications recommended by the Committee should be generally adopted by the local Governments and should be made widely known. Where, however, a local Government has laid down more liberal qualifications, these should not now be abandoned. They cannot support the recommendation that lists of the "entitled class" should be maintained; the qualifications are so low that each district list would be voluminous, and its preparation and maintenance would involve the appointment of a special staff. The expenditure and labour involved would be wholly incommensurate with the results obtained.

8. In paragraph 10, the Committee recommend that where enquiry is necessary the agency of the police should not, if possible, be employed; but that if no other agency of enquiry is available a licence should not be refused on the strength of a police report alone but only after a further magisterial enquiry. The Government of India are unable to concur in this recommendation and are constrained to deprecate a reflection on the good faith of the police. The replies of local Governments indicate that it is impossible to eliminate enquiry by the police in the cities and that owing to the shortage or absence of suitable revenue staff, no other agency is available in many district areas. At the same time the replies show that enquiry is frequently carried out by other agencies where these are available. The Government of India are of opinion that the agency of enquiry is really a matter for local Governments and are accordingly adverse from imposing any restriction on the choice of agency. They leave the matter in the hands of local Governments who will, they are confident, take all steps necessary to secure that whatever previous enquiries are necessary they are promptly carried out, and in a manner which is neither inquisitorial nor calculated to wound the self-esteem of the applicant.

9. The Government of India are in complete agreement with the recommendation made in paragraph 11 that ordinarily no arbitrary limit should be imposed on the number of licences issued in a district but that local Governments should have the discretionary power of limiting the number of licences in any area or district in which the number of arms justifies the apprehension of serious danger or in which such restriction is deemed necessary for the maintenance of public tranquillity. They accept the recommendation in paragraph 12 and have provided for the right of appeal by an amendment of the rules. The recommendation in paragraph 13 is accepted subject to a partial reservation as to the proposal that the duration of the licence should be for the calendar year. Local Governments have pointed out that in practice inconvenience would

arise and would prefer that licences for possession and going armed and for protection of crops or destruction of wild animals should run from the date of issue, but have no objection to other licences being issued for the calendar year. The Government of India agree with the views of the local Governments.

10. In paragraph 14 the Committee have dwelt on the inconvenience to which persons desirous of purchasing weapons are put because they cannot produce the weapon when applying for the licence necessary for its possession. The Government of India agree with them that it is not necessary to provide for issue of temporary licences in such cases and accept the recommendation that a regular licence should be issued at the time the applicant applies for a licence, if the application is granted. Provision has been made in the condition attaching to the appropriate licences for the details of purchases to be filled in on the form by the dealer from whom the purchases are made and also, to meet criticism offered in this respect, for details to be furnished to the licensing authority by the licensee himself in any case in which he purchases arms and ammunition from any person who is not a licensed dealer.

11. The Government of India accept the principle of the recommendation made in paragraph 15 that a temporary licence for 14 days should be given to persons arriving in India by sea and not in possession of a regular licence on the payment of full fee by the Customs authorities. It is however open to objection in detail. The period clearly will in many cases be too short for the object in view; the payment of the full fee to the Customs authorities will deprive local Governments of their legitimate revenue; and finally it is doubtful whether the agency of the Customs authorities is altogether suitable for the purpose. The Government of India have therefore decided that a temporary licence for the period of the journey to destination should be granted by the Commissioner of Police at Bombay, Madras, Calcutta, Rangoon, or the District Magistrates at other ports, on a special form on the payment of a fee of Re. 1 for each weapon and that on arrival at destination a regular licence should be taken out in the ordinary way. No practical difficulty need be anticipated. It will be made clear in the form of temporary licence that it does not cover possession after arrival at destination. Travellers arriving in India possessing no regular licence and desirous of obtaining one should inform their agents beforehand of the weapons they intend to import and instruct them to obtain the necessary temporary licence. On arrival at destination they should apply for the licences required in the ordinary way.

12. The Government of India accept the recommendations made in paragraph 16. The conditions of the licence forms have accordingly been altered so as to make it compulsory to report the loss of fire-arms. A note has also been appended to the licence forms explaining that the breach of any of the conditions of the licence renders the licensee liable to the penalties which may be imposed under the Act.

13. The Government of India accept the recommendations made in paragraphs 17s 18, 19 and 20 and trust that local Governments will

give effect to them both in the letter and the spirit. As regards paragraph 20 they agree that the District Magistrate or any Magistrate in charge of a sub-division in the District in which the licensee is residing or in any other district in which he is known should be empowered to renew a licence. In any case of doubt it is always open to such Magistrate to make enquiries from the licensing authority which originally granted the licence.

14. In paragraph 21, the Committee state their recommendation in regard to FEES. There is some diversity of opinion in the replies received from the local Governments, some accepting the proposal, some recommending no change and others putting forward variants of their own. The principal objection is the loss of revenue which will result from the adoption on the scale proposed by the Committee; in some quarters, too, it is suggested that the large number of arms-licences issued does not justify the belief that persons who require weapons are deterred from purchasing them by the high cost of the licence. The Government of India are impressed by the substantial loss of revenue which complete acceptance of this recommendation will entail. On the other hand they cannot overlook the fact that stress was laid on the desirability of reducing the fees before the Committee, particularly in the case of breech-loading weapons, by many of the witnesses who were examined. They have accordingly decided that the initial fees should remain unchanged but that half these fees should be chargeable on renewal provided applications are made within a month following the expiry of the period covered by the original licence. In their opinion this reduction of the renewal fees will afford substantial relief, and is the most they can agree to in the present financial stringency. They accept the recommendation in regard—(1) to the payment of fees by non-judicial stamp, but consider that an applicant should have the option of paying them in cash,—(2) the application for licences, (3) the renewal of licences by post,—(4) exemption from payment of fees in the circumstances stated in the concluding portion of paragraph 21, and (5)—the payment by dealers of a single fee for import into India and transport to destination.

15. As regards the limit on possession of ammunition, the Government of India agree with the recommendation of the Committee and trust that local Governments will, if they have not already done so, issue suitable instructions on the lines recommended.

16. They accept in principle the recommendation made in paragraph 28 that the issue of all-India licences should be as unrestricted as possible. They agree that Assam and Burma should no longer be excluded from the all-India licence; but they consider it necessary to make a provision that anyone who has secured an all-India licence in one province shall, if he enters another province, be subject to such restrictions as may be imposed by that province, as for example, that an all-India licence granted in one province should be endorsed by the District Magistrate of the district of another province visited by the holder of the licence. Enquiries as recommended have been made from the Punjab, Burma, the North-West Frontier Province and Delhi whether the retention of these

provinces in column 1 of Schedule II is required; the North-West Frontier Province agrees to exclusion, but the Government of India are unwilling at present to adopt this suggestion in the case of the Punjab (with which Delhi may be included) or Burma. On the proposal made in paragraph 23 regarding greater expedition in dealing with applications for licences it is impossible and indeed unnecessary for the Government of India to issue any general orders. They are aware that local Governments are fully alive to the necessity of prompt attention to applications for the grant and renewal of licences. They trust that no avoidable delay will occur; that if at any time the pressure of work in connection with licence applications becomes abnormal, special measures will be taken to cope with it; and that if in any case unnecessary delay has occurred steps will be taken to prevent its recurrence in future.

17. The Government of India accept the recommendations made in paragraphs 25, 26, 28, 29 and 33, but are unable, in view of the stronger objections placed before them by the military authorities that there is no difficulty in converting such rifles to take Government ammunition, to accept the recommendation contained in paragraph 27. As regards the recommendation in paragraph 31, the Government of India are of opinion that it is advisable to regularize the practice followed by licensed-dealers of employing assistants to conduct their business in their temporary absence, and the licence form granted to dealers has accordingly been amended so as to include a column for the names of duly authorized assistants.

18. The recommendation contained in paragraph 30 does not commend itself to the Government of India. They apprehend that the carrying of fire-arms by females might have dangerous results, and would only expose such females to attack from lawless persons desirous of stealing weapons. In their opinion it should be possible to meet the situation which the Committee appear to have had in mind by the entry of certain specified members of the licensee's family as retainers.

19. On the recommendation made in paragraph 32 urging reciprocity with Indian States the Government of India are not in a position to make any announcement. They have taken up the matter with the various States, and negotiations are proceeding.

20. The changes in the rules necessitated by the acceptance of these recommendations have been made; and the rules are now published as the Indian Arms Rules of 1924. It has not been found possible to accept *in toto* the recommendations of the Committee in regard to the form in which the rules should be published. They advised a separation of the technical directions intended for dealers from the rules governing the grant of licences for possession of fire-arms for private purposes. An attempt was made to draft the rules on this principle, but it was wholly unsatisfactory, and was accordingly abandoned. The Indian Arms Rules of 1920 follow the order of the sections of the Act; this is obviously the logical arrangement of the rules and it is clearly convenient on administra-

tive grounds that the sections of the Act and the rules should be in the same sequence. Moreover, the difficulties of interpretation to which the Committee have adverted are due far less to inherent obscurity or to the incorporation of technical directions, than to the fact that they are not self-contained. To be properly understood they must be read in conjunction with the Act and with the schedules and such difficulties as the ordinary member of the public feels, will not be solved by the publication of a paraphrased or abbreviated addition of the rules but by the dissemination of information as to the correct procedure of applying for and securing a licence. The Government of India have accordingly prepared for such use as local Governments may consider suitable a short pamphlet in popular language, describing the procedure regulating the application for licences for the possession of fire-arms for purposes of sport, protection, show and the like. They trust that this pamphlet will be translated into the various vernaculars and that publicity will be given to it.

21. In conclusion the Governor-General in Council wishes to express his appreciation of the labours of the Committee. The Indian Arms Rules of 1920 evoked much criticism and many defects were removed as they were pointed out. But much remained to be done when the Committee was appointed in 1922, and their business-like and practical recommendations coupled with a sympathetic administration of the rules by the local Governments should go far towards removing any dissatisfaction which may still remain.

A brief explanation of the Rules affecting the possession of arms by private individuals.

1. Complaints have been made that the Indian Arms Rules are not easy to understand. They contain many technical directions of no interest to the private person who desires to possess arms for private purposes; they have been modified from time to time and have been considerably revised this year (1923-24) and as they have to be read in conjunction with the Act and the schedules, the layman sometimes finds it hard to ascertain the procedure he should follow in order to secure a licence and to understand the conditions on which he may keep arms. This pamphlet has been prepared, therefore, with a view to explaining to the public the procedure laid down for obtaining and renewing arms licences, purchasing ammunition, carrying weapons on journeys, importing or exporting weapons for private use and the like. It does not purport to be an exhaustive paraphrase of the Rules but merely sets forth in language free from legal technicalities, what the procedure is without touching on matters connected with the manufacture, import, export and sale as affecting dealers.

2. Every person who is not specially exempt from the operations of those sections of the Act which prohibit the keeping or carrying of arms without a licence must take out licences to cover any arms or ammunition which he possesses or wishes to purchase. A list of the persons and classes of persons so

Persons who require licences and those exempt.

exempt will be found in Schedule I. of the Indian Arms Rules, 1924. Persons exempt however are subject to the following conditions:—

(i) the number and description of arms in respect of which exemption is enjoyed may be restricted under separate orders issued by each local Government. Where such orders are in force, arms in excess of the prescribed numbers or descriptions must be covered by licences;—(ii) all fire-arms* [and* ammunition] in a person's possession must be registered in such manner as the local Government may prescribe;—(iii) the loss or theft of any arms or ammunition must be reported forthwith at the nearest police station; and—(iv) arms or ammunition may not be imported through the post office and in Burma may not be despatched through the post.

Orders regarding conditions (i) and (ii) are issued separately by each local Government in regard to its own territory. It is not possible, therefore, to state here what they are, but the necessary information will be easily obtainable from a Commissioner of Police in a Presidency Town or the nearest Magistrate. In the old rules, 1920, the list of exemptions was much larger than it is now; and certain categories have been excluded from the new schedule. Such persons now excluded but exempt under the rules of 1920 will be granted a life certificate of exemption free of fees in respect of the weapons in respect of which they now enjoy exemption provided they apply within six months of the issue of the Rules of 1924.

3. Generally speaking, that is, outside the provinces of the Punjab, Burma and Delhi, licences are not necessary to cover possession of arms other than fire-arms *e.g.*, sword-sticks, daggers, spears, etc., but it may happen that in particular districts or cities in other provinces under special orders of the local Government, licences in respect of such arms may be necessary. As, however, orders of this description are issued in a time of emergency and rescinded when the emergency has passed, it is not possible to include details in this pamphlet and persons who may have doubts are therefore advised to make enquiries from the Commissioner of Police in the Presidency Towns and elsewhere from the nearest Magistrate. Where necessary, licences for arms of this description are issued for a fee of eight annas for each weapon. Otherwise, throughout British India with the exception of a few scattered districts, details of which may be found,* if fuller information is desired, in Schedule IV to the Indian Arms Rules, licences to cover possession of and going armed with all fire-arms are necessary. These are of various kinds and the applicant should make up his mind which form of licence he requires before submitting his application. For example:—

Arms for which licences are required and the various kinds of licences.

4. Licences may be given entitling the holder to keep arms (other than pistols and revolvers) and ammunition in a certain place but not to go armed; or again,

Licences may be given permitting the holders to possess arms and go armed for the purpose of sport, protection or display; or again.

Licences may be given to possess arms and go armed for the destruction of wild animals which do injury to human beings, cattle or crops—(These are intended mainly to help cultivators and are granted free of fees); and, lastly,

Licences may be given to go armed on a journey.

5. It may be asked whether everybody is entitled to a licence on payment of the prescribed fee. The answer is in the negative. Any person of course may apply for a licence, but the grant of licences is governed by the broad principle that arms and ammunition must not be allowed to fall into the hands of lawless people. It is clearly impossible for all applicants to be personally known to the licensing authority, who in order to discharge properly the responsibility laid on him, must in many cases cause enquiries to be made, through any agency he deems best, into the *bona fides* of the applicant and his fitness to possess arms before he can grant a licence. The Government of India have, however, laid down certain qualifications the possession of any one of which, connotes, in their opinion, sufficient evidence of respectability to warrant the grant of a licence without further enquiry unless the licensing authority has a sufficient and definite reason for refusal or for ordering enquiry. These qualifications are:—

(a) Membership of any Order established by the Crown or the possession of a title conferred or recognized by the Government of India or of the Kaiser-i-Hind Medal or a Certificate of Honour.—

(b) Membership, past or present to the Indian Central or Provincial Legislatures.—

(c) Payment of not less than Rs. 500 land revenue or Rs. 100 in roads or public works cesses, or any payment of incomtax—

(d) Being a Government officer in receipt of a salary of not less than Rs. 100 per mensem.—

(e) Being a Commissioned or gazetted officer, of His Majesty's Naval, Military or Air Forces, Indian Marine Service or a Commissioned Indian Officer of the Imperial Service Troops in active service.—

(f) Being a pensioned officer who before retirement was by virtue of his official position included in (d) or (e) above.

6. The licence which is most generally required is that which will enable the holder to possess arms and go armed for purposes of sport, protection or display. This licence is granted in Form XVI and anyone wishing to obtain it should apply either in person or by post to the Commissioner of Police in Presidency towns and elsewhere to the nearest District or Sub-Divisional Magistrate unless the applicant ordinarily resides in an Indian State and may have occasion to visit British India in which case he should apply to the Political Officer of his State.

7. Details of the fees chargeable for a licence in this form will be found on reference to the heading of Licence Form XVI.—Broadly, they are:—

Fees.

(i) for a breech-loading revolver or pistol Rs. 10.—(ii) for any other breech-loading weapon Rs. 5.—(iii) for any other weapon annas 8.

These rates apply to a licence granted for the first time. On renewal, fees at half these rates, except in the case of the last named, will be charged.

There are, however, certain classes of persons who, in virtue of their past or present civil or military service, have been exempted from the necessity of paying fees for licence in this form. Details of these will also be found in Schedule VII. Otherwise, where payable, fees may be paid either by means of a non-judicial stamp affixed to the application or in cash at the option of the applicant.

8. Licences in Form XVI are originally granted for one year from the date of issue and for the most part hitherto have been valid only in the district in which they were granted. Licensees should, however, realize that if they wish to avoid the inconvenience of annual renewal they may apply for a licence valid for a period not exceeding three years which will be granted on payment of a compounded fee. A licence in this form may also be made valid for the whole of British India and the practice of giving such all-India licences has been encouraged in order to minimise the inconvenience otherwise caused to persons who move frequently from one district to another. It should be observed that a condition attaching to a licence specially made valid for the whole of British India is that its validity is subject to such restrictions as may be imposed by a local Government in respect to its own territory. *i. e.*, countersignature by a local officer of a licence granted or renewed by an officer of another province, etc., and holders of such licences are advised in their own interests to ascertain, when they have occasion to go outside the province in which they originally obtained their licence or subsequently had it renewed, whether any such restrictions have been imposed in the province to which they have gone. This information will be readily obtainable from the nearest licencing authority in the new province who will also, in most cases, be in a position to regularize the licence if this is necessary.

9. The amount of ammunition for revolvers, pistols and rifles, other than '22 bore, which the licensee is entitled to possess at any one time or within the period of validity of the licence will be entered on the licence. This amount is determined by local Governments and all purchases of ammunition for these weapon must be entered on the licence form by the vendor but there is no necessity for the latter to enter purchases of any other kind of ammunition on the possession of which there are no restrictions nor has he any need to enter on any form of licence purchases of any kind of ammunition, other than that for rifles of '303 or '450 bore (and revolvers or pistols of '450 or any intermediate bore) (to effect the purchase of which ammunition possession

licences have to be taken out even by persons otherwise exempted) made by persons who are exempted from the necessity of taking out licences.

10. Where a licence is valid only for the district in which it was granted and the holder wishes to carry his weapons on a journey or in cases in which the licensee wishes to go on a journey accompanied by his retainers who are accustomed to bear arms when accompanying him, a licence is required for which a fee of four annas is charged for all weapons except revolvers or pistols for which a fee of Rs. 10 is exacted. These licences are obtainable from a Commissioner of Police, a District Magistrate or a Sub-Divisional Magistrate specially empowered to grant them and as the law requires an officer who receives an application for a journey licence to obtain the previous approval to its grant of the proper authority of the place of residence of the applicant in cases where the latter does not reside within the jurisdiction of the officer to whom application is made or not personally known to him, unless for any special reason this precaution is considered unnecessary, persons are advised to allow for the delay that such enquiries must cause by submitting their applications some time before the actual date of the journey. It should also be noted that a journey licence does not entitle the holder to use the arms covered by it for purposes of sport in the course of his journey. A licensee holding a district or a provincial licence wishing to proceed to any place outside the district or province for sport should have his licence made valid for that place and that for the journey thereto or, and he is advised to do this, get his licence made valid for the whole of British India.

11. The conditions attaching to the grant of any licence are printed on the form itself. These should be carefully noted and observed as the infringement of any one of them constitutes an offence under the Indian Arms Act and renders the holder of the licence liable to prosecution. Prominent amongst these conditions are those which require the giving of information forthwith at the nearest police station of the loss or theft of any arms or ammunition and the embargo on the taking of arms to a fair, religious procession or other public assemblage unless specially authorised to do so.

12. As has already been stated, licences to cover possession and going armed are granted for a period of from one to three years. When this period is nearing expiry, if the arms covered by a licence are still in the holder's possession, he should apply for renewal of his licence. Such an application should be addressed either to the authority who granted the licence or the nearest District or Sub-divisional Magistrate according to which officer's head-quarters are nearest to the applicant's place of residence for the time being. Production of arms is not usually demanded before a licence is renewed but it should be understood that it rests with the licensing authority to demand this if he deems it necessary. The original licence should,

of course, accompany all applications for renewal. In many cases personal applications will be found most speedy and convenient and are therefore encouraged where persons reside at head-quarters stations or in cities and towns but there is no objection to the submission of these applications through the post. It has already been stated that fees for renewal are, with one exception, muzzle-loading fire-arms and other arms, half the original fees. In this connection it should be noted, however, that licensing authorities have discretion to levy fees at the original rates in respect of renewals where the application for renewal is not received within a month following the date of expiry of the licence and where there is no sufficient excuse for the delay.

13. Private individuals frequently wish to import fire-arms into India as part of their personal luggage. If a licence covering possession in India has been obtained beforehand or if a person is one of an exempted class no difficulty arises as on production before the Customs authorities of the licence or proof, if required, of exemption, the arms can at once be cleared since in these cases no special licence to cover import is necessary. In the majority of cases, however, concerning non-exempted persons, the arms are not covered by a possession licence and in cases of this kind where a person's final destination in India is not the port of arrival, a licence covering temporary possession during the period of the journey from the port of disembarkation to the place of destination can be obtained on payment of a fee of Re. 1 per weapon from the Commissioner of Police or District Magistrate at the port of arrival. This will enable an individual to take his weapons with him on his journey up-country but on arrival at his destination he must take out a regular licence in the ordinary way. The objection that there may be no time on arrival in which to obtain a temporary licence of the kind described from the Commissioner of Police or other authority can easily be met by the individual instructing his agent in advance to obtain this licence on his behalf to cover the weapons he is bringing with him and a description of which should be furnished to the agent. The great advantage of this procedure is that the importer will be able to proceed at once on his journey with his weapons in his possession instead of leaving them in deposit with the Customs authorities until a proper licence covering possession can be obtained in respect of them.

14. Rifles of '303 and '450 bores and revolvers or pistols of '450 bore, [and revolvers or pistols of '441' '455 or any intermediate bore] are not allowed to be imported into British India except under the special sanction of the Government of India which is only given for exceptional reasons. This prohibition applies to all weapons the bore of which is of the dimensions given irrespective of the dimensions of the chamber or "lead" and whether, as manufactured, Government ammunition can or cannot be used in them. Even persons who have been granted the privilege of exemption have had it restricted in this respect to weapons which have been lawfully imported into British India and

no licensing authority is permitted to give a licence to cover possession of such weapons to non-exempted persons unless he is satisfied that they have been lawfully imported. This can only be the case if special permission has been obtained or the weapons were in India before the prohibition against import came into force, *i.e.*, in the case of the rifles before January 1901, and of revolvers or pistols before the latest Arms Rules, those of 1924, came into force. To ensure, however, that persons who own such rifles lawfully for sporting purposes and revolvers or pistols obtained before their import was prohibited, may obtain ammunition for the same in reasonable quantities provision has been made in the Rules to permit of selected dealers being allowed to import and sell such ammunition to qualified persons, *i.e.*, those who hold licences covering possessions of the same.

15. Private individuals are not required to obtain any special licence to cover the export of arms and ammunition which they may desire to take out of the country with them or send out of India, provided these are of a reasonable quantity and their possession in India is covered either by a licence or by exemption.

16. In the Appendix (not printed) will be found the list of exempted persons [*Vide* Schedule I, of the Rules],

of persons entitled to a life certificate, persons who are not required to pay fees for possession licences [*Vide* Schedule VII],

and, specimen copies of the licence forms [*i.e.*, Forms Nos. XIV, XVI, XVII, XVIII, XIX and XX in Schedule VIII]

THE INDIAN ARMS ACT, XI OF 1878.

I—Preliminary.

PREAMBLE.

SECTIONS

1. Short title,—Local extent,—and Savings.
2. Commencement.
3. Repeal of enactments.
4. Interpretation-clause.

II—Manufacture, Conversion and Sale.

5. Unlicensed manufacture, conversion and sale prohibited

III.—Import, Export and Transport

6. Unlicensed importation and exportation prohibited.
Importation and exportation of arms and ammunition for private use.
7. Sanction of Local Government required to warehousing of arms, etc.
- 8.—9. [*Repealed*]
10. Power to prohibit transport
Transshipment of arms
11. Power to establish searching stations
12. Arrest of persons conveying arms, etc. under suspicious circumstances
Procedure where arrest made by person not a Magistrate or a Police Officer

IV.—Going Armed and Possessing Arms, etc.

13. Prohibition of going armed without licence
14. Unlicensed possession of fire arms, etc
15. Possession of arms of any description without licence prohibited in certain places.
16. Arms, of which possession has become unlawful, to be deposited at police-station.

V.—Licences.

17. Power to make rules as to licences
18. Cancelling and suspension of licence.

VI.—Penalties.

19. For breach of sections, 5, 6, 10, 13 to 17.
20. For secret breaches of sections 5, 6, 10, 14 and 15.
For concealing arms, etc
21. For breach of licence
22. For knowingly purchasing arms, etc, from unlicensed person.
For delivering arms, etc, to persons not authorized to possess them.
23. Penalty for breach of rule.
24. Power to confiscate.

VII.—Miscellaneous.

25. Search and seizure by Magistrate
26. Seizure and detention by Local Government.
27. Power to exempt.
28. Information to be given regarding offences.
29. Sanction required to certain proceedings under section 19, clause (f).
30. Searches in the case of offences against section 19, clause, (f), how conducted
31. Operation of other laws not barred.
32. Power to take census of fire-arms.
33. Notice and limitation of proceedings.

THE FIRST SCHEDULE—ENACTMENTS *Repealed*.— THE SECOND SCHEDULE. [*Repealed*]

STATEMENT OF REPEALS AND AMENDMENTS.

Section 1 (b) amended in part by	}	Act XLIX of 1920, Sec 35.
Sections 8 and 9 and Second Schedule		Act XII of 1891, First Schedule.
Repealed and Section 14 Repealed in part by	}	Act XX of 1919.
Section 16 substituted by		Government of India (Adaptation
Sections 1, 6, 7, 11, 13, 15, 16, 17, 18, 25,	}	of Indian Laws) Order, 1937.
26, 30 and 32, altered by.		

THE INDIAN ARMS ACT, XI OF 1878. [15th March 1878.]
[AS AMENDED BY ACT XX OF 1919, ACT XLIX OF 1920 AND ALTERED
ACCORDING TO THE "GOVERNMENT OF INDIA [ADAPTATION
LAWS] ORDER, 1937".

As Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.*

Whereas it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; it is hereby enacted as follows:—

Preamble.

1.—Preliminary.

1. This Act may be called the Indian Arms Act, 1878; and it extends to the whole of British India.

Short title.
Local extent.

Savings.

But nothing herein contained shall apply to—

(a) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of any Government in British India or by a public servant or a member of either of the forces constituted by the Indian Territorial Force Act, 1920, or the Auxiliary Force Act, 1920, in the course of his duty as such public servant or member.

NOTES.

(1) For statement of Objects and Reasons—see page 12, for extracts from proceedings of Council—See page 14.

(2) NOTE—"British India" shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor-General of India or through any Governor or officer subordinate to the Governor-General of India, and as respects any period after that date means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar." (Sec. 3 (7) General Clauses Act X of 1897 as adapted by 'The Government of India [Adaptation of Indian Laws Order] 1937".

(3) This section, was amended by Act, XLIX of 1920, and the words "or a member of either of the forces constituted by the Indian Territorial Forces Act, 1920, or the Auxiliary Force Act, 1920" were substituted for the words "or a volunteer enrolled under the Volunteers Act, 1869." Under rule 46 (8) and Schedule VII "any person who was enrolled as a member of corps of volunteer under the Indian Volunteers Act, 1869," is however entitled to obtain a licence in Form XVI free of licence fee. Honorary members of the Parsi Indian Territorial Force, are not exempt from the operation of the Act.

(4) The words by order of "any Government in British India" were substituted by "The Government of India [Adaptation of Indian Laws] Order, 1937".

(5) A licence granted under the Indian Explosives Act (IV of 1884), for the manufacture, possession, sale, transport, or importation of an explosive may be given the effect of a like licence granted under the Indian Arms Act, 1878 [S. 15 of the Indian Explosives Act, IV 1884].

(6) Explosives required by a public servant in the course of his duty as such, are, under s. 3 (b) exempt from the operation of the Act and no licence is therefore necessary for their importation (H. D. letter no 445 dated the 7th Feb. 1908.)

(7) Any person can possess, etc., arms, etc., in course of his duty—but heads of departments are prohibited from granting permits or passes to their subordinates to carry arms not required for duty, (H. D. letter No. 1594 dated the 7th October 1895.)

(8) Lead-cutting swords imported by Native Cavalry regiments are, under section 1 (b) of the Arms Act, exempt from the operation of the Act. (H. D. letter No. 860-878, dated the 29th March 1897.)

(9) A sword or similar weapon used in marriage processions in Sind may be carried free of licence fee with the permission of the local Magistrate but it should be borrowed from a person holding a licence and the name of the licence-holder should be stated in the application (H. D. letter no. 1541, dated the 28th July 1899.)

(10) No licence is required for the export of arms, ammunition or military stores issued to Native States from British arsenals under the orders of Government. Each consignment, however, should be covered by a certificate signed by the officer in charge of the arsenal, to the effect that it is exported by order of Government under section 1 (b). (For Dept. letters nos. 1816 I, dated the 2nd June 1890 and 293G., dated the 5th Feb. 1920.)

(11) Arms carried or possessed by officers of Government as part of their equipment and arms supplied by Government to subordinates of Government departments to be carried or possessed by them for their protection in the execution of their duty, are not required to be licenced. Under clause (b) of section 1 of the Arms Act, nothing in the Act or rules applies to the bearing or possession of such arms by such persons. Police officers of and above the rank of Sub-Inspectors including Sergeants, are authorised to possess one revolver as part of their equipment. They are therefore exempted under section 1(b) of the Arms Act from the obligation to take out a licence in respect of a weapon so possessed (H. D. letters no. 1246, dated the 16th October, 1919, no. 1171, dated the 17th May, 1921, and no. F. 21/XXXIII/24 dated the 14th April 1925.)

(12) The following arms shall comprise the equipment of an officer of the Royal Navy and of the Royal Indian Marine for the purposes of section, (b) of the Act.

1 sword.

1 rifle—303 SMLE, Mark III or III*

1 pistol—of no special pattern. (H. D. no. F.-21-XXX-23 dated the 23rd Oct. 1924.)

(13) The following arms shall comprise the equipment of the officers of the Army or Royal Air Force for the purpose of this section.

Officers holding Commissions from
His Majesty the King

Officers holding Commissions from
His Excellency the Viceroy.

1 sword

2 revolvers or

2 pistols or

1 revolver and

1 pistol.

{ Of no special pattern
but one of the weapons
must take Govt.
ammunition of '455
bore. }

1 sword.

1 revolver (Wellesley '455 bore.)

1 Dirk

1 Skeel, Dhu

{ Highland Regiments only }

{ 1 Kukri (Gurkha and
Garhwali Regiments
only.) }

(H. D. letter no. F. 21-XXX-23 dated the 15th March, 1924,
and no F. 21-XLVI-25 dated the 23rd October, 1925.)

[NOTE—These orders apply to persons exempted under section 1 (b) of the Act. For the purposes of clauses (3) and (4) in Schedule VII, of the Arms Rules, 1924, the above description of the equipment will apply to officers who retire after the 15th March 1924. Such officers are therefore entitled to a free licence for two revolvers or two pistols or one revolver and one pistol which formed part of their equipment, provided that one of these weapons takes Govt. ammunition of '455 bore. Military officers who retired after the 18th March 1924, are entitled to free licences for revolvers or automatic pistols which are proved to have formed part of their equipment when in Service, irrespective of bore. For ex-officers of the Auxiliary Force, equipment has not been defined, and licensing officers before issuing free licences, need only satisfy themselves that the weapons for which exemption is claimed actually formed part of the officers equipment. (H. D. letter no. F. 21-XXV—25, dated the 25th July, 1925.)]

(14) The officers of the **Army or Royal Air Force**, holding Commissions both from His Majesty the King and His Excellency the Viceroy entitled to be in possession, as part of their equipment for the purposes of section 1 (b) of the Arms Act, of two swords, one Full Dress Pattern and the other Field Service Pattern, when so required by the "Dress Regulations for the Army." (H. D. letter no F-21-XXX-23 dated the 15th October, 1924)

(15) Under paragraph 197, Dress Regulations (India), 1931, retired officers of the Indian Army are permitted to wear swords forming part of the uniform when attending military ceremonies and also on other occasions when the wearing of uniform appear appropriate. Swords are exempt from the operation of the prohibitions and directions contained in the Arms Act, and licences should not be asked for them. (H. D. letter no. 21/LIX/32, dated the 17th November, 1932.)

(16) The Arms Act is highly penal and must be strictly construed.

SANGAM LAL.

15 ALL. 139.

ORI.

A. I. R. 1929 OUDH. 157.

(17) A penal enactment like the Arms Act must be construed in favour of the accused.

SETH BALKRISHNA.

A. I. R. 1936 NAG. 219.

(18) It is an elementary principle of the construction of statutes that the words have to be read in their literal sense. The Courts cannot put upon them a construction which they believed to represent the intention of legislature at the time of the passing of the statute.

FAZAL RAHIM.

34 CR. L. J. 670.

(19) The sale of arms by the nazir of the court, in execution of a decree is a sale by a public servant in discharge of his duty and is therefore excluded from the operation of the Arms Act. It is expedient for the court ordering such sale to give notice of the sale and of the purchaser's name and address, as contemplated by s. 5 of the Act to the Magistrate of the district or to the police officer in charge of the nearest police station.

WALA HIRAJI.

9 BOM. 518.

(20) Where a case might properly have been tried under the Arms Act or the Explosives Act, but the public prosecutor did not ask the High Court to order a retrial, the High Court cannot convict the accused under either of those two enactments without a fresh trial.

JOSEPH KANGANI.

8 M. L. T. 298.

2. This Act shall come into force on such day as the Governor-General in Council, by notification in the *Gazette of India*, appoints.

NOTE.—The Act came into force on the 1st Oct. 1878., (H. D. notn. No. 1169 dated the 27th June, 1878.)

3. On and from that day the enactments mentioned in the first Schedule hereto annexed shall be repealed to the extent specified in the third column of the said Schedule. But all authorities and permissions given, licences and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed under any enactment hereby repealed, shall be deemed to be, respectively, given, granted, made, published and prescribed under this Act.

And all such authorities, permissions, licences and exemptions shall, except as otherwise provided by this Act, continue in force for the period for which they may have been given or granted, respectively, or where no such period is expressly fixed, for one year from the date on which this Act comes into force, and shall then cease to have effect.

4. In this Act, unless there be something repugnant in the subject or context.—

Interpretation clause.

"cannon" includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting, and serving the same :

"arms" includes firearms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms ;

"ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flints, gun-wads, percussion caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre :

"military stores" in any section of this Act as applied to any part of British India means any military stores to which the Governor-General in Council may, from time to time, by notification in the *Gazette of India*, specially extend such section, in such part, and includes also all lead, sulphur, saltpetre and other material to which the Governor-General in Council may from time to time so extend such section :

"licence" means a licence granted under this Act, and "licensed" means holding such licence.

NOTES.

(1) For the definition of "arms" contained in section 4 of the Act, substitute the following so far as it is applicable to **Burma** ;—

"arms" includes—

- (i) **clasp-knives** the blades of which are pointed and exceed three inches in length ;
- (ii) **knives** with pointed blades rigidly affixed, or capable of being rigidly affixed to the handle, and measuring in all not over 5 inches in length, which are not intended, exclusively, for domestic, agricultural, or industrial purposes ; provided that it shall be presumed, until the contrary is proved, that knives of these descriptions are not intended exclusively for such purposes ;
- (iii) **knives** of such other kinds as the Local Government may, by notification, prescribe ; and
- (iv) **firearms**, bayonets, swords, daggers, spear-heads and bows and arrows, also cannon and part of arms, and machinery for manufacturing arms, (Burma Act VII of 1928).

(2) **Iron dropping or pellets (bunda)** are ammunition (H. D. letter no. 1633 dated the 7th Oct. 1881).

(3) **The sights of guns and rifles** should be regarded as parts of arms (H. D. letter no. 900 dated the 1st May, 1911).

(4) **Humane cattle killers** are not arms for the purpose of the Indian Tariff Act and notn. no. 3112 dated the 2nd June 1924, and **cartridges** for the same are not ammunition for the same purposes, unless they are capable of being used in firearms as well as in humane cattle killers. (H. D. letter no. F. 21-XIV-28 dated the 4th Sept. 1928.).

(5) **Humane cattle killers** are not to be classed as arms for the purposes of the Arms Act and no licence, for their possession, is necessary. (H. D. letter no. F. 21/XLV/20 dated the 30th March, 1936.)

(6) **Appliances such as hand grenades and riot pistols for discharging gas**, which are designed to render helpless for the time being a mob or an individual without causing a permanent injury, are arms within the meaning of the Act and are subject to all the prohibitions and restrictions imposed by the Act and Rules (H. D. letter no F. 21-LV-28 dated the 28th Feb. 1929).

(7) The weapon described as "life preserver" or "zipo" is an arm within the meaning of section 4, and is subject therefore to all prohibitions and directions contained in the Act and Rules. (H. D. letter no. F 21/XXXI/30 dated the 8th May 1930).

(8) The Burglar Alarm contrivance known as "Stop" is a fire-arm within the meaning of this section. (H. D. letter no. F-21-V-30 dated the 8th Oct. 1930).

(9) The Government of India have held the alarm contrivance known as 'Stop' to be an arm within the meaning of section 4, and therefore, subject to all the prohibitions and directions contained in the Act. (H. D. letter no. F. 21-LXXIII-30 dated the 27th Nov 1936).

(10) The word "includes" in sec 4 is clearly not intended to be exhaustive.
GANGAMMA, 1 WEIS 654

(11) There is no exhaustive definition in the Act of the expression arms. Where the circumstances of a case show that a weapon or instrument is carried for the purpose of offence or defence and not as an article for domestic or agricultural utility, there is no reason why such weapon or instrument should not be held to fall within the category of arms.

SANTA SINGH, 16 P. R. 1900 CR.
RALLA SINGH, 20 CR. L. J. 11=32 P. R. 1918 CR.
MANGAL SINGH, A. I. R. 1923 LAH. 138=2 LAH. 291.
EBRAHIM DAWOODJI BABI BAWA, 3 L. B. R. 1.=11 BUR. L. R. 183.
HMAT KYAN, 1 L. B. R. 271.
NGA PO TEIN, L. B. R. 1893-1900 487.
NGA LU GALE, A. I. R. 1928, RANG. 49=5 RANG. 710.
MEHR DIN, 28 Cr. L. J. 199=A. I. R. 1927 LAH. 162.

(12) The word arms, except so far as the definition expressly includes other weapons, must be understood to mean weapons of offence suitable for warfare. If anything, in the opinion of the Court, is not an arm, it is immaterial whether the Government have or have not excluded it from the operation of the Act.

NAG NE U, L. B. R. 1893-1900, 416.

(13) The mere fact that the weapon is dangerous and, if used, may probably cause death, does not make it an arm within the meaning of sec. 4.

GAJJA, 15 Cr. L. J. 685=26 I. C. 133.

(14) No weapon can be held to be an arm unless it is a weapon which in ordinary parlance can be spoken of as an arm, and, if it is not designed for use as a weapon of offence or defence, although it may be used as such, then it is not an arm.

MEHRDIN, A. I. R. 1927, LAH. 162.
PO ME, A. I. R. 1923, RANG. 23=11 B. L. R. 340.

(15) Neither the length, breadth or the form of the blade of a weapon, nor the handle, afford any test of its classification as an arm. Whatever can be used as an instrument of attack or defence for cutting as well as for thrusting and is not an ordinary implement for domestic purpose, falls within the purview of arms.

SATISH CHANDRA ROY, 34 CAL. 749=11 C. W. N. 791.
RALLA SINGH, P. R. 1918 Cr. 32.

(16) Whether in a particular instance an instrument is a fire-arm or not is a question to be determined according to the facts of each case and the circumstance that it is in an unserviceable condition is not sufficient to take it out of the category of fire-arm. The word firearms only means arms that are fired by means of gun-powder or other explosives.

AZU WALID BANGAR, 1. S. L. R. 18.
HARSHANATH CHATTERJI, 42 CAL. 1153.
ABANI MOHAN BHATTACHARJEE, 60 CAL. 1477=A. I. R. 1934, CAL. 368.

(17) Air-gun not adapted for use with explosive substances and classed as toys for the purposes of the Tariff Act, was a toy and did not come within the definition of arms.

MAUNG SHWE THET, 4 Cr. L. J. 239=12 BUR. L. R. 201.

(18) A gun rendered unserviceable by the loss of trigger does not come within the definition of arms. A broken and unserviceable gun does not fall under the description of "parts of arms." A fire-arm which is defective and otherwise unserviceable is not an arm within the meaning of the Act, and consequently not one for which a licence need be taken out, even though, it might be capable of being rendered serviceable by being repaired. The unserviceable remains

of a gun could not be fairly described as a fire-arm within the meaning of s. 14, and do not require to be protected by a licence under that section. A pistol which is out of repairs cannot be regarded as a weapon for offence or defence.

SIDAPPA

6 MAD. 60.

RASOOL SAHIB and KULAPPA GRAMANI

1 WEIR. 658.

CHAITOO GOND

12 C. P. L. R. CR. 8

HARPAL RAI

24 ALL. 454.

(19) A revolver with a broken trigger is within the definition of arms. In such cases the question is not so much whether the particular weapon is serviceable as a fire-arm but whether it has lost its specific character and has so ceased to be a firearm.

JAYARAM REDDI

21 MAD. 360.

(20) A gun-barrel so long as it can be used as a gun-barrel, is an arm within the definition of s. 4, because it is a part of fire-arm. But it is not a fire-arm within the meaning of s. 14, nor is it one of the other articles mentioned in the section. A gun-barrel and nipple in serviceable condition are arms within the meaning of sec. 4.

BARWAR TELI

12 C. P. L. R. 10.

VYAPURI KANGANI

7 MAD. 70.

(21) An old fashioned muzzle loading gun-barrel in good condition and with the touch-hole in good order is a fire-arm within the meaning of s. 14. There is nothing in s. 14 inconsistent with s. 4. Fire-arms in s. 14 include parts of fire-arms.

DHAN SINGH

3 N. L. R. 58.

(22) A revolver even if it is out of repair or is clogged from disuse is an arm and a person in possession of it without a licence is guilty of an offence under s. 19.

SAMIULLAH

6 P. R. 1908 CR.

JAYARAM REDDI

21 MAD. 360.

(23) Possession of a Quackenbush rifle (which fires small cartridge charged with gunpowder in a metal casing and a miniature bullet by means of a sticker worked by a string, which is released on pulling the trigger) in the Kohat district is illegal as it falls within the general expression "arms of the kind known as rifles."

HARNAM SINGH

159 P. R. 1913 CR.

(24) Bolts and bars of rifles are arms within the meaning of sec. 4. In order to fall within this section the weapon need not be in serviceable condition

KARM DIN

A. I. R. 1923, LAH. 617.

(25) Accused were convicted for having in their possession sword hilts bought from time to time at sales of old stores. They contended that sword hilts were not arms within the meaning of the Act. Held that the expression arms included "parts of arms" and that the hilts being part of swords were arms.

NUR DIN AND NIFAM DIN

38 P. R. 1889 CR.

(26) A sword-stick is a sword within the meaning of sec. 4 of the Act. A sword-stick is a weapon different from a Kirpan. The two expressions cannot be regarded as synonymous and so the possession of a sword-stick by a Sikh is not exempted by sec. 27 of the Act.

SATISH CHANDRA ROY

34 CAL. 749.

RANDHIR SINGH

A. I. R. 1928 LAH. 239.

(27) A Sikh possessing or wearing one sword commits no offence under s. 19 by virtue of the exemption under the Arms Rules

HARI SINGH

A. I. R. 1924 LAH. 600.

(28) A battle axe is an arm.

GANGAMMA

1 WEIR 654.

(29) Chhavi may be arms within the meaning of the Arms Act, and as the word 'arms' in s. 4 of the Act includes parts of arms the possession of a chhavi-head may amount to possession of arms. Every thing is chhavi which has a large axe-like blade curved or otherwise with an arrangement of ring or rings for binding it to the handle, and a handle of considerable length. The question of exclusive possession of an arm cannot be raised for the first time in appeal.

KESAR SINGH

20 P. R. 1890 CR.

SANTA SINGH

16 P. R. 1900 CR.

GAHNA

33 P. L. R. 1914 CR.

JINDA

10 P. L. R. 1916 CR.

(30) A sword 31 inches long with a blade length of 22 inches in a simple scabbard was held not to be proved a Kirpan. A Sikh found in possession of Kirpans of the length varying from nine to ten inches is not guilty of the offence under secs. 19 (a) and (d) as such Kirpans are not swords.

BACHITTAR SINGH

A. I. R. 1922 LAH. 141.

HARI SINGH

A. I. R. 1924, LAH. 600.

DALJIT SINGH FATEH SINGH

A. I. R. 1930 BOM. 153=31 CR. L. J. 847.

(31) The exemption only applies to Kirpans actually in existence and possessed or carried by Sikhs and not to the manufacture of Kirpans by Sikhs. A Sikh is not prevented by provisions in the Arms Act, from dealing with Kirpans which he possesses any way he likes, but he is not exempted by the entry in Schedule II from the operation of the prohibition as to manufacture contained in section 5 of the Act.

BASTA SINGH

A. I. R. 1923, LAH. 267=3 LAH. 437.

(32) Appellant was found carrying a bamboo *dang* 5 ft. 7 inches long, which had an iron attachment at the thick end, and hidden in the fold of his loin cloth was a blade 8 inches long which fitted the end of the *dang*. Held, that taking into consideration the nature of the instrument the fact that the blade could be readily slipped on and off the stick and the fact that it was found detached from the stick and hidden in the appellant's loin cloth showed that it was possessed by him not for ordinary domestic purposes but for purposes of offence and defence and that it was included in the term 'arms' used in the Act.

MANGAL SINGH

A. I. R. 1923 LAH. 138, 2 LAH. 133

(33) Carrying a Sword or Kirpan 9 inches in length, is an offence under sec. 62 of the Calcutta Police Act—(Bengal Act IV of 1863).

KRIPAL SINGH

A. I. R. 1924, CAL. 231

(34) An instrument consisting of two separate pieces, namely, *lathi*, 6' 3" long, at one end of which a hollow screw and an axe like blade, 5" by 4½" having a screw to allow of its being fixed into the long *lathi* was held to be an arm within the meaning of sec. 19 (f), as no instrument like that is ever used for domestic or agricultural purposes.

FURAN SINGH

A. I. R. 1928, LAH. 295

(35) Dags of the kind described as excluded from the operation of the Act, are not arms within the meaning of the Act and it is therefore unnecessary to exclude them from the operation of the Act.

NGA NE U.

L. B. R. 1893-1900, 416

(36) The meaning of *Dahmyaung* in the Burmese translation of the Arms Act must be limited to the meaning of dagger.

NGA TUM BAU

L. B. R. 1898-1900, 320

(37) *Dalwas*, spears and forks do not come within the definition of military stores in s. 4 and the mere possession of such weapon is not a punishable offence in Burma under s. 19 of the Act. But going armed with swords or spears without a licence is punishable under s. 13.

NGA PO TEIN

U. B. R. 1892-1896, VOL I, 1.

(38) A spear cannot be held to include a spear-head

RAM BRIOH

38 CR. L. J. 511=A. I. R. 1937. ALL. 228

(39) The accused imported certain knives described as hunting-knives and kept with him. One edge was sharp up to the guard, the other only at the point. The knife could be used for stabbing and thrusting. Held, that the instrument fell within the category of arm.

BISHAN SINGH

A. I. R. 1924, CAL. 714=51 CAL. 573,

(40) A clasp knife which has a blade 5½ inches long with a pointed end and is fitted to a long handle and turns over into the handle, falls within the meaning of the word 'arms'. Dagger-shaped knives known as clasp knives fall within the definition of arms.

NGA LU GULE

A. I. R. 1928, RANG. 49=5 RANG. 710.

(41) Though the exhibit knives were stout and formidable ones, they could not from their appearance be said to have been primarily manufactured with the intention of using them for offence or defence. They are useful for domestic use or for cutting stocks.

ME THIN

7 BUR. L. T. 165.

(43) A cook's knife is not an arm. The accused's conduct in manufacturing a sheath for the knife, to enable him to conveniently carry it about with him, does not convert it into an arm, unless the knife is altered (e. g.) by grinding it so as to make it double edged.

AUNG BA

5 L. E. R. 130.

(43) A table knife however carried or intended to be used is not an arm.

NGA KYA NYO

9 BUR. 207.

(44) A *dashe upyat* of the usual type is primarily intended for domestic or agricultural purposes and is not an arm within the meaning of the Act.

HAMYIT

5 B. L. B. 207=3 BUR. L. T. 91.

(45) The true criterion is not whether any given *dah* is an "Upyat" but what was the intention of the maker as regards its purposes.

Po ME

A. I. R. 1923. RANG 23=11 L. B. R. 340.

(46) Axe or knife does not become arm within s. 4 by merely using it for offending or defending on particular occasion.

MEHR DIN

A. I. R. 1927, LAH 162.

(47) If *Lee Metford* bullets were capable or fit for use they are "parts" of ammunition.

CHETA

ALL. REV. N. NO. 517 OF SEP. 1917.

(48) Empty cartridge cases of which the caps have been exploded do not come under the definition of ammunition in the Act.

An instrument for repairing cartridge cases of the Martini Henry rifle is not machinery for manufacturing ammunition within the meaning of the Act.

JAMAN KHAN

20 P. R. 1900 CR.

(49) Empty cartridge cases in which the caps have been exploded come within the definition of ammunition. To support a conviction for possessing empty cartridges it should be proved that the cartridges can be reloaded in India and used as ammunition by persons with whom they are found. If this is not found the cartridges are not ammunition and so no prosecution can be made on them.

AMIR

A. I. R. 1925, ALL. 498-47 ALL 629.

KALLU

A. I. R. 1926, ALL 255.

BALDEV SINGH

10 Cr. L. J. 573=32 ALL 152.

EHRAHIM ALIBHOY

7 BOM. L. R. 472-2 Cr. L. J. 449.

ALADIN

46 A. 107=A. I. R. 1924 ALL 215.

RANGASWAMI AIYAR

4 I. C. 405.

BHOPAL SINGH

A. I. R. 1936, 392=37 Cr. L. J. 727.

(50) A cartridge case is undoubtedly a part of ammunition within the meaning of sec. 4 of the Arms Act. It is an offence under the Act to have an empty cartridge case in one's possession, but in the normal course when it is not suspected that the empty cartridge case is to be reloaded or to be used in future as ammunition, the matter would be of such slight importance that it would be ignored under the provisions of s. 93 of the I. P. C. or under the maxim *de minimis non curat lex*.

A piece of lead in the shape of a bullet or in the shape of a shot is certainly ammunition or a part of ammunition. Lead, as such, which is not in such a shape, is excluded from the meaning of the terms, although lead can be made up into cartridges.

BHOPAL SINGH

37 Cr. L. J. 727=A. I. R. 1936, ALL. 392

(51) The rockets referred to in s. 4 under the definition of ammunition are war-rockets.

SUPPI

5 MAD. 159

(52) A person in possession of a quantity of gunpowder without licence is liable to conviction under s. 19 although he may have intended to employ the powder in the manufacture of fire-works or other harmless purposes, inasmuch as gunpowder is a material capable of being used for purposes of warfare.

KASIM SAHIB

8 MAD. 202.

(53) **Patakas** which are small packets, wrapped in a paper, of chlorate-potash mixed with small pieces of kankar and which explode with a slight report when thrown with force against a wall or other hard surface, are not fireworks within the Explosives Act, and so no licence is necessary for the manufacture or sale of Patakas.

BANSIDHAR

1 P. R. 1910 CR. = 9 P. W. R. 1910 CR.

(54) The general words "other explosive or fulminating materials" in s. 4 must according to the well recognized rule of "*cjusdem generis*" be interpreted in the light of the exempted explosives. According to this the definition of "ammunition" includes such explosive or fulminating material as could be used for any military purpose or in particular for fire-arms or torpedos or war rockets or for mining or blasting. As patakas are quite useless for such purposes, they are not "ammunition" within the meaning of the Act.

It is not fair in revision to alter a conviction under one Act to one under another Act unless a conviction under the latter Act were obviously correct and unless it were certain that the accused had not been prejudiced by being charged under the former Act.

KIFAYATULLAA KHAN

A. I. R. 1931 ALL. 17

(55) Accused was convicted under s. 5 for the manufacture, possession and sale of explosives in Burma and for possessing explosives without a licence. *Held*, that licences under these rules are not required for the possession of explosives of this nature. But cartridges and detonators are ammunition as defined in s. 4 and the accused might properly have been convicted under s. 19 (f) of the Act,

NGA YE U

L. B. R. 1897-1910 VOL. 1., 139

(56) Although lead is exempt from the operation of s. 4, yet, if it is moulded into bullets of .20 to .24 bore, it is ammunition within the meaning of the said section. In a case of technical offence a nominal sentence is always quite sufficient to meet the ends of justice.

SANT SINGH

16 P. R. 1910 CR.

(57) In a case under s. 19 (1), the quantity of lead found with the accused and the neighbourhood were such as to suggest that the lead was used for fishing purposes. The Magistrate merely asked each of the accused whether he admitted having the lead for sale without license although they were not represented by counsel and on their pleading guilty convicted them. *Held*, that the Magistrate should have in his examination of the accused put some questions with a view to elucidating from them whether they were *prima facie* vendors of lead for industrial, that is, fishing, purposes within the meaning of the Arms Act.

ALI HOSSEIN

128 I. C. 845 = A. I. R. 1930 RANG. 349 = 32 Cr. L. J. 206.

(58) Lathis are arms within the meaning of sec. 106, Cr. P. C.

SARJUG LAL,

35 I. C. 489. = 17 Gr. L. J. 313.

II—Manufacture, Conversion and Sale.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores except under a licence and in the manner and to the extent, permitted thereby.

Unlicensed manu-
facture, conversion
and sale prohibited.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address.

NOTES.

(1) If an officer or soldier wishes to dispose of any arms or ammunition either by private sale or by public auction, he should ascertain that the would-be purchaser is a person entitled by law to possess the same and if such person's name does not appear in the official Army or Civil List he should apply to the Magistrate or Deputy Commissioner of the District or the Local Political Officer, as the case may be, for permission for the transaction to take place. (I A. R. 12 of 3rd Jan. 1910).

These orders were extended to Civil Officers by H. D. letters no. 902 dated the 20th Feb and no. 6315 dated the 13th Dec. 1901.

(2) All arms and ammunition and articles of this nature found among unclaimed property in the possession of Railway Companies should be sent to the nearest Magistrate for sale on the understanding that the sale proceeds will be made over to the railway authorities. (Ry. D. letter no. 2106 R. T. dated the 3rd Dec. 1908).

(3) The sale of arms, ammunition or military stores is prohibited except under a licence and in the manner and to the extent permitted thereby. The only exception allowed is the sale of arms or ammunition possessed by a person for his private use, which is permitted subject to the observance of certain conditions specified in the second part of the section. This exception would not cover the case of an agent to whom arms are made over for sale on commission. Sale by an agent in such circumstances would be illegal except under a licence (Burma A. M. Ed. 1926, page 138, para 19).

(4) When a person who repairs arms is also a maker of arms, it is necessary, under the existing law, that he should provide himself with a licence in the latter capacity, so that the present question practically affects persons in the position of ordinary blacksmiths or others who may have arms in their temporary keeping for purposes of repair. In regard to these classes of persons, it formed no part of the intention of the Arms Act to require licences to be taken out, and in future no licences shall be required merely for carrying on the business of repairing arms. (H. D. resn no. 69-2039-50 dated the 15th Dec. 1881) Those repairers of arms, however, who stock spare parts of arms are required to take out licences for the possession of those spare parts in one or both of forms IX or XI or forms X and XII (H. D. no. 4-2 XIII-26 dated the 2nd Aug. 1926).

(5) The temporary possession of a gun by a servant who carries it from his master's house to the blacksmith for repair and by the blacksmith for the purpose of repair without a licence is not punishable under sec. 19. The repairing of arms is not manufacture within the meaning of ss. 5 and 19 (a).

TOTA RAM
YAGANTIAH

16 ALL. 276-1894 A. W. N. 82.
1 WEIR 653.

(6) A person who repairs arms and is in possession of guns made over to him for repairs, cannot be convicted of being in possession of arms without licence.

MURLI

A. I. R. 1929, ALL. 720

(7) The manufacture or possession of fireworks including rockets which are mere fireworks, does not come within the prohibition of s. 5. The rockets referred to in s. 4 under the definition of ammunition are war-rockets.

SUPPI

5 MAD. 159.

(8) *Vide* Note no (19) under sec 1,—WALA HIRAJI,—9 BOM. 518, page 87 *ante*.

(9) A person having obtained a licence for match-lock had the same converted into a percussion gun. He was convicted under s. 19 on the ground that the licence did not permit him to keep a percussion gun. Held that the accused could not be convicted under that section.

BODAPPA

10 MAD. 31.

(10) There is nothing in the Act or Rules which renders a sale of sulphur and ammunition by agent of a licence-holder illegal.

SITHARAMMAYA

12 MAD. 473.

(11) The manufacturer of the dagger shaped knives (known as clasp-knives) before the Court intended to supply weapons to persons who wanted efficient stabbing instruments. They could not be likely to serve any domestic purpose and therefore fell within the definition of arms.

EBRAHIM DAWOODJI BABI BAWA.

3 L. B. R. I.=11 BUR. L. R. 183.

(12) The mere possession or sale of **fire-works** without a licence is no offence under the Arms Act.

BOYINAPALLI VENKATARAJU

1 WEIR 655.

(13) Where the accused who had a licence under the **Explosives Act** to manufacture and sell **gun-powder and fire-works on certain premises**, manufactured fire-works at a different place, *held* that accused could not be convicted under the Arms Act.

RAMASWAMI PILLAI

1 WEIR 656.

(14) A Sikh is not exempted from the operation of the prohibition as to **manufacture contained in sec. 5.**

BASTA SINGH

A. I. R. 1923, LAH. 267, 3 LAH. 437

III—Import, Export and Transport.

6. No person shall bring or take by sea or by land into or out of British India any arms, ammunition or military stores except under a licence and in the manner and to the extent permitted by such licence.

Unlicensed importation, and exportation prohibited,

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Central Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Central Government thereon.

Importation and exportation of arms and ammunition for private use

Explanation.—Arms, ammunition and military stores taken from one part of British India, to another by sea or across intervening territory not being part of British India are taken out of and brought into British India, within the meaning of this section.

NOTES.

(1) The words "Central Government" in sections 6 and 7 were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

(2) Any person "**lawfully entitled to possess arms**" can import into British India or take out of the country with him or send out any arms or ammunition without any special licence, provided these are of reasonable quantity, are for his personal use and their possession is covered either by a licence or by exemption. The words "**lawfully entitled to possess**", apply to persons licensed according to law to possess arms, as well as to persons exempted from the operation of sections 13 and 14 of the Act. (H. L. letter no 1862, dated the 14th Dec 1880).

(3) When a person employs the agency of a firm for the import or export of arms or ammunition which he is entitled to possess the transaction is within the exemption conferred by the second para, of sec. 6. (H. D. letter No. 21-LXX-VIII-30 dated the 6th February, 1931).

(4) An officer in Government service abroad who does possess a valid fire-arm certificate authorising him to hold his fire-arms in Great Britain is not allowed to import any fire-arms or ammunition (other than smooth bore shot-guns and ammunition therefor) save under a licence issued by the Board of Trade. (H. D. letter no. F. 21-XXVI-31 dated the 28th April, 1931).

(5) The exemption in clause 2 of section 6 covers only the export of arms and ammunition by a privileged person for his own personal use, not the export of arms

and ammunition by other people for the use of a privileged person. (For. Dept. letter no. 1327-1, dated the 23rd March 1891).

(6) When arms and ammunition are simultaneously imported, a licence under the Arms Act is necessary for the import of arms and another, under the Explosives Act, for the import of ammunition, irrespective of the question whether a licence under the Arms Act has been obtained or not. (H. D. letter no. 4638, dated the 6th August 1901).

(7) All articles of the foreign parcel mail imported into India and declared or suspected to contain arms and ammunition are scrutinised by the Customs authorities. Such articles as are found to have been imported in contravention of the terms of notification no. 2112, dated the 2nd June 1924 (*Vide* note no. (9) (2) below), are detained by the Customs authorities and dealt with in accordance with the provision of section 167 (3) of the Sea Customs Act, 1878 (VIII of 1878), any arms that are confiscated under this section being disposed of in accordance with the rules in force for the disposal of confiscated weapons. Parcels which on scrutiny by the Customs authorities are passed by them are handed over to the post-office for delivery to the consignees. Inward foreign articles of the letter mail found to contain arms and ammunition are forwarded by the post-office of delivery to the chief port of the Presidency or province nearest to that office to be there made over to the Customs authorities who then deal with them in the manner above prescribed for the treatment of parcels. The foregoing instructions do not restrict in any degree the discretionary powers exercised by the Customs authorities under the existing provisions of the law. (C. and I. Dept. no. 523-527-17, dated the 24th January 1911).

(8) The transmission of arms and ammunition in foreign postal articles forwarded by other postal administrations in open transit (*a decouvert*), through the Indian Post Office, is prohibited. Articles of this class should be returned to the country of origin. Transit articles of the foreign mail, the contents of which although falling under the head of "arms and ammunition" as defined in the Indian Arms Act are in themselves quite harmless, may, however, at the discretion of Postmaster General be transmitted to their destinations. (C. and I. Dept. no. 8072-8074-55, dated the 29th Sept. 1913).

(9) Under s. 19 of the Sea Customs Act 1878, (VIII of 1878) and in supersession of the notn. of the Dept. of C. and I. no. 5377 dated the 26th July 1919, the Govt. of India has prohibited :—

(1) the bringing by sea or by land into British India, through the medium of the Post Office of arms, ammunition or military stores as defined in the Indian Arms Act, 1878 (XI of 1878),

Provided that this prohibition shall not apply to the bringing of arms, ammunition or military stores into British India—

(a) from Berar, or

(b) by or on behalf of Government.

(2) the bringing or taking by sea or land into or out of British India of arms, ammunition or military stores, as defined in the Indian Arms Act (XI of 1878), save in accordance with the provisions of that Act and of the rules and orders for the time being in force thereunder. (C. and I. Dept. no. 2112 dated the 2nd June 1924).

(10) The procedure for the exportation of arms, ammunition and military stores required for the Governments of Afghanistan and Nepal are laid down in the letters of the Govt. of India, No. 1287/Fr. dated the 5th December 1922 and of Govt. of Bengal, no. 2564 dated the 10th July 1925.

(11) Licensing authorities should refuse permission to import walking-stick-guns. Arms dealers possessing such stick-guns in stock may however sell them to persons who hold licence for them (H. D. letters no. F. 21-XXXIII-32 dated the 15th August 1932 and no. F. 21-XXXIII-32 dated 20th Jany. 1933).

(12) Licensing authorities should refuse permission to import pistols manufactured as a Stylograph pencil and its ammunition. The pistol can be used for firing shot cartridge and can also take standard .320 revolver ball cartridge. The cartridge supplied with pistols are loaded with 4.7 grains of smokeless powder and a glutinous bag containing a virulent liquid tear gas. (H. D. letter no. F. 21 XXI-31 dated the 10th Sep. 1931).

(13) The automatic alarm pistols which are being advertised for sale as toys have been used by dacoits with success. These pistols fire alarm corks which are explosives of the 'Fulminate' class, the importation of which is prohibited without a licence. The importation of these weapons is restricted as they are considered to be of such a construction or character as to render them capable of being used otherwise than as toys. (Bengal Rule 67 H)

(14) In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878 (VIII of 1878), and in supersession of Fin Dept notn no. 38 dated the 18th June 1927, the Government has restricted the bringing into British India dummy or imitation revolvers or pistols, to cases in which a permit to import the same has been granted, in the case of import at a Presidency Town or Rangoon, by the Commissioner of Police, and in the case of import elsewhere by the District Magistrate

Provided that the restriction imposed by this notification shall not apply to revolvers or pistols which are of such construction and character as to render them incapable of being used other than a toy or of being converted into lethal weapons. (Fin. Dept notn. no 25 dated the 6th September 1930)

(15) A person lawfully entitled to possess arms and ammunition signing the prescribed certificate of purchase of the same in the name of another with an address not his own and thereby deceiving the gunsmith and the Government and defeating the object of the certificate, commits forgery his act having been done fraudulently if not dishonestly.

CAUSLEY

43 CAL. 421.

(16) Where the accused who was the servant of some lady in the Nepal State was proved to have brought the gun to British India for the purpose of having it repaired and he had no licence under the Indian Arms Act, held, that he was guilty of an offence under s 19 (c) of the Arms Act, but that it was sufficient to impose a sentence of fine.

ORI

A. I R, 1929, OUDH. 157.

7. Notwithstanding anything contained in the Sea Customs Act, 1878, (VIII of 1878), no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Central Government required to warehousing of arms, etc

8. [Levy of duties on arms, etc., imported by sea] Repealed by the Repealing and Amending Act 1891 (XII of 1891.)

9. [Power to impose duty on import by land] Repealed by the Repealing and Amending Act 1891, (XII of 1891)

10. The Governor-General in Council may, from time to time, by notification in the Gazette of India.—

Power to prohibit transport (a) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a licence and to the extent and in the manner permitted by such licence, and

(b) cancel any such notification

Explanation. Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section.

Transhipment of arms.

NOTES.

(1) In order to avoid the possibility of transport licence being used more than once, the time for which such licences are valid should invariably be entered in the proper column of the licence. The time allowed, specially in the case of arms, ammu-

nition or military stores licensed or transported through any part of British India to the frontier, should be carefully restricted to such period as may be considered reasonable. (H. D. no. 44-1737, dated the 23rd Sept. 1879).

(2) In the transmission of arms, ammunition and military stores from one British district to another through foreign territory, the procedure prescribed is that both an export and import licence in the regular form should be taken out—the export licence for the transmission of the consignment to foreign territory, and the import licence to cover its re-conveyance into British territory. Whenever such a case may arise a copy of the original licence for export should be communicated to the Magistrate of the place to which the consignment is ultimately destined. (For. Dept. no. 2864-I dated the 29th June 1887).

(3) Although the word "transport" as used in the Indian Arms Act, would in a certain sense, include every movement from place to place, yet the Government of India consider that looking to the general objects of the Act and the difficulties which might result from construing the words in its widest sense, it is reasonable to attach to it a more restricted meaning, which it would not perhaps be easy to define precisely, but which would certainly not include such movement as the removal of arms from a warehouse to a shop in the same town or the landing of arms imported. Under such restricted interpretation of the term no licence is required for the removal of ammunition from one magazine and warehouse to another in the same locality. (H. D. letter no. 88-2955, dated the 9th Nov. 1888).

(4) The Advocate General, Bengal has held that in the case in question, the offence of transporting arms without the requisite licence was complete, inasmuch as the arms had been removed or transported from the gunshop to the Railway station at Purbasera: a conviction under section 19 (d) of the Arms Act, as it stands, would therefore have been possible, if the accused had been charged with the substantive offence punishable under that section. (H. D., letter no. 3007, dated the 9th Nov. 1921).

11. *The Central Government, may, at any places along the boundary line between British India and foreign territory and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage animals, and all boxes, and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by Central Government in this behalf by name or in virtue of his office.

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a licence or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him.

Any person so apprehended and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police-officer, shall be delivered over, as soon as possible to a Police-officer.

*The words "Central Govt." have been substituted for the words "Local Govt." by the Govt. of India (Adaptation of Indian Laws) Order, 1937.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—Going armed and possessing arms, etc.

Prohibition of going armed without licence.

13, No person shall go armed with any arms except under a licence and to the extent and in the manner permitted thereby.

Any person so going armed without a licence or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the *Central Government in this behalf by name or by virtue of his office.

NOTES

(1) For the purposes of this section, 'arms' includes also knives with pointed blades rigidly affixed, or capable of being rigidly affixed, to the handle, and measuring in all over 5 inches in length, which are intended exclusively for domestic, agricultural or industrial purposes (Burma Act VII of 1928).

(2) Holder of a licence to kill wild beasts is not bound to take out a licence if he uses his gun for shooting purposes.

BOMAYA CHETTY

5 MAD. 36

(3) Section 13 prohibits a person from "going armed" except under a licence but the licensee is not bound to take his licence with him whenever he goes armed.

KORAGA

1 WEIR 661

KISHUNWA

20 CAL. 444

MUHAMAD IBRAHIM

22 Cr. L. J. 755

(4) When a licence to go armed is granted for protection only, the licensee cannot use it for sport or display.

VENKATARAYADU

1 WEIR 663

(5) A person who appears in public place or issues from his own property or abode, having about his person, a weapon of the sort described in s. 4 and not covered by a licence goes armed within the meaning of s. 13. The phrase "going armed" is not to be restricted to the meaning of carrying or bearing arms in the manner usual for the particular weapon in view.

NGA SHWE TON

A. I. R. 1927, RANG. 32, L. B. R. 1893-1900, 284

(6) The accused was found in another man's house wearing a dagger. He did not allege that the dagger was not his or that he had not brought it to the house. On the contrary he specified the purpose for which the dagger was used. Held, that in the above circumstances the accused has committed the offence of going armed with a dagger in contravention of s. 13.

NGA THA BAUNG

U. B. R. 1897-1901 Vol. 1, 4.

(7) *Dalwes, Spears and Forks* do not come within the definition of military stores. *Vide note (37) to sec. 4*—NGA PO TEIN, U. B. R. 1892-1896, Vol. 1, 1,—page 91.

(8) Possession of a *Jambia* is not an offence under sec. 13.

BALAJI MANAJI PATEL

12 BOM. L. R. 350 = A. I. R. 1934, BOM. 159

(9) A spear would not cease to be a spear by reason of its points and edges becoming blunt, if they are capable of being sharpened at any time, and taking of such a spear to the parade ground for gymnastic purposes amounts to going armed within the meaning of sec. 13.

SATTAGOWDA

A. I. R. 1930 BOM. 174 = 32 B. L. R. 571

(10) The word "arms" as defined in s. 4 includes parts of arms. It would therefore include a gun, minus a percussion cap, and a person carrying that gun would be going armed with arms and the person carrying such a gun without a licence would be guilty under s. 19 (e).

*The words "Central Govt." were substituted for the words "Local Govt." by the Govt. of India (Adaptation of Indian Laws) Order, 1937.

A man who is found going about with a pistol, gun, sword or other weapon within the definition of arm must, in the absence of proof to the contrary, be presumed to be carrying it with the purpose of using it, should an opportunity for using it arise. S. 13 itself as it stands is distinct from s. 14 as it implies the action or process of going armed. If arms according to the definition, are carried, the requirements of the section are fulfilled even where the weapon could not immediately be fired. Any other interpretation would open the way to evasion of the law by carrying caps or cartridges secretly or in the keeping of a companion.

GAJRAJ SINGH

38 CR. L. J. 639

14. No person shall have in his possession or under his control any cannon or firearms or any ammunition or military stores, except under a licence and in the manner and to the extent permitted thereby.

Unlicensed possession of firearms etc.

(Temporary provisions) Repealed by the Repealing and Amending Act, 1891 (XII of 1891.)

[Note. Sections 13 and 14 are not in the Chittagong Hill Tracts--For the Regulations in force in those tracts--Vide Chittagong Hill Tracts Regulation I of 1900.]

NOTES

(1) The unserviceable remains of a gun could not be fairly described as a fire-arm within the meaning of sec 14.

CHAITOO GOND

12 C. P. L. R. CR. 8

(2) A gun-barrel so long as it can be used as a gun-barrel is an arm within the meaning of sec. 4, because it is a part of fire-arm. But it is not a fire-arm within the meaning of sec. 14, nor it is one of the articles mentioned in the section.

BARWAR TELI

12 C. P. L. R. CR. 10

(3) Fire-arms in this section include parts of fire-arms.

DHAN SINGH

3 N. L. R. 53

(4) Where a person kept a gun for some time and made it over to another to keep it for him he cannot be convicted under sec. 19 (f). The only person who can be punished under s. 19. cl. (f) is the person who has in his possession or under his control any arm in contravention of secs. 14 and 19.

AKHIL NATH DUTT

15 C. W. N. 440

(5) There is no provision in this section requiring a person to deposit a spear. If there is no other basis of conviction, it is illegal.

CHAGANIPATE CHINO BASAVAPPA

291 I. C. 544 = 18 CR. L. J. 505

(6) Possession of parts of firearms is prohibited by this section read with s. 4.

HARSHA NATH CHATTERJEE

43 CAL. 1153, 19 C. W. N. 706

(7) Both licences and exemptions are granted by virtue of the Act and Rules. Any licence or exemption not so granted would be invalid and no protection to an accused person charged with contravening the Act. The fact that a person had been treated as one entitled e. g. to an exemption in any one year or for any period, would not prevent the matter from being re-opened in any succeeding year or period.

B. R. VERTANNES

34 CR. L. J. 112 = A. I. R. 1932 RANG 180

(8) The offence of going armed with fire-arms is considerably more narrow than the offence of being in possession merely of fire-arms. The expression "going armed" clearly indicates two things, namely, first an intention to use it as a firearm and, secondly, the possibility of using it.

SONAI MATHU AMBALAM

26 CR. L. J. 1025 = A. I. R. 1925 MAD. 585

(9) Where proceedings are instituted against any person for secret possession of arms in contravention of ss. 14 and 15, the accused should be discharged under s. 20 if the intention to conceal the possession is not made out. Offences created by s. 20 are distinct from those under s. 19.

NGA PO CHIN

8. B. L. R. 452

(10) In a prosecution for possession of fire-arms in contravention of ss. 14 and 15 of the Arms Act it is incumbent on the prosecution to prove that the

fire-arms were possessed in contravention of ss. 14 and 15 of the Act, in other words, that they were possessed without licence or other legal authority. It is incumbent on the prosecution to lead some evidence which would justify an inference that the possession was against the provisions of the Arms Act. The fact that the fire-arms have been possessed in furtherance of terrorist movements is not in itself an offence under the Arms Act.

It may be that there is a conspiracy to commit terrorist crimes, and, it may be that there is a conspiracy to possess fire-arms in contravention of the provisions of the Arms Act. But the two things are not the same. From the fact of being members of an organisation the object of which is to commit terroristic offences, it would not follow, in the absence of other evidence, that the accused were also parties to a criminal conspiracy for the specific and definite purpose of possessing fire-arms in contravention of the Arms Act.* It is a fallacy to suppose that merely because one was a member of the larger organisation although the objects of the two were not one and the same.

BIMAL KRISHNA BISWAS

61 CAL. 819—39 C W N 761—37 CR L. J. 840

(11) A man who possesses an arm for which he holds an expired licence does not do so "under that licence and in the manner and to the extent permitted thereby." Consequently he commits an offence under s. 19 (f) and is not punishable under s. 23.

ZAINULABDIN

38 CR. I J 396—A I. R. 1937 PESIL 30

*(12) Section 13 prohibits an unlicensed person from going armed with any kind of arms, that is to say, a person going armed with either a knife or a revolver comes within the provisions of the section. But with regard to fire-arms a further offence may be committed, namely, having them in possession or under control, without a licence. Section 14 covers this offence, and if this offence is committed with the intention referred to in s. 20, then a heavier punishment may be inflicted than for the simple offence under s. 14, the penalty for which is provided in s. 19 (f). To be in possession or control of arms other than those mentioned in s. 14 is not an offence, though it is an offence to go armed with them, as provided in s. 13. An unlicensed person going armed with a revolver may be convicted under either s. 13 or s. 14 of the Arms Act, and consequently may be convicted under s. 20.

SACHINDRA KAR GUPTA

35 CR L. J. 125

(13) Possession of arms without renewal of licence is punishable under s. 19 (f).

MALCOLM

A I. R. 1330 CAL. 218.

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860, applies at the time this Act comes into force or to which the *Central Government may, by notification in the official Gazette, specially extend this section, no person shall have in his possession any arms of any description, except under a licence and in the manner and to the extent permitted thereby.

Possession of arms of any description without licence prohibited in certain places.

NOTES

(1) Section 32, clause 2 of Act XXXI of 1860 (*Vide* page 7 *ante*) does not apply to Burma as it did not apply to Lower Burma on the 1st Oct. 1878.

(2) Section 15 has been extended to the following places—

Madras. The Malabar District—It is hereby notified that within the limits of the said district, no person who is not specified or described in Schedule I of the Indian Arms Rules, 1920, as exempted shall, from the date of this notification have in his possession any arms of any description except under a licence and in the manner and to the extent permitted by it. (Notn no. 222 dated the 14th Sep. 1922)

* The words "Central Government" were substituted for the words "the Local Govt. with the previous sanction of the Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Calicut, Ernad, Walayanad, Ponnani (G. O. No. 355 dated the 6th Feb. 1885 and no. 360 dated the 30th June 1815.)

Bombay—Aden.—(Notn. no. 3467 dated the 16th June 1897.)

In exercise of the powers conferred by section 15 of the Indian Arms Act, XI of 1878 and in supersession of the Government of Bombay notifications No. 391 dated the 18th January 1893 and No. 8225 dated the 12th December 1898, the Governor in Council, with the previous sanction of the Governor General in Council, is pleased specially to extend this section to the whole of the Bombay Presidency (Bombay notification No. 3395 dated the 10th September 1932.)

Bengal.—Section 15 of the Act is extended to all districts in Bengal and with effect from the 9th March 1923, no person of these districts shall have in his possession any arms of any description except under a licence and in the manner and to the extent permitted thereby. (Bengal notns. No. 787 dated the 9th March 1923 and No. 1121 dated the 31st March 1923).

N. B. This notification under section 15 does not in itself supersede any exemption under section 27 of the Act in force at the time. Exemptions in force remain in force; possession of arms becomes unlawful if the arms are among those notified under column 3 of Schedule II or among the exceptions noted in column 2 of Schedule II of the Indian Arms Rules, 1924. (Bengal letter no. 1838—1866 dated the 15th May 1922 and para. 24B of Local Rules)

Punjab—Districts of **Hazara, Peshawar, Kohat, Bannu Dera Ismail Khan and Dera Ghazi Khan.** (Notn. no. 1635 of the 16th Nov. 1900) (These districts, with the exception of Dera Ghazi Khan, are now within the jurisdiction of the North West Frontier Province).

(3) Clause 2 of sec. 32 of Act XXXI of 1860, relating to the manufacture, importation and sale of arms, did not apply to the **Badami taluka** of the **Kaladgi Collectorate** at the time when the Indian Arms Act, XI of 1878, came into force; and the notification of the Government of Bombay, No. 1112 of the 19th Feb. 1878, which declared that the provisions of Act XXXI of 1860, as modified by Act VI of 1866, are in force in Badami, amongst other places, is not an order of disarmament under clause (1) sec. 32 of Act XXXI of 1860. In the absence therefore of a notification under section 15 of Act XI of 1878, extending, with the previous sanction of the Governor-General in Council, the provisions of the section to Badami, the possession of arms without a licence in that taluka is not punishable under s. 19.

DODYAMA BASAPPA

9 BOM. 478

(4) The possession of a sword or dagger in a place to which s. 15 has not been extended is no offence.

FAKIR AHMED.

1 WEIR 666

(5) A person having a sword without a licence in a district which is disarmed, but not going armed with it, is no offence under the Act.

KUNJA ASARI

1 WEIR 666

(6) The possession of a bayonet without a licence is not an offence under the Act, except in the district to which sec. 15 has been extended.

NGA SHWE HLA.

L. B. R. 1872-1892-426

(7) The knowledge of the existence of firearms found in a hut on search should not, without further evidence, be imputed to any other than the occupier of the hut nor would that presumption operate even against him if it could be proved that it was possible that the same might be there without his knowledge.

ROMESH CHANDRA.

41 CAL. 35

(8) *Vide* note (4) under s. 14—**AKHIL NATH DATT**,—15 C. W. N. 440—p. 100, *ante*.

(9) *Vide* note (9) under s. 14—**NGA PO CHIN**,—8. B. L. R., 452,—page 100 *ante*.

16. (1) Any person possessing arms, ammunition or military stores the possession whereof has, in consequence of the cancellation or expiry of a licence or of an exemption or by the issue of a notification under section 15 or otherwise, become unlawful, shall without unnecessary delay

In certain cases arms to be deposited at police stations or with licensed dealers.

deposit the same either with the officer in charge of the nearest police-station, or, at his option and subject to such conditions as the Central Government may, by rule, prescribe, with a licensed dealer.

(2) When arms, ammunition or military stores have been deposited under sub-section (1) or, before the first day of January 1920, under the provision of any law for the time being in force, the depositor shall, at any time before the expiry of such period as the Central Government may by rule prescribe, be entitled—

(a) to receive back anything so deposited the possession of which by him has become lawful, and

(b) to dispose, or authorize the disposal, of anything so deposited by sale or otherwise to any person whose possession of the same would be lawful; and to receive the proceeds of any such sale :

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of anything the confiscation of which has been directed under section 24.

(3) All things deposited as aforesaid and not returned or disposed of under sub-section (2) within the prescribed period therein referred to shall be forfeited to His Majesty.

(4) (a) The Central Government may make rules consistent with this Act for carrying into effect the provisions of this section.

(b) In particular and without prejudice to the generality of the foregoing provisions, the Central Government may, by rule, prescribe—

(i) the conditions subject to which arms, ammunition and military stores may be deposited with a licensed dealer, and

(ii) the period after the expiry of which things deposited as aforesaid shall be forfeited under sub-section (3).

V. Licences.

17. The Governor-General in Council may, from time to time by notification in the *Gazette of India*, make rules as to licences. Power to make rules as to licences. rules to determine the officers by whom the form in which and the terms and conditions on and subject to which any licence shall be granted; and may by such rules among other matters—

(a) fix the period for which such licence shall continue in force;

(b) fix a fee payable by stamp or otherwise in respect of any such licence granted in a place to which section 32, clause 2 of Act No. XXXI of 1860, applies at the time this Act comes into force, or in respect of any such licence other than a licence for possession granted in any other place;

(c) direct that the holder of any such licence other than a licence for possession shall keep a record or account, in such form as the Central Government may prescribe, of anything done under such licence, and exhibit such record or account when called upon by an officer of Government to do so ;

(1) Section 16 was substituted by Act XX of 1919.

(2) The words "Central Govt." in section 16 were substituted for the words "Local Govt." by the Govt of India (Adaptation of Indian Laws) Order, 1937.

(d) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a licence of the description referred to in section 5 or section 6;

(e) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered; and

(f) require the person holding any licence or acting under any licence to produce the same and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

NOTES.

(1) The Act does not require a person who holds the licence for a gun or any other weapon to carry the licence on his person whenever he has the weapon with him. When being required to produce it he is prepared to do so on a reasonable opportunity being given him to get it, and, if it exists, he should not be prosecuted, and if prosecuted, the production of the licence at the trial is a sufficient answer to the charge of infringing the Act.

MAHOMED IBRAHIM
KISHUNWA

24 O. C. 22=265 CR. L. J. 755
20 CAL. 444

(2) An order extending the time of renewal of licences has the effect of keeping licence previously granted practically in force and a person cannot be convicted under s. 19 (f) for a breach of its provision within the extended time.

KALI NATH SINGH.

3 C. W. N. 394

(3) On the 1st Oct. 1900, the plaintiff applied to the District Magistrate to renew his existing licence for arms, and for the issue of an additional licence for fresh arms. The District Magistrate, however, cancelled the plaintiff's existing licence, and declined to grant him a licence for fresh arms. This order was sent on to defendant—the officer in charge of the police station at the village where plaintiff lived, with a direction that it should be communicated to the plaintiff, and that such arms as there might be in his possession should be attached. The defendant, accompanied by a *panch*, went to the plaintiff's house, communicated to him the contents of the order passed by the District Magistrate and called upon him to give up the gun which he held under the cancelled licence. The plaintiff produced a gun; but the defendant suspecting that that was not the gun in respect of which the cancelled licence had been granted, searched the plaintiff's house but no gun was found. The plaintiff thereupon sued the defendant for maliciously searching his house; held, that the defendant was not liable—(1) as he was acting in the discharge of a duty recognised by law when he searched the house, and (2) as it was not proved by the plaintiff that the defendant acted dishonestly and was prompted by a desire to injure the plaintiff.

NARA SIMHA SHANKAR DESHPANDE

27 BOM. 590.

18. Any licence may be cancelled or suspended—

Cancelling or suspension of licence.

(a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district, or Commissioner of Police in a Presidency town, within the local limits of whose jurisdiction the holder of such licence may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such licence; or

(b) by any Judge or Magistrate before whom the holder of such licence is convicted of an offence against this Act, or against the rules made under this Act; and

*the Central Government may by a notification in the official Gazette, cancel or suspend all or any licences throughout the whole or any portion of British India.

VI. Penalties.

19. Whoever commits any of the following offences (namely):—

For breach of sections 5, 6, 10, 13, to 17. (a) manufactures, converts, or sells or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5;

(b) fails to give notice as required by the same section;

(c) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6;

(d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10;

(e) goes armed in contravention of the provisions of section 13;

(f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15;

(g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep;

(h) intentionally fails to exhibit anything which by a rule made under section 17, clause (c), he is required to exhibit; or

(i) fails to deposit arms, ammunition or military stores as required by section 14 or section 16;

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

NOTE 1—So far as the Presidency of Bengal is concerned the following addition is made to this section:—

[19A. Notwithstanding anything contained in section 19,

For breaches of sections 6, 13, 14 and 15 in respect of certain arms. whoever commits an offence under clause (a), (c), (e) or (f) of section 19 shall, if the offence is committed in respect of a pistol, revolver, rifle or shot gun, be punished with transportation

for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine].

[Added by the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Bengal Act XXI of 1932) and the Bengal Criminal Law Amendment Act, 1934 (Bengal Act VII of 1934)].

NOTE 2—[Section 19 is repealed and is not in force in the whole of the North-West Frontier Province (N. W. F. Province Act I of 1934)].

NOTES.

(1) Under Schedule II of the Code of Criminal Procedure, 1898, offences under this section are bailable, and are triable by a Court of Sessions, Presidency Magistrate or a Magistrate of first class.

* The words "the Central Govt. may by a notification in the Official Gazette cancel or suspend all or any licences throughout the whole or any portion of British India" were substituted for the words "the Local Govt." by the Govt. of India (Adaptation of Indian Laws) Order, 1937.

(8) **CLAUSE (a)**—*Vide* notes under sections 4, 5, 6, and 14 on pages 89, 93, 95 and 99 *ante*.

(3) The possession of gunpowder without a licence, even though for the innocent purpose of making the fireworks, is an offence.

BOYINAPALLI VENKATARAJU

1 WEIR 655.

(4) As Khandesh is neither a district on the external land frontier of British India nor a sea-port district of British Burma, clause IV of the notification of the Government of India, No. 518 of the 6th March 1879, has no application to it, and as the Government of India has not, by any other notification, extended s. 19 of the Act to saltpetre in the Khandesh district, a person cannot be convicted under s. 19 for keeping saltpetre without a licence.

SAKHARAM

RAT. UN. CR. C. 227.

(5) The mere temporary possession, without a licence, of arms for purposes other than their use as such, is not an offence within the meaning of s. 19. The above principle is not confined to the case of a servant carrying his master's gun, but applies also to a friend performing the same office to a friend. The essence of the offence is in going armed, i. e., carrying a weapon when the necessity or opportunity arises.

HARPAL RAI

24 A 454=A. W. N. 1902, 123.

(6) The keeping of arms under this section must be keeping for sale, not keeping only.

HARSHANATH CHATTERJI

42 CAL. 1153

(7) Manufacture of Kirpan is an offence under the Act. A Sikh found in possession of Kirpans of the length varying from 9 to 10 inches is guilty under section 19 (a) and 19 (d) as such Kirpans are not swords.

DALJIT SINGH FATEH SING

A. I. R 1930 Bom. 153.

BASTA SINGH

A. I. R. 1923 LAH 267.

(8) Where the weapon is made over merely for the purpose of negotiating a sale, such possession is not unlawful in as much as it is not possession of the weapon with the intention of using it as a weapon. Such temporary possession is not possession as contemplated by the Arms Act. Negotiations for sale where no delivery takes place is no offence. The possession of arms for which the licence has not been renewed is also punishable under section 19 (f) of the Act read with sec. 14 thereof. The word 'extend' in sec. 14 is not limited in its meaning to territorial extent.

MALCOLM AND ANR.

44 CR. L. J. 363=A. I. R 1933 CAL. 218.

(9) Though an unlicensed pistol was found in a shop—the master being absent, the servant in possession of the pistol alone could be convicted for the offence. The master's conviction could not be upheld.

CHHOTE

A. I. R. 1923, ALL. 33.

(10) Possession of fire-arms in furtherance of terrorist movements is not in itself an offence under the Arms Act. For a conviction for an offence under s. 19 (a) of the Arms Act, as amended by Bengal Act XXI of 1932, it is incumbent on the prosecution to prove that the fire-arms were possessed in contravention of the Arms Act. In other words, the prosecution must lead some evidence which would justify an inference that the possession was against the provisions of the Act, i. e. without licence or some other legal authority.

Mere proof that the accused are members of an organisation the object of which is to commit terrorist crimes or offences is not sufficient: because it would not follow therefrom, in the absence of other evidence, that the accused are also parties to a criminal conspiracy for the specific and definite purpose of possessing fire-arms in contravention of the Arms Act.

BIMAL KRISHNA BISWAS

62 Cal. 819=39 C. W. N. 761.

(11) The temporary possession of a gun by a servant who carries it from his master's house to the blacksmith for repairs and by the blacksmith for the purpose of repair without a licence is not punishable under sec. 19.

TOTA RAM

16 ALL. 276=1894 A. W. N. 82.

(12) **CLAUSE (b)**—*Vide* notes under section 5, page 93 *ante*.

(13) A person who applied for permission to sell a gun and did not obtain such permission was held not punishable under s. 19 (b) when he had given notice under s. 5.

VENKIAH

1 WEIR 657

(14) A gun was found in an abandoned room of the house belonging to the accused in which the accused who were members of a joint family and others resided. The room was accessible from outside. The accused were convicted under s. 19 (b) *Held*, that if the place in which an article is found is one to which several persons have equal right of access, it cannot be said to be in the possession of any one of them, and the conviction of the accused could not be sustained.

SUDHANYA BAWALI

21 C. W. N. 839.

(15) *CLAUSE (c).*—*Vide* notes under s. 13, page 99 *ante*.

(16) Where a person is found carrying arms apparently in contravention of the provisions of the Arms Act, it must be presumed in the absence of proof to the contrary, that he is carrying such arms with the intention of using them should an opportunity of using them arise and does not include taking arms for repairs. Unless he is licensed to carry the weapon and is not exceeding the terms of his licence he may be properly convicted under s. 19 (c).

WILLIAMS

ALL. W. N. 1891, 308,

BHURE

15 ALL. 27.

(17) An offence under s. 19 (c) is committed when a person enters British India with a weapon he is not lawfully entitled to possess in this country. It is not necessary that there should be any particular intention in the mind of the offender to complete the offence.

MUHAMMAD ISMAIL ROWTHER

35 MAD. 596.

(18) *Vide* note (16) under 6—*Ori. A. I. R.* 1929 Oudh 157, page 97.

(19) *CLAUSE (d).*—*Vide* notes under s. 10 page *ante*.

(20) Where a person is accused of having more cartridges in his possession than is covered by his licence, it is for the prosecution to prove definitely that the number of cartridges in his actual possession on any particular date exceeded the number covered by his licence. The Court cannot be called upon to draw an inference that he had in fact a larger number of cartridges in his possession on the conjectural ground that he could not have used those that he transported on the previous occasion in the meantime. An order for this inquiry cannot be made against a person who has been discharged unless the order is perverse.

DAVILAT RAM

A. I. R. 1933 LAH 166—33 CR. L. J. 190.

(21) Where a person orders a gun from a dealer in Bombay ostensibly for an intending purchaser but in fact upon his own account, the act does not amount to offence of transporting without licence under rule 19 (d). Under rule 24 of the Arms Rules it is for the consignor and not for consignee to apply for and obtain licence, and when the transporting is done by dealer in Bombay, it is fully covered by the licence. Conviction under s. 19 (d) cannot in such a case be sustained. It is sufficient that the person ordering the gun should under rule 22 hold a licence to possess the gun and if he is found without one he is liable to prosecution on receipt of the weapon for possessing it without licence.

VIRASAMI NAIDU

A. I. R. 1920 MAD. 864.

(22) Where the accused is tried for two distinct offences, one under s. 19 (d) of the Arms Act and the other in respect of being in possession of stolen property knowing or having reason to believe it to be stolen property, held that the accused was entitled to a separate trial in respect of each offence charged against him and that the provisions of secs. 234-236 and 239 Cr. P. C., could not be made applicable to the case.

ONKAR SINGH

34 CR. L. J. 1417—A. I. R. 1934 OUDH 457.

(23) *CLAUSE (e).*—*Vide* notes under ss. 13 and 14, pages 99 and 100, *ante*.

(24) A person licensed to carry a gun lent one of his servants his gun to shoot game with it, *Held* that the servant should not be convicted for carrying a gun without a licence and that the gun should not be confiscated.

HURLEY

1881 ALL. W. N., 7.

(25) The offence of failing to deposit arms is not triable by a Magistrate of the second class under s. 8 of the Cr. P. C. 1872. A Magistrate of the second class has no power to try an offence punishable under s. 19 (e) and a conviction by him for such an offence is illegal.

SHAIKH MOWLA SAHIB

1 WEIR 660.

(26) The carrying of a spear is not an offence under s. 19 (e), because spears are exempted from s. 13.

GANPAT

RAT. UN. CR. C. 507.

SATTAGOWDA

A. I. R. 1930 BOM. 474.

BHURE

15 ALL., 27.

(27) A person who had no ammunition with him so as to be in a position to use his gun is not guilty under s. 19 (e) of the offence of going armed, nor can he be convicted under s. 19 (f) without sanction as required by s. 29.

TENKURAMAN BASAWAN

1 WEIR 662.

(28) Sportsmen hand over their guns to their servants to avoid unnecessary fatigue to themselves and by doing so it does not appear that the servants should be considered as going armed when they have no control over the use of the gun so far as intended and are simply bearers of the gun as a load. If the gun were taken to pieces before being handed to the servant, it would be difficult to hold that he could be armed with it and the moral restrictions of the servant's duty to make no use of the gun seems in effect to make the same difficulty when the gun is left complete.

NGA MYAT AUNG

U. R. R. 1897-1903 VOL. I, 1.

(29) The accused an agricultural servant of an exempted person was proceeding with a loaded gun to his master's village to frighten off the pigs from the crops. He was charged under s. 19 (e) with going armed in contravention of the provisions of s. 13, but was acquitted on the strength of the ruling of the Allahabad High Court in *Empress versus Gangadin*, 22 All. 118; *Held* that the exemption should be construed literally, but the construction adopted by the Magistrate ignores the undoubted fact that the privilege conferred by the exemption is of a personal nature and does not extend to the servants and retainers of the person exempted.

SONIA TELI

14 C. P. L. R. 112.

(30) Accused was prosecuted by the police under s. 19 (e) for going armed with a revolver. The Magistrate doubted whether a person could be said to go armed with an unloaded revolver wrapped up in a cloth. He therefore charged the accused in the alternative with going armed under clause (e) or, with possessing the revolver, under clause (f) of s. 19. After the framing of the charge the Magistrate submitted the record to the District Magistrate owing to an objection being taken, for his previous sanction under s. 29. At the time when he took the evidence for the prosecution no sanction was required, because proceedings in respect of an offence under clause (f) had not then been instituted, and, under s. 256, Cr. P. C., the accused had the right to recall all the witnesses for the prosecution after the charge was framed. He was, therefore, in no way prejudiced by the Magistrate's procedure. The Magistrate, therefore, had jurisdiction, notwithstanding the word 'previous' in s. 29, because, in the circumstances set forth, the proceedings in respect of the offence under clause (f) cannot be said to have been instituted when the Magistrate received the police report. Considering the term of the District Magistrate's order, it was held that proceedings in respect of the offence under clause (f) were instituted again after the sanction was received, and the absence of a charge framed after sanction, in that case, is cured by s. 531, Cr. P. C.

KAKA

4. L. B. R. 247=8 Cr. L. J. 65

(31) The accused was going armed without a licence within the meaning of s. 19 (e) and was not covered by his master's exemption. The words "for his own personal use" are clear and unambiguous and cannot be interpreted to mean the use of the gun by a servant or any one except the person exempted. Where the meaning of the words of the statute is clear and unambiguous, a court is not at liberty to speculate as to the intention and to decline to give effect to the strict sense because of some apparent or supposed hardship.

HATAMMAI Walad MEHERKHAN

4. S. L. R. 214.

(32) The mere temporary possession, without a licence, of arms for purposes other than their use was not an offence within the meaning of s. 19.

KOYA HANSJI

33 BOM 187.

TOTA RAM

16, ALL. 276.

(33) If the servant carries the gun for the purpose of the master or in the presence of his master, that may not be an offence under the Act; but to get further will be going against the terms of the Act. Where the master was misled by the District Magistrate into thinking that he was entitled to allow his gun to be used by his servant and he and his servant honestly believed that they were doing nothing wrong in allowing the servant to take the gun and to use it for the purpose of shooting game in the forest, held, that the order of the confiscation of the gun was wrong though the servant might be rightly convicted of an offence under s. 19 (e).

VAIRAVAN SARVAI

A. I. R. 1924, MAD. 668=47 MAD. 438.

(34) Where the weapon, which was found to fit a dang the appellant was carrying, was originally concealed but the appellant voluntarily took it from its place of concealment in order to threaten a railway servant who caught him for travelling without a ticket, *held*, that it indicates an indifference as to whether the weapon was seen or not. The intention requisite for an offence under s 20 was not established and conviction must be altered to s. 19.

SURJAN SINGH

A. I. R. 1923, LAH. 10.

(35) A person who carries about a gun without any ammunition can be said to go armed. To define "armed" as meaning "one who is equipped with an arm capable of immediate use as an arm" seems contrary to the vernacular meaning of the word "armed" and is also not safe. The offence is punishable under s. 19 (e) and the sanction of the District Magistrate is not required.

MAHAMMAD PUNJAL

18. S. L. R. 272 = A. I. R. 1915 Snd. 177.

(36) An accused charged under s 452 I. P. C. for house trespass with preparation to cause hurt cannot be convicted under s. 19 (e) without specific charge under the latter and with no opportunity to the accused to meet the altered charge.

NGA SHWE TON

A. I. R. 1927, RANG. 32 L. B. R. 1893-1900, 284.

(37) The licensee was convicted under s. 19, in respect of his having gone armed with his gun in a marriage procession; *Held*, that a marriage procession neither comes necessarily under the category of a religious procession nor of a public assemblage within the condition of the licence and therefore no special permission of the District Magistrate was required for the carrying of arms in such a marriage procession.

SETH BALKISHAN

A. I. R. 1928, NAG. 219.

(38) Where an accused having pleaded guilty was convicted under s. 19 (e) by the first class Magistrate and the Sessions Court acquitted him, it was *held*, that as under s 412 Cr. P. C., no appeal lay from the conviction, the order of acquittal made by the Court of Sessions was made without jurisdiction and must be set aside.

NGA LU GALE

A. I. R. 1928, RANG. 49.

(39) The offence under s. 19 (e) is distinct from offence under s. 324 I. P. C., and therefore a trial for an offence under s. 324 I. P. C., would not be a bar to the proceedings under s. 19 (e) of the Act.

MANJUBHAI GORDHAN DAS

53 BOM. 602 - A. I. R. 1929, BOM. 283.

(40) The fact that an accused was prosecuted under s 19 (e), for the possession of an unlicensed dagger is a lambardar of 30 years of age, is no reason for showing leniency by not sentencing him but only taking security under s. 562, Cr. P. C. His age should carry no weight. At that age a man has arrived at a time of life when he is fully responsible for his actions and capable of realising their nature to the full. If the fact that it is his first offence by itself be sufficient reason for waiving the punishment, it should be applied in all cases under s 19 (e), in which there are no aggravating circumstances. But it is impossible to consider that such a course should be adopted universally. The law should be allowed to take its own course, and if it is not allowed to do so, the result would be that an exception is made in favour of an offender merely because he is a man of above the average position, which itself would amount to a gross failure of justice. S. 562, Cr. P. C. should only be applied in special cases and for special reason. (Bhagat Singh, 34 C. L. J. 779, dissented).

AKBAR MUNIR

38 CR. L. J. 610 = A. I. R. 1937 PESH. 51.

(41) CLAUSE (f). No proceedings under s. 19 (f) can be instituted without the previous sanction of the District Magistrate, or, in a Presidency town, of the Commissioner of Police, required under s. 29 of the Act. Also persons punishable under the section are not to be arrested without the previous sanction of the District Magistrate.

BOMAYA CHETY

5 Mad. 26.

NGA PO KA

L. B. R. 1892-1896, 536.

PA TWE WA

U. B. R. 1892-1896, VOL. 1, 2.

GOPAL KRISHNA IYER

9 MAD. L. T. 475.

• AHMED HUSAIN

27 CAL. 692 = 4 C. W. N. 750.

ANGAD

A. I. R. 1929, ALL. 69.

FAZAL RAHIM

A. I. R. 1933, PESH. 29 = 34 Cr. L. J. 690.

ABDUL KADIR SAHIB

5 M. L. J. 162.

KISAN KOHALEE

9. N. L. R. 81 = 9 C. P. L. R. Cr. 36.

(42) The mere possession of arms, other than those mentioned in s. 14, is not a punishable offence.

NGA PO KA

L. B. R. 1872-1892, 536.

(43) The trial of an offender under s. 19 (f), without the District Magistrate's sanction under section 29 is not merely an error of procedure but is a defect which bars the jurisdiction of the Court. Where the offence has been committed by the accused, who was in possession of arms, the fact that the legal procedure (s. 25) was not followed in making the search would not, by itself, be sufficient ground to acquit the accused.

PA TWE WA

U. B. R. 1882-1896 VOL. I., 2.

(44) Having regard to the Punjab Govt. notn. No 826 dated the 25th Feb. 1875, making the provisions of s. 32 of the Arms Act (XXXI of 1860) operative in the greater part of the Punjab, including the Karnal District, the previous sanction of the District Magistrate, was not a condition precedent to a prosecution for an offence under s. 19 (f) of the Act.

SUNDAR SINGH

24 P. R. 1913 Cr.

(45) The provisions of s. 32 of the Arms Act, 1860, not being in force in Dera Ghazi Khan, the previous sanction of the District Magistrate is necessary for a prosecution under s. 19 (f), in that District. Prosecution without such sanction is illegal.

ALIBEG

A. I. R. 1932 LAH. 869=35 Cr. L. J. 1934, 109.

(46) For the purpose of supporting a conviction under s. 19 (f) and s. 20, the articles discovered must be clearly proved to have been in the possession of the accused. Admissions made to police are generally inadmissible as evidence under s. 25 or the Evidence Act.

NGA THA KU

10 BUR. L. T. 121.

(47) In the Bijnor district and certain other parts of the United Provinces in the north of the rivers Jumna and the Ganges the sanction of the District Magistrate for a prosecution under s. 19 (f) is not necessary, as rule 92 of the U. P. Rules shows that all parts of the United Provinces north of the river Sone have been disarmed.

AMIR AHMAD

A. I. R. 1926 ALL. 143.

(48) Where the accused is clearly in possession of arms and ammunition without a licence, no sanction is necessary for starting prosecution under section 19 (f).

ABDUL GHAFUR

A. I. R. 1929 ALL. 68.

(49) According to s. 29, sanction of the District Magistrate was necessary to prosecute a person under s. 19 (f) for possessing arm without a licence in the district of Aligarh, only for three months after 15th March 1878 and not subsequently. [A. I. R. 1926 ALL. 143 and A. I. R. 1929 ALL. 68, (notes (47) and (48) above) *distd.*]

ANGAD

A. I. R. 1929 ALL. 69.

(50) In the absence of a proclamation or order under s. 3, clause 2, of Act XXXI of 1860 for a general disarmament or search for arms, the sanction under s. 29 of the Act is necessary for a prosecution under s. 19 (f) for possession of a gun without licence.

PERUMAL CHETTI

1 WEIR 660.

(51) A collection of firearms, consisting of four small cannon, four pistols and thirty-one muskets, had been kept as objects of worship in a Sikh Temple in Patna for upwards of two centuries. The Mahant of the temple neglected to take out a licence in respect of these arms. A police inspector, who was appointed to see that the provisions of the Arms Act were obeyed, searched the temple on information received and, having found the arms, prosecuted the person who had charge of the temple. The latter was convicted by the Deputy Magistrate of Patna under s. 19 (f) and sentenced to pay a fine of Rs. 50 or to be rigorously imprisoned for two months. The Deputy Magistrate also ordered the arms to be confiscated, and directed that their value and the fine should be divided between the informer, and the police inspector. Held, with reference to Act X of 1873, s. 579, and the heading to Schedule IV of the same Act, and to s. 19 (f) of Act XI of 1878, that the proceedings of the police inspector and the conviction of the accused were not illegal. There is nothing in the Arms Act to exempt the custodians of a temple from complying with the requirements of the Arms Act either by taking out a licence or obtaining exemption under s. 27.

TEGHA SINGH

8 CAL. 473.

(52) When a Magistrate issues a search warrant under s. 25 it is necessary that he should record the grounds of his belief that the person against whom the warrant is issued has in his possession arms, ammunition or military stores for an unlawful purpose. Where proceedings under the Act in respect of the unlawful possession of arms are taken against a member of a joint Hindu family not being the head of such joint family, and arms are found in a common room of the joint family house, it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family who is sought to be charged with their possession.

SANGAM LAL

15 ALL. 129.

(53) Where an unlicensed gun is found in a house where the members of a joint Hindu family live, a presumption is raised against all the adult male members that it was in their possession and control and they might one and all be tried on the charge under sec. 19 (f).

SIKHDAR

33 Cr. L. J. 719.

(54) In a prosecution under s. 19 the accused was charged with being in possession of a dagger which was found in a cloth or quilt inside a basket in one of the rooms of his house. It appeared that the room and house were jointly occupied by the accused and his son, and the prosecution failed to prove that the dagger was in the exclusive possession and control of the accused, or that he was its owner; *Held*, that the accused was under the circumstances not guilty of an offence under the Arms Act.

SHER ZAMAN

52 P. R. 1905 CR.

(55) When a weapon is found in a house belonging to a joint family, in the absence of proof that the room in which the weapon was kept was in the exclusive or particular possession of any member of the family, it cannot be inferred that the weapon was in the possession of any other person than the head of the family.

MANIGAR KOIR

15 PAT. 696 = A. I. R. 1936 PAT. 512 = 38 Cr. L. J. 100.

(56) In a prosecution under s. 19 (f) it must be proved that the accused has arms in his possession or control. When several people occupy a house it should be presumed that the head of the family is in possession or control of every thing in the house including unlicensed arms. It is of course open to him to rebut that presumption by any evidence which he can advance.

MIR AHMED

38 Cr. L. J. 838 = A. I. R. 1937 PESH. 73.

(57) A license of a person to carry arms, and including a retainer, authorises any retainer to carry the arms specified with the permission of his master, and does not restrict him merely to carry them while in the actual presence of his master.

KISHUNWA

20 CAL. 444.

(58) Certain persons, amongst them certain Rajas and members of the N. W. P. Legislative Council, were exempted from the operation of ss. 13 and 14, but with this proviso that "except where otherwise expressly stated, the arms or ammunition carried or possessed by such persons shall be for their personal use, etc." *Held*, that the terms of this proviso would allow of a person exempted under the notification, above alluded to, sending a servant armed with a gun into a neighbouring district to shoot birds for him, and that a gun so carried and used by the servant of the exempted person was in the "personal use" of the exempted person within the meaning of the notification.

GANGADIN

23 ALL. 118, A. W. N. 1899, 213.

(59) When a person who apparently had a licence to go armed had come to a village wherein his cousin's servant was to shoot, feeling thirsty, went to get a drink, leaving the gun with the servant, *held*, that such a temporary custody of the gun by the servant did not amount to "possession" or "control" contemplated by s. 19 (f).

KHUDDA GOND.

4 N. L. R. 140 CR.

(60) A servant was found using a gun which was lent to him by his master who held a licence for the gun for his own purpose; *Held* that the act of the accused was an infringement of s. 19 (f) of the Act.

MADHO LAL

13 C. W. N. 124

(61) The petitioner was carrying a gun on behalf of his master with the licence to the Magistrate for the purpose of a renewal of the licence. It was admitted that the object of the petitioner was merely to carry to the gun to the

Magistrate. The petitioner was convicted under s. 19 (f) for possessing a gun in contravention of the provision of the Act: *Held*, that the conviction of the petitioner cannot be upheld.

CHARU CHANDRA GHOSH
GOPAL
MALUA

41 CAL. 11=17 C. W. N. 978.
18 CR L. J. 297.
20 " " 432.

(62) A person, named Prabhat Chandra Chaudhuri seized a gun which was in the hands of a servant of an exempted person and fired at a mad dog which had entered the compound of his house. It missed the animal but a shot from the gun wounded a man named Manda Rajbansi. For this Prabhat Chandra Choudhuri was convicted under s. 304-A. I. P. C. and sentenced to pay a fine of Rs. 300 and to detention in court for one day. The Session Judge on appeal reduced the fine to Rs. 100. The accused was again prosecuted under s. 19 (f) *held* that the accused was not liable under the section referred to. The provisions of this section do not make the mere possession of gun punishable; they make possession contrary to the provisions of s. 14 of the Act punishable. The temporary possession which the accused had of the gun which he snatched up and fired was not the possession contemplated by s. 14 of the Arms Act.

PRABHAT CHANDRA CHAUDHURI

35 CAL. 210=12 C. W. N. 272

(63) Where a certain firearm has been found from the possession of the accused who had concealed it under a heap of straw in order that visitors in the house should not see them, *held* that the concealment was not with the intention specified in s. 20 and the accused could, therefore be convicted only under s. 19 (f).

AZU WALAD BANGAR

1 S. L. R. 18, CR.

(64) The first part of s. 20 does not apply to cases of concealments or of attempts of concealments made by a man who has arms on his person or in a bag which he is carrying or which is otherwise in his immediate personal possession, only on being arrested. It is meant to deal with cases of concealment before arrest. Where a man, finding himself arrested for being in possession of a revolver, attempts to throw it away, the act of such person would only come under s. 19 (f).

GOPAL KRISHNA IYER

9 M. L. T. 475.

(65) The accused kept a gun as a servant of C, who was licensed to bear it. After C's death the accused continued in the employ of C's undivided brother V who succeeded C in the management of the property. The accused was convicted under s. 19 (f) for having been in possession of an unlicensed gun. On appeal, it was contended that the liability, if any, was that of V, who had neglected to renew the licence; *Held*, that the accused was rightly convicted for he was the only person who had the possession and the control of the weapon.

JAFU BABU

14 BOM. L. R. 501.

(66) Each case of concealment of arms must be decided on its own facts, i. e. whether it falls under section 19 or section 20 of the Arms Act, and the circumstances connected with the present case showed that the concealment was made so that the possession of the weapon should not be known to the police and the offence therefore fell under section 20.

KHEM SINGH

8 P. R. 1915 CR.

(67) A person carrying a revolver in his pocket without a licence is guilty under s. 19 (f) and not under s. 20. When a revolver was found in the possession of one of the two men sitting together and it was proved that at one time the revolver was possessed by one of the other of the two, both are guilty of possessing arms without a licence.

UDHAM SINGH

27 P. W. R. 1912=CR. L. J. 637.

(68) If on the trial of the case under the Arms Act the evidence recorded indicates an offence under s. 20, the magistrate ought to commit the case to the Sessions Court.

NISHI KANT LAHIRI

20 C. W. N. 732.

(69) A discovery of arms is on the information supplied by the accused that he had buried a revolver in his field, fulfils the requirements of sections 19 (f), and 20.

ISHAR SINGH

72 P. L. R. 1916

(70) A pardanashin lady and her minor son, a young man of 17 years of age, lived together in the family house. In their house was a small collection of arms of various kinds which had belonged to the father who, as an honorary magistrate, was exempt from the operation of the Arms Act. There was evidence that the arms were kept clean and that the son at all events took a certain amount of interest in

them. *Held*, that a finding that the son was in possession of these arms and not having a licence for them was liable to conviction for an offence under s. 19 (f), was not open to objection.

GHULAM HUSAIN

40 ALL. 420

(71) Where a head constable made a false report that a dacoity had been committed and that he had arrested some dacoits and after a delay of three days, as he said, recovered the arms from the petitioner not in the presence of witnesses, who signed the list but who distinctly recorded that the arms were produced before them by the constable. *Held* that the petitioner was not guilty.

ALIF DIN

A. I. R. 1922 LAH. 420

(72) A *chhavi* was in a house in the joint possession of both the accused, it could not be said with any degree of certainty that one of them was in exclusive possession thereof and the accused must therefore be given the benefit of doubt.

ALIA

A. I. R. 1922 LAH. 466.

(73) The accused was in secret possession of locally made guns and cartridges. Sanction was obtained for prosecution under s. 29, but he was convicted both under s. 19 (f) and s. 20. *Held* that the conviction under s. 20 was legal but that under s. 19 (f) was bad for want of sanction.

NGA THA HLA

A. I. R. 1924, RANG. 85.

(74) A Sikh possessing or wearing one sword commits no offence under s. 19 by virtue of the exemption under Schedule II.

HARI SINGH

A. J. R. 1924, LAH. 600 ; 308

(75) The accused's father held a licence for a gun. The licensee did not mention that he was entitled to hand over his gun to a retainer. The accused took out the gun of his father for the purpose of shooting birds and was found out by an officer of the police and tahsildar; *held*, that though the spirit of the law was not contravened, yet, the letter was certainly contravened. The sentence was reduced to a fine of Rs. 25.

MUHAMMAD HASSAN

A. I. R. 1924 ALL. 175=47 ALL. 267.

(76) When communal riots were taking place in different quarters of the town, the accused, brother of a licence holder, took out his brother's gun and fired shots in the air so that people mischievously inclined might know that it was not safe for them to do any mischief to the people living in the house. *Held*, that the possession of the gun was on behalf of the brother and the accused was not guilty under s. 19 (f).

BABU RAM

A. I. R. 1925, ALL. 396=47 ALL. 606.

(77) Something more than a mere ordinary concealment should be established in order to bring the possession within the meaning of s. 20. Where the gun was upon a charpoy on which the accused was sitting and was covered with a *dota* and the accused had been convicted under s. 20 the conviction was altered into one under s. 19 (f). [Ahmad-Husain 27 Cal. 692 *folld.*—*Vide* note (3) under s. 20, page 120.]

CHANNAN SINGH

A. I. R. 1922, LAH. 395=6 LAH. 151.

(78) Each case of concealment of arms must be decided on its own facts as to whether it falls under s. 19 or s. 20 of the Arms Act. For a conviction to fall under s. 20 there must be some special indication of intention that the possession of the arms was being concealed from a public servant or from a railway official.

CHET SINGH

A. I. R. 1922 LAH. 262.

(79) Proceedings are "instituted" against the person in respect of an offence under s. 19 (f) of the Arms Act only when he is placed before the Court. The fact that the sanction of the Commissioner of Police for a prosecution under s. 19 (f) was not obtained before entering the case in the case book and making out a charge but only before placing the accused before the Court does not, therefore, vitiate a trial.

ISMAIL KHAN

A. I. R. 1927 CAL. 721.

(80) Want of compliance with the provisions of s. 25 will not render conviction under sections 19 and 20 illegal.

SHIAM LAL

A. I. R. 1927 ALL. 516.

(81) If a person carries on his person a small weapon such as a pistol, a dagger, or a blade of a *chhavi*, he naturally puts it in his pocket or *dab*, and if with that weapon in his pocket or *dab* he is in his house or in his village or in a *basar* or in a court compound, it cannot be inferred that he was so carrying the weapon with the intention specified in section 20.

GHULAM MOHAMMAD

A. I. R. 1927 LAH. 561.

(82) Where two or more persons conspire to possess firearms without a licence they are guilty of an offence under s. 120B., I. P. C., read with s 19 (f) of the Arms Act.

NIRMAL CHANDRA DE

A. I. R. 1927, CAL 265=31 C. W. N. 239.

(83) Where an article, the possession of which is forbidden by the Arms Act, has been discovered by reason of information given by an accused person, his conviction based upon that evidence is valid.

NAURANG SINGH

A I R. 1927, LAH. 900

(84) Where the cartridges of a rifle were found in the house of a person who was charged with theft, and he stated that the cartridges were not within his knowledge but might have been placed in the house by his brother who had formerly been employed in the military, held, that he cannot be convicted of an offence under sec. 19 (f) of the Act

MANIGER

A I R 1927, CAL 571.

(85) Where the portion of a house in which an article is found is not in the exclusive possession of any one member of the joint family, but is used by or accessible to all the members of the family there is no presumption that the article is in the possession or control of any person other than the house master or the head of the family. But it is open to the prosecution to prove that the possession was with some other member of the family, and that member would then be liable to account for it. (15 All. 129, Sangam Lal (note 52 op page 111) *folld*)

DULA SINGH AND ANOTHER

A I R. 1928, LAH 272.

(86) Where the form of a licence contained a description of a gun as a full barrelled gun, it cannot be held as a licence to hold a half barrelled gun

MURLI SINGH

A I R 1928, LAH 759.

(87) As in the case of a suit, a proceeding is instituted when for the first time the adjudication of a Court of competent jurisdiction is sought. Therefore the expression "proceedings" in s 29 mean legal proceedings in Court and not searches or arrests or investigations made by the police in exercise of the powers conferred upon them by the Criminal P. C., or any other law

GHULAM NABI AND OTHERS

A I R 1928, PAT 146.

(88) On a search being made in a house certain cartridges were discovered under the chowki on which the accused were sitting conversing with others. The cartridges were not proved to be in their possession, nor was it proved that they knew that they were their; held, that the charge against them rested on suspicion and their guilt not being proved they cannot be convicted under section 19 (f)

BAZLUR RAHMAN AND OTHERS

A I R 1929, CAL 302.

(89) While the police were searching accused's house for stolen property (which was not present) they discovered in a locked box two empty brass .405 used cartridge cases which were incapable of being re loaded in India. Held, that accused was not guilty.

AMIR

47 All. 629=A. I. R. 1925, All 498=87 I. C. 927.

(90) A person licensed to possess gun cannot authorize the possession of that gun by his servant for an unlawful purpose. Therefore, a servant who is in possession of that gun for an unlawful purpose can be properly convicted under s 19 (f) of the Arms Act.

NANKU

159 I C 183=A. I. R. 1935, All. 916.

(91) In the case of a house occupied by a joint family there is an initial presumption that an article found therein is in the possession of the head of the family. Thus where a house was occupied by a person, his father who was 80 years old and the person's wife, and a *chhav* blade was found in wife's possession the mere fact that the father is 80 years old is not sufficient to establish that the person was in possession of the *chhav*.

KARAM SINGH

A. I. R. 1929, LAH. 872.

(92) Sentence of solitary confinement cannot be awarded under the Arms Act.

NAZIR SINGH

LAH 1924, 667.

(93) Under section 19 a Magistrate having found the accused guilty, was bound to pass some sentence though it was open to him to pass a nominal sentence. S. 24 shows that the order of confiscation is an addition to the sentence that may be passed.

GANGAMMA

1 WEIR 664,

- (94) The Arms Act is highly penal and must be strictly construed.
SANGAM LAL 15 ALL. 129.
- (95) Having regard to the previous convictions of the accused the sentence of seven year's rigorous imprisonment was considered appropriate.
KHEM SINGH 76 P. L. R. 1915=16 Cr. L. J. 419=28 I. C. 796.
- (96) In a case of technical offence, a nominal sentence is always quite sufficient to meet the ends of justice
DANT SINGH 16 P. R. 1910 Cr = 22 P. W. R. 1910 Cr.
EBRAHIM ALIBHOY 7 B. L. R. 474.
- (97) A penal enactment like the Arms Act must be construed in favour of the individual person where any doubt exists
SETH BALKISHAN A I. R. 1928, NAG. 219.
- (98) Where the accused was bound under section 110 Cr P. C., and was made to execute a bond in the sum of Rs. 500/-, with two sureties on the ground that he was a habitual thief and dacoit, and where before the expiry of the bond, he was convicted for being in possession of a *chhavi* under s. 19 (f), and sentenced to three years imprisonment, where it was proved that while he was found in possession of the *chhavi* he was on a wandering expedition and where after his conviction, the Courts below forfeited the full amount of the security furnished by the sureties, held, that the order of confiscation of security was fully justified
BUTA SINGH AND RODA SINGH 18 CR L J. 508=3 P. R. 1917 CR.
- (99) R, a boy of 18, occupied with others a house which the police searched in connection with a burglary. In the Zenana portion of the house, a room was locked. R who had not the key, got it from a woman in the Zenana, and in that room two cartridges and one double barrelled gun were found. R, was sentenced, but was acquitted on appeal. On appeal by local Govt. against acquittal it was held that R could not be convicted under s 19 (f) as the prosecution failed to prove that the gun and cartridges were recovered from R's possession. The word "locality" is a comprehensive word and may well include villages within three or four miles of the village where the search is to be conducted
MAST RAM A I. R 1931, OUDH. 115.
- (100) Where the evidence does not exclude a reasonable possibility of a pistol having been placed there by some other of the persons who frequented the rooms, or even by the person in whose possession it was at the time of the arrest. Held, that it cannot be said that it has been proved beyond reasonable doubt that the pistol was in the possession of the accused.
KRISHNA GOPAL 92 I. C. 589=27 Cr. L. J. 301.
- (101) Where it was found that the two accused were found lying on a bed in the house of another and in the bedding a *chhavi* was found wrapped in a cloth, held, that it was impossible to say which of the two was actually in possession even if it was proved that the owner of the house was not the owner and therefore the conviction of the accused was illegal
NARINJAN SINGH 65 I. C. 447=23 Cr. L. J. 95.
- (102) An essential ingredient of sec 20 is that the man doing any act mentioned in clause (a), (c), (d), or (f), of sec 19, should do it in such a manner as to indicate an intention that such act may not be known to any public servant and consequently merely keeping of a *chhavi* blade in one's own house and possessing a stick that would fit into it, cannot be regarded as falling within the purview of sec. 20. The case would fall more appropriately under the definition of sec 19 (f).
IDA A. I. R. 1931, LAH. 561=33 Cr. L. J. 346.
- (103) The accused who was the servant of a licence-holder was in possession of his master's gun on behalf of his master who was away and who had left the place where the accused was guarding his master's money for a short time only. Held, that the accused was not liable to be convicted.
PARMESHWAR SINGH A. I. R. 1933, PAT. 600=35 Cr. L. J. 137.
- (104) A stolen revolver was found in possession of the accused who were engaged in collecting arms and explosive substances and it appeared that the theft was not at all recent. Held, that the mere fact of possession was not sufficient for a conviction under sec. 411 Penal Code. A person cannot be convicted both under ss. 20. and 19 (f), in respect of the same revolver.
DHARANIKANT CHAKRAHARTY AND OTHERS 35 CR. L. J. 1934. 227.

(105) A joint trial of the accused for offences under sec. 29, Frontier Crimes Regulation and s. 19, Arms Act, is not open to any objection.

AKBAR

35 CR. L. J. 1934 399.

(106) When the house of the accused was searched by the Police on receipt of certain information, an unlicensed muzzle loading pistol was found concealed under a heap of grain inside a vessel and inside the barrel of the pistol some percussion caps were also found on removing a wad of cloth from the muzzle of the pistol. The accused and his sons and their wives were living in the house in which the pistol was found. Held, that it was most unlikely that an article of such size and description as the pistol should remain concealed in the house without the knowledge of the head of the family and that in the circumstances there could be no doubt that the accused must have been aware of the presence of the pistol in his house and he was "in possession and control" of it within the meaning of s. 19 (f).

JAWALA

35 CR. L. J. 428=A. I. R. 1934, ALL. 548.

(107) If a man fires off a firearm while a Police Officer is attempting to arrest him, the natural conclusion is that he is attempting to shoot the Police Officer. If the defence is that he had merely the intention of frightening the police officer by firing in the air, then the burden of proving that fact is upon the defence. Where in a trial by jury the accused was charged with an offence under s. 19 (f), Arms Act, and the jury gave a verdict of not guilty, but on reference by the Sessions Judge the High Court found him guilty under s. 19 (f) read with s. 20, Arms Act. Held, that it was open to the High Court to convict him under s. 19 (f), read with section 20, Arms Act, though he was charged with an offence under s. 19 (f), only.

YASHPAL

A. I. R. 1933, ALL. 627=35 CR. L. J. 573.

(108) The phrase, "the possession of the arms or control over the arms" referred to in clause (f) of s. 19 of the Arms Act, implies physical possession or control of the arms or ammunition in respect of which the charge has been lodged. Where the arms are found concealed underneath a gunny cloth spread inside a bullock cart and the persons who jumped out of it and tried to escape but were caught, must alone be deemed to be in joint physical possession of the arms, found in the cart, and they alone were liable to punishment under s. 19 (f) of the Arms Act.

LAKHAN SINGH AND OTHERS

35 CR. L. J. 973=A. I. R. 1934, OUDH 200.

(109) The offence of being in possession of arms without a licence is a cognizable offence and the fact that the sanction of the District Magistrate is necessary to constitute proceedings in respect of a specific offence itself is no bar to the institution of proceedings in respect of an offence of criminal conspiracy to commit the substantive offence itself.

MAGANLAL BAGDI AND OTHERS

35 CR. L. J. 1097.

(110) When a person is acquitted of the charge brought against him in respect of the possession of cartridges, he cannot, as long as the order of acquittal remains in force, be deemed to have committed that offence. The fact that certain persons were convicted in respect of possession of a stolen revolver under ss. 411 and 414, Penal Code, respectively, is no bar to their being convicted in respect of it under s. 19 (f) of the Arms Act.

MUNNOO

A. I. R. 1933, OUDH 470=35 CR. L. J. 36.

(111) The definition of arms in s. 4, Arms Act, is intentionally wide and the list of weapons referred to therein is not exhaustive. It cannot be said that every type of air gun or air pistol must be excluded from the definition. The essence of the offence under s. 19 (f) is the possession of arms without a licence and a licence is required for each separate weapon. When once the prosecution fails to connect the accused with knowledge of the revolver, he cannot be convicted of conspiracy. In such a case the accused is entitled to an acquittal.

ABANI MOHAN BHATTACHARJEE

35 CR. L. J. 766.

(112) Whether a case falls under sec. 19 (f) or sec. 20 depends on the facts of each case; but for sec. 20 to apply there must be some special indication of an intention to conceal the possession of the arms from a public servant, railway official or public carrier. Where two revolvers, some cartridges and a pistol were recovered from a trunk which was carried in a railway compartment; held that the accused must be presumed to have intended to conceal them from railway officials and the offence fell under sec. 20.

PREM KUMAR

33 CR. L. J. 110.

(113) Where in a search of two persons revolver cartridges are found in the person of one of them but nothing incriminating is found in the other, sec. 34, I. P. O., does not apply and the conviction of the latter under sec. 19 (f), Arms Act, is not proper, nor can he be convicted for abetment in as much as conviction for abetment will be justifiable only if the accused had an opportunity to meet a case based on sec. 28 of the Arms Act and the Court was satisfied with the proof of the elements of that offence.

MANMATHA NATH BISWAS

A. I. R. 1933, CAL. 132=34 CR. L. J. 399.

(114) Where in the case of a house search, two loaded cartridges were found in a cornbin in the house of the accused and he was prosecuted for an offence under the Arms Act, on the ground that he being the head of the family should be held responsible for the arms recovered and was convicted under sec. 19 of the Arms Act: *held*, that in all such cases it was necessary to prove not only the presence of the article in the house but the possession of some particular person over the article in order to justify a conviction.

KAUF AHIR

A. I. R. 1933, ALL 112=34 CR. L. J. 12.

(115) Where the Police suspecting that the accused's house contained stolen property, searched the house and the accused led them to a cattle shed near the house which was open and accessible to outsiders and produced a revolver from there and it appeared that the accused was living in the house with his father and brother. *Held*, that although it was the accused who led the Police to the shed and pointed out the place where the revolver was lying, yet the mere knowledge of the fact that the revolver was lying in the shed or the pointing out the place from which it was actually found, without proof that the place was in the exclusive possession of the accused, is not sufficient to bring home the offence and that he was not guilty under s. 19 (f), Arms Act

GIAN CHAND

A. I. R. 1933, LAH. 314=34 CR. L. J. 1256.

(116) Where a magistrate under sec. 30 committed two persons to the sessions the charges being, respectively, murder and a charge under sec. 19 (f) of the Arms Act against the first accused, and attempted murder and similar charge under the Arms Act against the second accused and the Sessions Judge after disposing of the case against the first accused for murder, recommended that the committal for the second charge be quashed, *held* that the magistrate acted rightly in framing charges and passing committal orders under both the Arms Act and the Penal Code and sending the cases up for trial to the Sessions Court.

UJAGAR SINGH

34 CR. L. J. 314.

(117) Where a person is charged under sec. 19 (f) of the Arms Act, pleaded guilty and finding that the possession of arms with him was connected with his political views, he was awarded the maximum sentence under the section: *held*, that it was very necessary that the powers of the Court should be employed in putting down these very dangerous crimes of possession and concealment of arms, and that there was nothing calling for interference of the High Court.

NIL RATAN GANGULY 60 CAL. 471=A. I. R. 1933, CAL. 124=34 CR. L. J. 633.

(118) The previous sanction of the District Magistrate is required for a prosecution of s. 19 (f) of the Arms Act not only in the Peshawar but also in the other four districts of the Frontier Province. It is an elementary principle of the construction of statute that the words have to be read in their literal sense. The courts cannot put upon them a construction which they believe to represent the intention of the legislature at the time of passing of the statutes.

FAZAL RAHIM

34 CR. L. J. 670.

(119) Where under sec. 19 (f) and sec. 20 of the Arms Act, sentence was passed only under sec. 20, but not under sec. 19 (f) and on appeal the Sessions Judge set aside the conviction on the ground of the magistrate having no jurisdiction to try the accused under sec. 20 and observed that if the magistrate wished to proceed with the matter, he might commit the accused to the Sessions Court, but magistrate without holding any further inquiry under Chapter XVIII Cr. P. O. committed the accused to Sessions under both the sections: *Held* that the order of commitment having been made without an inquiry under Chapter XVIII Cr. P. C., was wrong in law, and *held* further, that sec. 403 Cr. P. C. did not operate as a bar to the prosecution of the accused under sec. 19 (f) or sec. 20 of the Arms Act.

NAGENDRA NATH SARKAR

33 CR. L. J. 770.

(120) Possession of those parts of a revolver which have not so changed their original character as to have ceased to be parts of a fire-arm, and with nothing to suggest that they could not be assembled together either with or without other parts in such a way as to be capable of being used as a fire-arm, is an offence under s. 19 (f), Arms Act. In such cases the question is not so much whether the particular weapon is serviceable as a fire-arm but whether it has lost its specific character and has so ceased to be a fire-arm.

SANTA SINGH PANJABI. A. I. R. 1933, CAL. 495=37 C. W. N. 234=34 CR. L. J. 916.

(121) When a person is found in the possession of a stolen revolver without a licence, he can be tried under the Arms Act as well as under the Penal Code and can be punished under both the enactments in as much as it is not the act or omission which constitutes the offence under the two enactments. Section 26, General Clauses Act, is no bar to the double punishment. Where an article stolen in October was recovered from the possession of the accused in the following May, the court under s. 114, Evidence Act, is entitled to presume that the accused is either a thief or retainer of stolen goods, knowing them to be stolen unless he can account for his possession of the goods.

REOTA

34 CR. L. J. 1018.

(122) In a case under s. 19 (1), the quantity of lead found with the accused and the neighbourhood were such as to suggest that the lead was used for fishing purposes. Held, that the Magistrate should have in his examination of the accused put some questions with a view to elucidating from them whether they were *prima facie* vendors of lead for industrial, that is fishing purposes within the meaning of Arms Act.

ALI HOSSEIN

A. I. R. 1930, RANG. 349=128 I. C. 845.

(123) *Vide* note no (12) under s. 14—SACHINDRA KAR GUPTA—A. I. R. 1933 CAL. 592=35 CR. L. J. 125, page 101.

(124) *Vide* note (3) under s. 20—AHMED HUSAIN—27 Cal. 692, page 120, *post*.

(125) *Vide* note (29) under s. 20, PIR SABJAT ULLAH SHAH—A. I. R. 1931 Sind 9, page 123, *post*.

(126) *Vide* note (2) under s. 21, KALYAN CHAND GOPAL CHAND—A. I. R. 1923, Bom. 35, page 124, *post*.

(127) The accused was arrested at Gaurala being in unlawful possession of a revolver and ammunition. Held that he was guilty under the Arms Act.

SURJYA KUMAR SEN

35 CR. L. J. 335.

(128) A licence holder, who has a personal privilege to possess a rifle cannot transfer that privilege by lending the rifle to a non-licence-holder for use by that non-licence-holder for his own purposes. Consequently an offence punishable under s. 19 (f) is committed when a rifle is borrowed by the accused, a non-licence-holder, for the protection of the accused—that is for his own private use and not for use on behalf of the licence-holder. But, if his possession is not for any unlawful purpose, though his actual possession is unlawful, a nominal sentence will be sufficient to meet the ends of justice.

All licence-holders should be meticulous in taking all precautions for the safe custody of weapons for which they hold a licence and for preventing the borrowing of those weapons by other persons. Absence of such precautions constitutes a danger to the public, and hence under s. 24, Indian Arms Act, they are liable to be confiscated to Government.

SARFARAZ KHAN SHAH BAGKAN

36 CR. L. J. 1204=A. I. R. 1935 Pesh. 103.

(129) The sentence of one year's rigorous imprisonment under s. 19 (f) for the offence of being in possession of unlicensed revolver is not appropriate. If it had been the case of some other unlicensed weapon having been found in the possession of an accused person, a sentence of one year's rigorous imprisonment might well be considered to be adequate. The case of pistol or revolver stands on a somewhat different footing. It is a dangerous weapon and can easily change hands without detection. The chances of a weapon falling into the hands of dangerous persons are not very remote. (Sentence enhanced to two year's rigorous imprisonment).

BISHWANATH

38 CR. L. J. 137=A. I. R. 1936 ALL 850.

(130) In the case of a licensed weapon a person who merely assists the owner of the weapon by carrying it for him or taking it somewhere for him may be said to assist his master in doing a perfectly legal act, for the master being the licensee is entitled to have the gun in his possession. But in the case of an unlicensed weapon neither the actual owner of the gun nor any body to whom he entrusts it can be said to be engaged in a legal act, for the possession in that case is illegal whether it were the possession of the master or of a servant. But where it is not proved that the accused had knowledge that the gun which he was carrying for his master was unlicensed, the offence does not call for a serious punishment

LALMAN THARU

38 CR. L. J. 409=167 I. C. 352.

(131) In s. 4. of the Arms Act, the legislature enumerated only arms and not parts thereof. Therefore spearheads cannot, within the meaning of that section, be taken to be parts of spears. *Held*, that the notification of the U. P. Government no. IV-VIII dated the 9th May 1934, does not prohibit the possession of a spear-head in the District of Ghazipur. The word 'spear' used in the notification must be interpreted in the sense in which that word is used in that section in contra-distinction to spear-head. A spear cannot be held to include a spear-head. Consequently, a resident of Ghazipur district in possession of a spear-head cannot be convicted under s. 19 (f).

RAM BIRCH

38 CR. L. J. 511=A. I. R. 1937 ALL. 228=167 I. C. 935.

(132) Where from the evidence it appeared that the arms discovered in the possession of a person might have been placed there by his servant *held* that the conviction of a person under s. 19 (f) is illegal and must be set aside.

BISHAN SINGH

8 LAH. L. J. 404=97 I. C. 743.

(133) Offence under s. 19 would appear to be complete as soon as the accused is found in possession of arms and ammunition in contravention of s. 14 or s. 15 of the Act and the commission of the offence is not dependent upon whether the search was or was not conducted in the manner provided by s. 25 and s. 30. Indeed it is conceivable that there may be cases of an exceptional nature where in view of the exigencies of a situation demanding immediate action the provisions of s. 25 and s. 30 cannot be strictly complied with and in such cases if unimpeachable evidence is offered by the prosecution to prove that the accused was in fact found to be in possession of certain incriminating articles, the prosecution cannot fail merely because the search was not made in strict accordance with the provisions of s. 25 or s. 30. The clear and unambiguous provisions of ss. 25 and 30 cannot however be allowed to be normally disregarded so as to reduce those sections to a mere dead letter.

PERSAD DAHAIT

159 I. C. 487=16 PAT. L. T. 598=A. I. R. 1935 Pat. 465.

(134) A man who possesses an arm for which he holds an expired licence does not do so 'under that licence and in the manner and to the extent permitted thereby'. Consequently he commits an offence under s. 19 (f) and is not punishable under s. 23.

ZAINUL ABDIN

34 CR. L. J. 496=A. I. R. 1937. PESH. 30.

(135) Where a pistol was used by the accused with a reckless disregard to consequences against a Police Constable who was chasing him and the bullet remained lodged inside *held*, that the presumption of the accused's intention to cause death must be drawn and that he was guilty under sec. 307 I. P. C. and sec. 19 (f) of the Arms Act.

DHANWANTREE DURGA DAS—35 CR. L. J. 171—A. I. R. 1933 LAH. 852=14 LAH. 820.

(136) The fact that an accused was prosecuted under s. 19 (e), for the possession of an unlicensed dagger is a lambardar of 30 years of age, is no reason for showing leniency by not sentencing him but only taking security under s. 562. Cr. P. C. His age should carry no weight. At that age a man has arrived at a time of life when he is fully responsible for his actions and capable of realising their nature to the full. If the fact that it is his first offence by itself be sufficient reason for waiving the punishment, it should be applied in all cases under s. 19 (e), in which there are no aggravating circumstances. But it is impossible to consider that such a course should be adopted universally. The law should be allowed to take its own course, and if it is not allowed to do so, the result would be that an exception is made in favour of an offender merely because he is a man of above the average position which itself would amount to a gross failure of justice. S. 562, Cr. P. C. should only be applied in special cases and for special reasons.

AKHTAR MUNIR

38 CR. L. J. 610=A. I. R. 1937 PESH. 56.

20. Whoever does any act mentioned in clause (a), (c), (d) or (f) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the servant of any public carrier,

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

NOTE. So far as the Province of Bengal is concerned the following additions have been made to this section.

[Provided that if an offence committed under this section is in respect of a pistol, revolver, rifle or shot-gun, the offender shall be punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine. [The Bengal Criminal Law (Arms and Explosives) Act XXI of 1932.]

[20A. Notwithstanding anything contained in this Act, whoever goes armed with a pistol, revolver, rifle or other fire-arm in contravention of the provisions of section 13, or has any such fire-arm in his possession or under his control in contravention of the provisions of section 14 or section 15, under circumstances indicating that he intended that such fire-arm should be used for the commission of any offence of murder, shall, if he is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death, or with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, to which fine may be added. (The Bengal Criminal Law Amendment Act VII of 1934).

Enhanced punishment in certain cases.

NOTES.

(1) Under Sch. II., Cr. P. C. 1898, offences under this section are not bailable and triable only by a Court of Sessions. They can, of course, be tried by officers specially empowered under S 30 of the Code.

(2) An offence under s. 20 is not triable by a first class magistrate.

SHUNSHUINISA

2 L. B. R. 244.

(3A) It is not the law that S 20 of the Arms Act applies only to cases of export or import of arms; an act, in the matter of unlicensed possession of arms or ammunition, must relate to export or import of arms.

No sanction under s. 29 of the Arms Act, is required for a prosecution under s 20.

NAGENDRA CHANDRA DAS

60 Cr. L. J. 190—38 C W. N. 656=A. I. R.

1934 CAL. 405 & 705.

(3) The licence of the accused for the possession of fire-arms and ammunition was cancelled in August 1897. He was suspected of being in possession of arms after the cancellation of his licence. The Assistant Magistrate of Purneah, with a number of police, went to the house of the accused to search for arms, arrested the accused and then searched his house. The police had no search warrants, nor was there anything to show upon what charge the accused was arrested. Two gun-stocks, some ammunition and implements for re-loading were discovered in the house. There was nothing to show that the sanction required by s. 29 of the

Arms Act was given before proceedings were instituted. Accused was convicted and sentenced under ss. 19 and 20 of the Arms Act. *Held* that the conviction under s. 20 was not sustainable but that the accused must be taken to have had arms and ammunition as defined by the Arms Act, within the meaning of s. 19 (f) and the conviction under that section must be confirmed. *Held*, further, that with respect to the question whether or not any previous sanction had been given under s. 29, the Court was not unmindful of the suggestion that the charge in this case was, in the first instance, in respect of an alleged offence under s. 20 and of not one under s. 19; but that ss. 19 and 20 were so interwoven that it was difficult to see how an offence could be committed under the first paragraph of s. 20, unless an offence under one of the enumerated sub-sections in s. 19 had also been committed. It was not suggested that the charge here was an offence under the second paragraph of s. 20.

AHMED HUSAIN

27 CAL. 692 = 4 C. W. N. 750.

(4) Proceedings may be instituted against any person under s. 20 for the secret possession of arms in contravention of the provisions of sec. 14 or sec. 15 without previous sanction under sec. 29. If however in such a case the Magistrate finds that the intention to conceal the possession is not made out, he should discharge the accused under sec. 20. Proceedings under sec. 19 (f) may then be instituted if and, when the necessary sanction thereto is given, under sec. 29. The absence of sanction is a defect which cannot be cured by sec. 537. Cr. P. C.

NGA PO CHIN

8 L. B. R. 452 = 9 BUR. L. T. 287.

(5) The mere denial on the part of a person, whose house is being searched by the police for unlicensed arms, that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the police within the meaning of the second paragraph of s. 20. *Held* also, that where unlicensed arms are found concealed upon premises which though legally the joint property of a joint Hindu family, are in fact, at the time of the finding in the exclusive possession and control of one member of the family, he can properly be held to be in possession of such arms.

RAM SARUP.

28 ALL. 302.

(6) The first part of sec. 20, does not apply to cases of concealments or attempts at concealments made by an accused who has arms on his person or in a bag which he is carrying or which is otherwise in his immediate personal possession only on being arrested. It is meant to deal with cases of concealment before arrest.

GOPAL KRISHNA IYER

9 MAD. L. T. 475.

(7) S. 20 of the Act though widely worded is in practice only applied to cases where the import or export of arms is attempted and not to ordinary cases of concealment of arms.

IBRAHIM

9 P. R. 1912 CR. = 13 P. L. R. 1914.

(8) Being in possession of chhavi and keeping it hidden is simply punishable under s. 19, (a) of the Act. S. 20 is applicable only to those cases where the import or export of an arm is attempted.

The question of exclusive possession of an arm cannot be raised for the first time in appeal.

GAHNA

I P. W. R. 1914 (CR.) = 15 CR. L. J. 506 = 24 I. C. 594.

(9) Petitioner was alleged to have given information which led to the discovery of a rifle. One of the prosecution witnesses deposed that the petitioner said where the rifle had been buried, the other deposed that he said "I buried it". *Held*, in the absence of any other evidence of possession by the petitioner it cannot be presumed that because he knew where the rifle was he had concealed it himself.

KHUBA BAKSH

A. I. R. 1923 LAH. 238.

(10) Where the circumstances under which a pistol was recovered from the accused, who had come on a visit to Lahore from his village, led to clear inference that his intention was that the possession of the pistol by him may not be known to any public servant. *Held*, that it was not a case of an ordinary concealment and conviction should be one under s. 20.

FAIZ

8 L. L. J. 306 = 27 CR. L. J. 934 = 96 I. C. 390.

(11) *Vide* note (60) under sec. 19 (f) KHEM SINGH, — 8 P. R. 1915 CR., page 112.

(12) *Vide* note (67) under sec. 19 (f), UDHAM SINGH — 15 CR. L. J. 637, page 112.

(13) *Vide* note (63) under sec. 19 (f), AZU WALAD BANGAR — 1 S. L. R. 18 CR., page 112.

(14) The only additional element necessary to constitute an offence under sec. 20 is that the possession should be in such a manner as to indicate an intention that such act may not be known to any public servant.

HARSHA NATH CHATTERJI 42 CAL. 1153=19 C. W. N. 706.

(15) Sentence of three years rigorous imprisonment without special grounds is very heavy and ought to be reduced.

BALAMBOIL BUTTASHARI AHMAD 17 CR. L. R. 80.

(16) *Vide* note (69) under sec. 19 (f)—ISHAR SINGH,—72 P. L. R. 1916, page 112.

(17) The eight appellants were on a joint trial convicted by the Sessions Judge of dacoity under ss. 359-397, I. P. C., and one of them was not only charged with being concerned in the dacoity but also with being in possession of arms and ammunition under s. 20 of the Arms Act, at a time subsequent to the dacoity. The learned judge acquitted him of the latter charge as he held he could not be legally convicted of that offence and that of dacoity at the same trial. *Held*, that the trial was illegal and the defect in it could not be cured by the court acquitting the appellant concerned of the charge under the Arms Act.

JAI SINGH 44 P. R. 1917 CR. 156.

(18) Where an approver makes a statement disclosing his illegal possession of firearms and is released on pardon it is illegal to try him under s. 20.

SIAM SUNDAR 19 ALL. L. J. 717.

(19) Each case of concealment of arms must be decided on its own facts and it must be shown that the concealment was made so that the possession might not be known to the police.

SHER ALI A. I. R. 1923, LAH. 79=52 P. R. 1905 CR.

CHET SINGH A. I. R. 1926 LAH. 262.

KARIM BAKSH A. I. R. 1928 LAH. 193.

SABIATULLA SHAH A. I. R. 1931 SIND 9.

(20) Merely because the weapon concealed is *chhavi*, maximum sentence ought not to be inflicted.

FAKIRA 3 LAH. L. J. 145.

(21) Where the arms were discovered on the information given by the accused, the concealment of the *chhavi* and other arms recovered from the possession of the accused is clearly within the intention of this section.

ALI AHMAD A. I. R. 1923, LAH. 434.

(22) *Vide* note (77) under sec. 19, CHANNAN SINGH,—A. I. R. 1925, LAH. 395, page 113.

(23) *Vide* note (34) under sec. 19, SURJANSINGH,—A. I. R. 1923, LAH. 10, page 109.

(24) Sec. 20 lays down distinct offences and the Court should therefore distinctly state whether the first or the second part of the section is meant.

NGA THA HLA. A. I. R. 1924, RANG. 85.

(25) The power of search in respect of an offence punishable under s. 19 (f) must be exercised in the presence of some officer specially appointed by name or in virtue of the office by the Local Government in this behalf. A search conducted by a Police officer in charge of a reporting station, specially empowered as above without obtaining a warrant from a Magistrate, is not illegal.

BABURAM A. I. R. 1925, ALL. 396=47 ALL. 606.

(26) Keeping ammunition and part of arms hidden under clothes, falls under s. 20 and not under s. 19.

MT. BABO A. I. R. 1926, LAH. 61.

(27) *Vide* note (81) under sec. 19, GHULAM MOHAMMAD,—A. I. R. 1927, LAH. 561, page 113.

(28) In every case it is a question of fact whether the person found in possession of a concealed weapon is carrying the weapon in such a way as to indicate an intention to hide the article from the classes of persons referred to in s. 20. But the fact that a person is concealing a weapon while he is on a railway platform must indicate an intention to conceal that weapon from *inter alia* railway officials who are about that platform. The fact that there was a suspicion in the mind of the police that the accused was about to take part in a criminal undertaking is not a circumstance which a Court can take into consideration in arriving at an appropriate punishment for the actual offence which has been proved under section 20.

ABDUL WAHID A. I. R. 1928 LAH. 110=9 LAH. 302.

(29) The fact that the accused secreted the spear-head next to his skin does not indicate any intention that the possession by the accused of the spear-head might not be known to any public servant. The fact that the accused ran away when challenged by the constable indicates an intention of the character mentioned in s. 20. But where the accused had a companion who also ran away but upon whose person nothing incriminating could be found, as no such intention can be credited to the companion on the ground he also ran away, it cannot be attributed to the accused as well.

HARNAM SINGH

31 CR. L. J. 79=120 I. C. 273=A. I. R. 1929, LAH. 576.

(30) Each case has to be decided on its own merits to see whether the intention indicated in sec. 20 is to be found in each particular case. Where the *taikhana* (store-room) in which the arms and ammunition were found was no more than a store-house for safe custody of goods and therefore a place where arms and ammunition would naturally be kept and where there was no attempt to conceal the *taikhana* itself, it having an obvious door which would not escape the notice of the persons making the search, it was held that it could not be said that the accused possessed the fire-arms in such a manner as to indicate an intention that his possession should not be known to public servants and that he could not be convicted of an offence under sec. 20, though clearly he was guilty of an offence under sec. 19 (f). If an accused person is convicted of an offence punishable under sec. 20, by the trying Magistrate, there is nothing to prevent the appellate Court from altering the conviction to one under sec. 19 (f). Where sanction to prosecute is given under sec. 29 of the Arms Act for unlawful possession and concealment of arms and ammunition and for an offence under sec. 20 read with sec. 19 (f), it was held that as no sanction was required by sec. 29 for an offence under sec. 20, the sanction should be treated as one given for an offence under sec. 19 (f) and then conviction under sec. 19 (f) is not illegal. Where the offence reported to the Magistrate under sec. 157, C. P. C., was an offence under sec. 20 of the Arms Act, and the proceedings prior to the application for sanction to prosecute and sec. 19 (f), were proceedings under sec. 20, for which no sanction is necessary under sec. 29, the objection that the prosecution was bad for failure to obtain the previous sanction of the District Magistrate for an offence under sec. 19 (f) could not be sustained.

(PIR) SABJATULLAH SHAH

A. I. R. 1931, SIND. 9.

(31) *Vide* note (102) to sec. 19, IDA, A. I. R. 1931, LAH. 561=33 CR. L. J. 346, page 115.

(32) Section 20, Arms Act, is not restricted in its operation to cases of importation and exportation of arms in bulk. But, for s. 20 to apply, there must be some special indication of an intention to conceal possession of the arms from a public servant, Railway official or public carrier.

SACHENDRA KAR GUPTA

A. I. R. 1933 CAL. 692=35 CR. L. J. 125.

(33) Where the evidence was that the accused had tucked up in the top part of the dhoti where the folds were a heavy revolver which was not in perfect working order as the trigger did not engage the hammer but it was quite capable of being used by the well-known method of pressing back the hammer and then letting it go again without the assistance of the trigger and it appeared that he had a cap of 12 bore cartridges which would not in the least fit in with the revolver, and the suggestion of the defence was that another man had the revolver and had managed to throw it into the dhoti of the accused; held that the plea of the defence could not be accepted and the accused was guilty under sec. 20.

ANANTA KUMAR MUKERJI

A. I. R. 1933 CAL. 677=37 C. W. N. 509.

(34) *Vide* note no (120) under s. 19--SANTA SINGH A. I. R. 1933 CAL. 495=37 C. W. N. 234, page 118.

(35) Accused who was charged under sec. 120 B, I. P. C., read with secs. 19 and 20 of the Arms Act, for having joined in a conspiracy with others to possess arms in contravention of the Arms Act, was absconding and when arrested he was found in possession of arms; held, that separate proceedings can be taken for the possession of arms on the second occasion, that the two cases are wholly independent and that the evidence or the conviction in one cannot be considered in the others.

SUKHDEV RAJ

A. I. R. 1933, LAH. 231=34 CR. L. J. 637.

(36) The first part of s. 20 Arms Act, is not inapplicable to cases where arms are found on a search being made under s. 25 of the Act. The two parts of s. 20 are quite independent of one another. In view of the severe restrictions imposed by the authorities on the possession of revolvers, there is, in the nature of things,

a strong presumption that a person in unlicensed possession of such a weapon thereof, has procured it for unlawful purposes, and has a fixed intention that his possession thereof shall not become known to these public servants, namely, the police, whose duty it is to enforce the provision of the Arms Act. The intention referred to in the first part of s. 20 is only one of the factors that would have to be taken into consideration in deciding what sentence would be appropriate in any particular case, and it does not follow that a person who has been convicted under the first part of s. 20 will necessarily receive a heavier sentence than would have been inflicted on him under s. 19 (f) of the Act. The presumption referred to above is one which could very easily be rebutted in the case of persons whose only fault has been carelessness, thoughtlessness or ignorance of the law and who has not been inspired by any deliberate intention of keeping the fact of their being in possession of an unlicensed revolver from the knowledge of the authorities. Mere possession of an unlicensed weapon is ordinarily punishable under s. 19 (f), but, if the circumstances are such as to indicate an intention that the possession may not be known to the police, the offence is punishable under s. 20. Whether the intention referred to above exists or not is a pure question of facts, and this question must therefore, be determined in each particular case with reference to the fact proved in that case.

JOENDRA MOHAN GUHA 60 CAL 545 = A. I. R. 1933 CAL. 516 = 34 CR. L. J. 879.

(37) In a prosecution under s. 20, Arms Act, the question whether the circumstances justify the intention as indicated in s. 20, depends on the particular circumstances of each case. When a person is about to proceed on a dacoity and he travels to the place not by railway or public vehicle, it cannot be reasonably inferred that a weapon which is found in his pocket or in his clothes has been placed there with the express intention of concealing the possession of the weapon from any of the persons specified in s. 20. The mere fact that the weapon is not exposed to view does not necessarily indicate the intention mentioned in s. 20.

GANGA PRASAD

A. I. R. 1933 PAT. 493 = 34 CR. L. J. 890.

21. Whoever, in violation of a condition subject to which a licence has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

NOTES.

(1) Under Sch. II, Cr. P. C. 1898, offences under this section and under sections 22 or 23 are bailable and triable by any Magistrate.

(2) The accused, who was a cousin of the licensee, borrowed the gun and carried it in a marriage procession where he fired some shots and wounded some people accidentally. The licensee was forbidden under the terms of his license from taking the gun to a public assemblage. Held, that the accused was guilty of an offence under s. 19. Where a marriage procession emerged from private premises and goes down the public street, then it is open to the public to join the procession, becomes a public assemblage.

KALYAN CHAND GOPAL CHAND

A. I. R. 1923, BOM. 35 = 24 BOM. L. R. 487.

For knowingly purchasing arms, etc., from unlicensed person.

For delivering arms, etc., to persons not authorised to possess them.

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorised under the proviso to section 5, to sell the same; or

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorised to possess the same;

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

NOTE 3.

(1) Dealers in arms will be responsible if they merely rely on such inquiries to satisfy themselves of the legal authority of any intending purchasers. They are similarly not properly discharging their obligation if they send by post arms to any person who professes himself entitled to possess them. They must make due inquiries in all cases of sales, and must in all cases where they have not already sufficient proof that the purchaser is legally entitled to purchase, obtain sufficient proof by further inquiry. (H. D. no. 2954, dated the 11th August 1909.)

(2) The manager of a licensed vender of arms, ammunition and military stores sold certain military stores without previously ascertaining whether the buyer was legally authorised to possess the same. Held, that the licensee was liable to punishment under this section, though the goods were not sold with his knowledge and consent. The principle—"whatever a servant does in the course of his employment with which he is entrusted and as part of it, is his master's act" is applicable to the present case.

TYAB ALI

24 BOM. 423.

(3) From s. 22 of the Act it is clear that the transfer of possession contemplated is something more than the entrusting of an arm to a servant. Moreover, in ss. 14 and 19, the Act deals with possession and control as distinct matters. A servant using a gun belonging to his master would no doubt have the weapon under his control, so long as the use continued but the weapon would remain in the master's possession. Throughout the Arms Act the word "possession" must be taken to mean something different from mere 'control.'

MUKUNDA

4 N. L. R. 78.

(4) A and his servant N while out on a shooting excursion, came across a deer recently killed by a tiger. A fixed his rifle over the killed deer so as to form a trap for the tiger and went home leaving the trap in charge of N. A was charged under section 22 of the Arms Act, with having delivered the rifle into the possession of an unauthorised person. Held, that the delivery into possession contemplated by section 22 of the Arms Act, is such a delivery as to give the person into whose possession the arm is delivered control over the arm and authority to use it as an arm and that therefore A cannot be convicted for an offence under section 22.

ADAMS

5 L. B. R. 83.

(5) Where a gunmaker acting under the directions of the licence-holder made over his gun to a person merely to carry it to its owner and not with any authority to use it as an arm; held, that the gunmaker did not commit an offence under s. 22. A licence holder of a gun can permit another person who is not so licensed to carry his gun.

MANZUR HUSAIN

A. I. R. 1928, ALL. 55.

(6) The word 'sword' in the table of Schedule II of the Indian Arms Rules, 1924, includes sword-sticks: held, that the selling of sword-sticks and their possession without licence amounted to an offence under s. 22.

MAULA BOYJI

A. I. R. 1933 Bom. 438=35 BOM. L. R. 884.

(7) Vide note (28) under sec. 20, ABDUL WAHID,—A. I. R. 1928 LAH. 110=9 LAH. 302, page 122.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Penalty for breach of rule.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or

Power to confiscate.

Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale shall be confiscated.

NOTES.

(1) Confiscated arms, ammunition and military stores may be sold to licensed dealers or to other persons entitled to possess them, and such rifled barrels as are to be destroyed must be sent to the nearest Ordnance officer to be broken up, and may no longer be destroyed locally. (H. D. no. 1404 dated the 11th June 1907 and no. 1628 dated the 9th Oct 1907),

(2) For delay in getting a licence renewed a Magistrate imposed a fine and ordered confiscation of the gun. *Held*, the fine was a sufficient punishment and set aside the order of confiscation and directed the retention of the gun at the Police station till the production of a licence entitling the holder to possess the gun.

KOTTUWA ROWTHER

15 CB. L. J. 21.

(3) Confiscation is in addition to some sentence which the Magistrate is bound to pass.

GANGAMMA.

1 WEIR 664

VII.—Miscellaneous.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

Search and seizure
by Magistrate.

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a licence, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the *Central Government.

NOTES.

(1) Where the accused were convicted of offences under ss. 225-302, 224-353, I. P. C. and it was urged on their behalf on revision that a search under the Arms Act which gave rise to the alleged obstruction and use for criminal force on their part, was illegal inasmuch as it was made at night, and was not restricted to the procedure laid down in s. 25 of Arms Act; *held*, maintaining the convictions that a search by night is not illegal, and, in cases under the Arms Act, is not restricted to the procedure laid down in s. 25 of the Act, which section of the Arms Act does not override s. 165 of the Crim. Pro. Code.

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* The words "Central Government" were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order 1937.

(2) The defendant, who did not, before causing the search of the plaintiff's house to be made, first record the grounds of his belief, could not justify the search under the provisions of the said Act. As there was no proceeding pending before him, the defendant was not a 'court' within the meaning of s. 94, Cr. P. C., and, therefore, the defendant could not direct a search to be made in his presence under the provisions of s. 165 of the Code. The search having been for the purpose of discovering arms generally, s. 165 of the Code did not apply. Conducting a search for arms is not an act done in the discharge of a judicial duty. Even where a defendant's *bona fide* in conducting a search, is established, it does not release him from the obligation the law casts upon him, as being in supreme control of the search party, of seeing that the search was conducted in a proper and reasonable manner. In such a case, the damages should be substantial, and not merely nominal. When a statute creates a special right, but certain formalities have to be complied with, antecedent to the exercise of that right, a strict observance of the formalities is essential to the acquisition of that right. In a general search of arms under s. 25 the Magistrate holding such search must first record the grounds of his belief as directed therein, in order to avail himself of the protection of that section from the consequences of his action. A Magistrate can only conduct a search under s. 165, Cr. P. C., when he is competent to issue a search warrant under s. 96 of that Code which applies to the issue of a search warrant by the Court.

BROJENDRA KISHORE RAI CHOWDHURI

36 CAL. 433=13 C. W. N. 456.

(3) On appeal to the Privy Council, Their Lordships thought that there was no foundation for the suit, *Clarke's action under the circumstances was quite justified*. The charge of personal misconduct advanced and reiterated without any shadow of proof deserves the severest reprobation. Their Lordships therefore, advised His Majesty that the appeal ought to be allowed, the order of the Court of Appeal discharged and the suit dismissed with costs.

BROJENDRA KISHORE RAI CHOWDHURI

39 CAL. 953=16 C. W. N. 865

(4) Search for arms would be illegal if it was not ordered by a Magistrate in pursuance of s. 25

NGA PO TEIN

U B R 1892-1896 VOL. I, 1.

(5) S. 25 of the Arms Act appears to refer to cases in which the Magistrate considers that arms whether under a licence or not, are possessed for an illegal or under circumstances such as to endanger the public peace. F. 30 of the Arms Act appears to contemplate the presence of some specially empowered officer, besides the officer conducting the search.

TEGHA SINGH

8 Cal. 473, page 47.

(6) *Vide note* (52) under Sec. 19, SANGAMLAL—15 All. 129—page 111.

(7) *Vide note* (133) under s. 1919 PERSAD DAHAIT—159 I C. 487=A I. R. 1935, PAT. 465, page 119

(8) A magistrate directing the issue of a warrant to search premises on information received that the owner or occupant thereof is in possession of firearms without a licence, acts as a Court and not merely as a public servant, whether he purports to act under the Cr. P. Code or under s. 25 of the Arms Act.

GADDAM PANCHALU

35 M. L. J. 686=20 Cr. L. J. 90=42 MAD. 46.

(9) Although the search, is illegal, a person can be convicted if the evidence against him is conclusive. The ordinary meaning of "in the course of any proceedings instituted" in section 30 is in the course of any legal proceedings which have already begun. "In the presence of some officer" mean that there must be two persons, namely, the person making the search and the officer specially appointed.

KUTROO

A. I. R. 1925, ALL. 434=47 ALL. 575.

(10) Where the police officer made a search under s. 165 Cr. P. C., and a stolen gun and cartridges were found, held, that the accused could be convicted under s. 20 and that the want of compliance with the provisions of s. 25 will not render conviction under ss. 19 and 20 illegal.

SHIAM LAL

A. I. R. 1927, ALL. 516.

26. *The Central Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

27. The Governor General in Council may, from time to time, by notification published in the "Gazette of India"—
Power to exempt.

(a) exempt any person by name or in virtue of his office, or any classes of persons, or exclude any description of arms or ammunition, or withdraw any part of British India from the operation of any prohibition or directions contained in this Act; and

(b) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.

NOTES.

(1) For persons or classes of persons exempted—*Vide* Schedule I, attached to the Rules.

(2) For arms, ammunition or military stores excluded—*Vide* Schedules II and III attached to the Rules.

(3) For parts of British India withdrawn—*Vide* Schedule IV, attached to the Rules.

(4) Exemption from the operation of the Act applies to the possession of a gun, so long as it is the property of the licensee and the mere fact that it happened at the time to be carried by a servant does not make the servant liable for not having himself licence under the Act.

KALI NATH SINGH

3 C. W. N. 394.

(5) The Government of India have, under s. 27, the power of excluding any description of arms from the operation of the Act. But the Act does not empower the Government to define what is an arm within the meaning of the Act. If anything is not, in the opinion of the Court, an arm within the meaning of the Act, it is immaterial whether the Government have or have not excluded it from the operation of the Act. Dibs of the kind described in the notification, no. 827, dated the 15th June 1893, as excluded from the operation of the Act, are not arms within the meaning of the Act and it is therefore unnecessary to exclude them from the operation of the Act.

NGA NE U

L. B. R. 1893-1900. 416.

(6) *Vide* note no. (48) under s. 19—ABDUL GHAFUR—A. I. R. 1929 ALL. 68—page 110.

(7) *Vide* note no. (3) under s. 20 AHMED HUSAIN—27 Cal. 692=4 C. W. N. 750, pages. 120-121.

(8) As the notification of the Government of India exempts all soldiers in the service of Her Majesty the Queen-Empress of India from the operation of certain provisions of ss. 13-16 of the Arms Act, 1878, and as by the orders of the Government of India the term 'soldiers' includes reservists the possession of a double barrelled gun by the accused did not constitute an offence against the provisions of the Arms Act. There is no provision of law or of any rule having the force of law whereby the Army Regulations, India, can be held legally to restrict the powers exercised by the Governor General in Council under s. 27 of the Arms Act.

BISHAN SINGH

1 F. R. 1902 CR.=5 P. L. R. 1902.

*The words "Central Government" in section 26 were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Arms Act was given before proceedings were instituted. Accused was convicted and sentenced under ss. 19 and 20 of the Arms Act. *Held* that the conviction under s. 20 was not sustainable but that the accused must be taken to have had arms and ammunition as defined by the Arms Act, within the meaning of s. 19 (f) and the conviction under that section must be confirmed. *Held*, further, that with respect to the question whether or not any previous sanction had been given under s. 29, the Court was not unmindful of the suggestion that the charge in this case was, in the first instance, in respect of an alleged offence under s. 20 and of not one under s. 19; but that ss. 19 and 20 were so interwoven that it was difficult to see how an offence could be committed under the first paragraph of s. 20, unless an offence under one of the enumerated sub-sections in s. 19 had also been committed. It was not suggested that the charge here was an offence under the second paragraph of s. 20.

AHMED HUSAIN

27 CAL. 692=4 C. W. N. 750.

(4) **Proceedings may be instituted against any person under s. 20 for the secret possession of arms in contravention of the provisions of sec. 14 or sec. 15 without previous sanction under sec. 29.** If however in such a case the Magistrate finds that the intention to conceal the possession is not made out, he should discharge the accused under sec. 20. Proceedings under sec. 19 (f) may then be instituted if and, when the necessary sanction thereto is given, under sec. 29. The absence of sanction is a defect which cannot be cured by sec. 537. Cr. P. C.

NGA PO CHIN

8 L. B. R. 452=9 BUR. L. T. 287.

(5) **The mere denial on the part of a person, whose house is being searched by the police for unlicensed arms, that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the police within the meaning of the second paragraph of s. 20.** *Held* also, that where unlicensed arms are found concealed upon premises which though legally the joint property of a joint Hindu family, are in fact, at the time of the finding in the exclusive possession and control of one member of the family, he can properly be held to be in possession of such arms.

RAM SARUP.

28 ALL. 302.

(6) **The first part of sec. 20 does not apply to cases of concealments or attempts at concealments made by an accused who has arms on his person or in a bag which he is carrying or which is otherwise in his immediate personal possession only on being arrested.** It is meant to deal with cases of concealment before arrest.

GOPAL KRISHNA IYER

9 MAD. L. T. 475.

(7) **S. 20 of the Act though widely worded is in practice only applied to cases where the import or export of arms is attempted and not to ordinary cases of concealment of arms.**

IBRAHIM

9 P. R. 1912 CR.=13 P. L. R. 1914.

(8) **Being in possession of ohavi and keeping it hidden is simply punishable under s. 19, (a) of the Act. S. 20 is applicable only to those cases where the import or export of an arm is attempted.**

The question of exclusive possession of an arm cannot be raised for the first time in appeal.

GAHNA

I P. W. R. 1914 (CR)=15 CR. L. J. 506=24 I. C. 594.

(9) **Petitioner was alleged to have given information which led to the discovery of a rifle. One of the prosecution witnesses deposed that the petitioner said where the rifle had been buried, the other deposed that he said "I buried it".** *Held*, in the absence of any other evidence of possession by the petitioner it cannot be presumed that because he knew where the rifle was he had concealed it himself.

KHUDA BAKSH

A. I. R. 1923 LAH. 238.

(10) **Where the circumstances under which a pistol was recovered from the accused, who had come on a visit to Lahore from his village, led to clear inference that his intention was that the possession of the pistol by him may not be known to any public servant.** *Held*, that it was not a case of an ordinary concealment and conviction should be one under s. 20.

FAIZ

8 L. L. J. 306=27 CR. L. J. 934=96 I. C. 390.

(11) *Vide* note (66) under sec. 19 (f) KHEM SINGH,—8 P. R. 1915 CR., page 112.

(12) *Vide* note (67) under sec. 19 (f), UDHAM SINGH—15 CR. L. J. 637, page 112.

(13) *Vide* note (63) under sec. 19 (f), AZU WALAD BANGAR—1 S. L. R. 18 Cj page 112.

(14) The only additional element necessary to constitute an offence under sec. 20 is that the possession should be in such a manner as to indicate an intention that such act may not be known to any public servant.

HARSHA NATH CHATTERJI

42 CAL. 1153=19 C. W. N 706.

(15) Sentence of three years rigorous imprisonment without special grounds is very heavy and ought to be reduced.

BALAMBOIL BUTTASHARI AHMAD

17 CR. L. R. 80.

(16) *Vide* note (69) under sec. 19 (f)—ISHAR SINGH,—72 P. L. R. 1916, page 112.

(17) The eight appellants were on a joint trial convicted by the Sessions Judge of dacoity under ss. 359-397, I. P. C., and one of them was not only charged with being concerned in the dacoity but also with being in possession of arms and ammunition under s. 20 of the Arms Act, at a time subsequent to the dacoity. The learned judge acquitted him of the latter charge as he held he could not be legally convicted of that offence and that of dacoity at the same trial. *Held*, that the trial was illegal and the defect in it could not be cured by the court acquitting the appellant concerned of the charge under the Arms Act.

JAI SINGH

44 P. R. 1917 CR. 156.

(18) Where an approver makes a statement disclosing his illegal possession of firearms and is released on pardon it is illegal to try him under s. 20.

SHIAM SUNDAR

19 ALL. L. J. 717.

(19) Each case of concealment of arms must be decided on its own facts and it must be shown that the concealment was made so that the possession might not be known to the police.

SHER ALI

A. I. R. 1923, LAH. 79=52 P. R. 1905 CR.

CHET SINGH

A. I. R. 1926 LAH. 262.

KARIM BAKSH

A. I. R. 1928 LAH. 193.

SABJATULLA SHAH

A. I. R. 1931 SIND 9.

(20) Merely because the weapon concealed is *chhavi*, maximum sentence ought not to be inflicted.

FAKIRA

3 LAH. L. J. 145.

(21) Where the arms were discovered on the information given by the accused, the concealment of the *chhavi* and other arms recovered from the possession of the accused is clearly within the intention of this section.

ALI AHMAD

A. I. R. 1923, LAH. 434.

(22) *Vide* note (77) under sec. 19, CHANNAN SINGH,—A. I. R. 1925, LAH. 395, page 113.

(23) *Vide* note (34) under sec. 19, SURJANSINGH,—A. I. R. 1923, LAH. 10, page 109.

(24) Sec. 20 lays down distinct offences and the Court should therefore distinctly state whether the first or the second part of the section is meant.

NGA THA HLA.

A. I. R. 1924, RANG. 85.

(25) The power of search in respect of an offence punishable under s. 19 (f) must be exercised in the presence of some officer specially appointed by name or in virtue of the office by the Local Government in this behalf. A search conducted by a Police officer in charge of a reporting station, specially empowered as above without obtaining a warrant from a Magistrate, is not illegal.

BABURAM

A. I. R. 1925, ALL. 396=47 ALL. 606.

(26) Keeping ammunition and part of arms hidden under clothes, falls under s. 20 and not under s. 19.

MT. BABO

A. I. R. 1926 LAH. 61.

(27) *Vide* note (81) under sec. 19, GHULAM MOHAMMAD,—A. I. R. 1927, LAH. 561, page 113.

(28) In every case it is a question of fact whether the person found in possession of a concealed weapon is carrying the weapon in such a way as to indicate an intention to hide the article from the classes of persons referred to in s. 20. But the fact that a person is concealing a weapon while he is on a railway platform must indicate an intention to conceal that weapon from *inter alia* railway officials who are about that platform. The fact that there was a suspicion in the mind of the police that the accused was about to take part in a criminal undertaking is not a circumstance which a Court can take into consideration in arriving at an appropriate punishment for the actual offence which has been proved under section 20.

ABDUL WAHID

A. I. R. 1928 LAH. 110=9 LAH. 302.

(29) The fact that the accused secreted the spear-head next to his skin does not indicate any intention that the possession by the accused of the spear-head might not be known to any public servant. The fact that the accused ran away when challenged by the constable indicates an intention of the character mentioned in s. 20. But where the accused had a companion who also ran away but upon whose person nothing incriminating could be found, as no such intention can be credited to the companion on the ground he also ran away, it cannot be attributed to the accused as well.

HARNAM SINGH

31 CR. L J 79=120 I. C 273=A. I. R. 1929, LAH. 576.

(30) Each case has to be decided on its own merits to see whether the intention indicated in sec 20 is to be found in each particular case. Where the *taikhana* (store-room) in which the arms and ammunition were found was no more than a store-house for safe custody of goods and therefore a place where arms and ammunition would naturally be kept and where there was no attempt to conceal the *taikhana* itself, it having an obvious door which would not escape the notice of the persons making the search, it was held that it could not be said that the accused possessed the fire-arms in such a manner as to indicate an intention that his possession should not be known to public servants and that he could not be convicted of an offence under sec. 20, though clearly he was guilty of an offence under sec 19 (f). If an accused person is convicted of an offence punishable under sec 20, by the trying Magistrate, there is nothing to prevent the appellate Court from altering the conviction to one under sec. 19 (f). Where sanction to prosecute is given under sec 29 of the Arms Act for unlawful possession and concealment of arms and ammunition and for an offence under sec 20 read with sec. 19 (f), it was held that as no sanction was required by sec 29 for an offence under sec 20, the sanction should be treated as one given for an offence under sec 19 (f) and then conviction under sec 19 (f) is not illegal. Where the offence reported to the Magistrate under sec 157, C P C, was an offence under sec 20 of the Arms Act, and the proceedings prior to the application for sanction to prosecute and sec. 19 (f), were proceedings under sec 20, for which no sanction is necessary under sec. 29, the objection that the prosecution was bad for failure to obtain the previous sanction of the District Magistrate for an offence under sec 19 (f) could not be sustained.

(PIR) SABJATULLAH SHAH

A. I. R. 1931, SIND. 9.

(31) *Vide* note (102) to sec 19, IDA, A. I. R. 1931, LAH. 561=33 CR. L J 346, page 115.

(32) Section 20, Arms Act, is not restricted in its operation to cases of importation and exportation of arms in bulk. But for s 20 to apply, there must be some special indication of an intention to conceal possession of the arms from a public servant, Railway official or public carrier.

SACHENDRA KAR GUPTA

A. I. R. 1933 CAL 692=35 CR. L. J. 125.

(33) Where the evidence was that the accused had tucked up in the top part of the dhoti where the folds were a heavy revolver, which was not in perfect working order as the trigger did not engage the hammer but it was quite capable of being used by the well-known method of pressing back the hammer and then letting it go again without the assistance of the trigger and it appeared that he had a cap of 12 bore cartridges which would not in the least fit in with the revolver, and the suggestion of the defence was that another man had the revolver and had managed to throw it into the dhoti of the accused, held that the plea of the defence could not be accepted and the accused was guilty under sec. 20.

ANANTA KUMAR MUKERJI

A. I. R. 1933 CAL. 677=37 C. W. N. 509.

(34) *Vide* note no (120) under s. 19--SANTA SINGH A. I. R. 1933 CAL. 495=37 C. W. N. 234, page 118.

(35) Accused who was charged under sec 120-B, I. P. C, read with secs. 19 and 20 of the Arms Act, for having joined in a conspiracy with others to possess arms in contravention of the Arms Act, was absconding and when arrested he was found in possession of arms. held, that separate proceedings can be taken for the possession of arms on the second occasion, that the two cases are wholly independent and that the evidence or the conviction in one cannot be considered in the others.

SUKHDEV RAJ

A. I. R. 1933, LAH. 231=34 CR. L. J. 637.

(36) The first part of s. 20 Arms Act, is not inapplicable to cases where arms are found on a search being made under s. 25 of the Act. The two parts of s. 20 are quite independent of one another. In view of the severe restrictions imposed by the authorities on the possession of revolvers, there is, in the nature of things,

a strong presumption that a person in unlicensed possession of such a weapon thereof, has procured it for unlawful purposes, and has a fixed intention that his possession thereof shall not become known to these public servants, namely, the police, whose duty it is to enforce the provision of the Arms Act. The intention referred to in the first part of s. 20 is only one of the factors that would have to be taken into consideration in deciding what sentence would be appropriate in any particular case, and it does not follow that a person who has been convicted under the first part of s. 20 will necessarily receive a heavier sentence than would have been inflicted on him under s. 19 (f) of the Act. The presumption referred to above is one which could very easily be rebutted in the case of persons whose only fault has been carelessness, thoughtlessness or ignorance of the law and who has not been inspired by any deliberate intention of keeping the fact of their being in possession of an unlicensed revolver from the knowledge of the authorities. Mere possession of an unlicensed weapon is ordinarily punishable under s. 19 (f), but, if the circumstances are such as to indicate an intention that the possession may not be known to the police, the offence is punishable under s. 20. Whether the intention referred to above exists or not is a pure question of facts, and this question must therefore, be determined in each particular case with reference to the fact proved in that case.

JOENDRA MOHAN GUHA 60 CAL 545=A. I. R. 1933 CAL 516=34 CR L. J. 879.

(37) In a prosecution under s. 20, Arms Act, the question whether the circumstances justify the intention as indicated in s. 20, depends on the particular circumstances of each case. When a person is about to proceed on a dacoity and he travels to the place not by railway or public vehicle, it cannot be reasonably inferred that a weapon which is found in his pocket or in his clothes has been placed there with the express intention of concealing the possession of the weapon from any of the persons specified in s. 20. The more fact that the weapon is not exposed to view does not necessarily indicate the intention mentioned in s. 20.

GANGA PRASAD

A. I. R. 1933 PAT. 493=34 CR L. J. 890.

21. Whoever, in violation of a condition subject to which a licence has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

NOTES.

(1) Under Sch. II, Cr. P. C. 1898, offences under this section and under sections 22 or 23 are bailable and triable by any Magistrate.

(2) The accused, who was a cousin of the licensee, borrowed the gun and carried it in a marriage procession where he fired some shots and wounded some people accidentally. The licensee was forbidden under the terms of his license from taking the gun to a public assemblage. Held, that the accused was guilty of an offence under s. 19. Where a marriage procession emerged from private premises and goes down the public street, then it is open to the public to join the procession, becomes a public assemblage.

KALYAN CHAND GOPAL CHAND

A. I. R. 1923, BOM. 35=24 BOM. L. R. 487.

For knowingly purchasing arms, etc., from unlicensed persons.

For delivering arms, etc., to persons not authorised to possess them.

22.* Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorised under the proviso to section 5, to sell the same; or

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorised to possess the same;

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

NOTES.

(1) Dealers in arms will be responsible if they merely rely on such inquiries to satisfy themselves of the legal authority of any intending purchasers. They are similarly not properly discharging their obligation if they send by post arms to any person who professes himself entitled to possess them. They must make due inquiries in all cases of sales, and must in all cases where they have not already sufficient proof that the purchaser is legally entitled to purchase, obtain sufficient proof by further inquiry. (H. D. no. 2964, dated the 11th August 1909.)

(2) The manager of a licensed vender of arms, ammunition and military stores sold certain military stores without previously ascertaining whether the buyer was legally authorised to possess the same. *Held*, that the licensee was liable to punishment under this section, though the goods were not sold with his knowledge and consent. The principle—"whatever a servant does in the course of his employment with which he is entrusted and as part of it, is his master's act" is applicable to the present case.

TYAB ALI

24 BOM. 423.

(3) From s. 22 of the Act it is clear that the transfer of possession contemplated is something more than the entrusting of an arm to a servant. Moreover, in ss. 14 and 19, the Act deals with possession and control as distinct matters. A servant using a gun belonging to his master would no doubt have the weapon under his control, so long as the use continued but the weapon would remain in the master's possession. Throughout the Arms Act the word "possession" must be taken to mean something different from mere "control."

MUKUNDA

4 N. L. R. 78.

(4) A and his servant N while out on a shooting excursion, came across a deer recently killed by a tiger. A fixed his rifle over the killed deer so as to form a trap for the tiger and went home leaving the trap in charge of N. A was charged under section 22 of the Arms Act, with having delivered the rifle into the possession of an unauthorised person. *Held*, that the delivery into possession contemplated by section 22 of the Arms Act, is such a delivery as to give the person into whose possession the arm is delivered control over the arm and authority to use it as an arm and that therefore A cannot be convicted for an offence under section 22.

ADAMS

5 L. B. R. 83.

(5) Where a gunmaker acting under the directions of the licence-holder made over his gun to a person merely to carry it to its owner and not with any authority to use it as an arm; *held*, that the gunmaker did not commit an offence under s. 22. A licence holder of a gun can permit another person who is not so licensed to carry his gun.

MANZUR HUSAIN

A. I. R. 1928, ALL. 55.

(6) The word 'sword' in the table of Schedule II of the Indian Arms Rules, 1924, includes sword-sticks: *held*, that the selling of sword-sticks and their possession without licence amounted to an offence under s. 22.

MAULA BOYJI

A. I. R. 1933 Bom. 438-35 BOM. L. R. 884.

(7) *Vide* note (38) under sec. 20, ABDUL WAHID,—A. I. R. 1928 LAH. 110-9 LAH. 302, page 132.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Penalty for breach of rule.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or

Power to confiscate.

Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale shall be confiscated.

NOTES.

(1) Confiscated arms, ammunition and military stores may be sold to licensed dealers or to other persons entitled to possess them, and such rifled barrels as are to be destroyed must be sent to the nearest Ordnance officer to be broken up, and may no longer be destroyed locally. (H. D. no. 1404 dated the 11th June 1907 and no. 1628 dated the 9th Oct 1907),

(2) For delay in getting a licence renewed a Magistrate imposed a fine and ordered confiscation of the gun. *Held*, the fine was a sufficient punishment and set aside the order of confiscation and directed the retention of the gun at the Police station till the production of a licence entitling the holder to possess the gun.

KOTTUWA ROWTHER

15 CR L. J. 21.

(3) Confiscation is in addition to some sentence which the Magistrate is bound to pass.

GANGAMMA.

1 WEIR 664.

VII.—Miscellaneous.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a licence, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the *Central Government.

NOTES.

(1) Where the accused were convicted of offences under ss 225-302, 224-353, I. P. C. and it was urged on their behalf on revision that a search under the Arms Act which gave rise to the alleged obstruction and use for criminal force on their part, was illegal inasmuch as it was made at night, and was not restricted to the procedure laid down in s 25 of Arms Act; *held*, maintaining the convictions that a search by night is not illegal, and, in cases under the Arms Act, is not restricted to the procedure laid down in s. 25 of the Act, which section of the Arms Act does not override s 165 of the Crim. Pro. Code.

SHARAF KHAN

144 P. L. R. 193

* The words "Central Government" were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order 1937.

(3) The defendant, who did not, before causing the search of the plaintiff's house to be made, first record the grounds of his belief, could not justify the search under the provisions of the said Act. As there was no proceeding pending before him, the defendant was not a 'court' within the meaning of s. 94, Cr. P. C., and, therefore, the defendant could not direct a search to be made in his presence under the provisions of s. 165 of the Code. The search having been for the purpose of discovering arms generally, s. 165 of the Code did not apply. Conducting a search for arms is not an act done in the discharge of a judicial duty. Even where a defendant's *bona fide* in conducting a search, is established, it does not release him from the obligation the law casts upon him, as being in supreme control of the search party, of seeing that the search was conducted in a proper and reasonable manner. In such a case, the damages should be substantial, and not merely normal. When a statute creates a special right, but certain formalities have to be complied with, antecedent to the exercise of that right, a strict observance of the formalities is essential to the acquisition of that right. In a general search of arms under s. 25 the Magistrate holding such search must first record the grounds of his belief as directed therein, in order to avail himself of the protection of that section from the consequences of his action. A Magistrate can only conduct a search under s. 165, Cr. P. C., when he is competent to issue a search warrant under s. 96 of that Code which applies to the issue of a search warrant by the Court.

BROJENDRA KISHORE RAI CHOWDHURI

36 CAL. 433=13 C. W. N. 456.

(3) On appeal to the Privy Council, Their Lordships thought that there was no foundation for the suit, *Clarke's action under the circumstances was quite justified*. The charge of personal misconduct advanced and reiterated without any shadow of proof deserves the severest reprobation. Their Lordships therefore, advised His Majesty that the appeal ought to be allowed, the order of the Court of Appeal discharged and the suit dismissed with costs.

BROJENDRA KISHORE RAI CHOWDHURI

39 CAL. 953=16 C. W. N. 865

(4) Search for arms would be illegal if it was not ordered by a Magistrate in pursuance of s. 25

NGA PO TEIN

U B R. 1892-1896 VOL. I, 1.

(5) S. 25 of the Arms Act appears to refer to cases in which the Magistrate considers that arms whether under a licence or not, are possessed for an illegal or under circumstances such as to endanger the public peace. S. 30 of the Arms Act appears to contemplate the presence of some specially empowered officer, besides the officer conducting the search.

TEGHA SINGH

8 Cal 473, page 47.

(6) *Vide note (52) under Sec 19, SANGAMLAL*—15 ALL. 129—page 111.

(7) *Vide note (133) under s. 1919 PERSAD DAHAIR*—159 I. C. 487=A. I. R. 1935, PAT. 465, page 119

(8) A magistrate directing the issue of a warrant to search premises on information received that the owner or occupant thereof is in possession of firearms without a licence, acts as a Court and not merely as a public servant, whether he purports to act under the Cr. P. Code or under s. 25 of the Arms Act.

GADDAM PANCHALU

57 M. L. J. 686=20 Cr. L. J. 90=42 MAD. 46.

(9) Although the search, is illegal, a person can be convicted if the evidence against him is conclusive. The ordinary meaning of "in the course of any proceedings instituted" in section 30 is in the course of any legal proceedings which have already begun. "In the presence of some officer" mean that there must be two persons, namely, the person making the search and the officer specially appointed.

KUTROO

A. I. R. 1925, ALL. 434=47 ALL. 575.

(10) Where the police officer made a search under s. 165 Cr. P. C., and a stolen gun and cartridges were found, held, that the accused could be convicted under s. 30 and that the want of compliance with the provisions of s. 25 will not render conviction under ss. 19 and 30 illegal.

SHIAM LAL

A. I. R. 1927, ALL. 516.

26. *The Central Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

27. The Governor General in Council may, from time to time, by notification published in the "Gazette of India"—
Power to exempt.

(a) exempt any person by name or in virtue of his office, or any classes of persons, or exclude any description of arms or ammunition, or withdraw any part of British India from the operation of any prohibition or directions contained in this Act; and

(b) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.

NOTES.

1) For persons or classes of persons exempted—*Vide* Schedule I, attached to the Rules.

(2) For arms, ammunition or military stores excluded—*Vide* Schedules II and III attached to the Rules.

(3) For parts of British India withdrawn—*Vide* Schedule IV, attached to the Rules.

(4) Exemption from the operation of the Act applies to the possession of a gun, so long as it is the property of the licensee and the mere fact that it happened at the time to be carried by a servant does not make the servant liable for not having himself licence under the Act

KALI NATH SINGH

3 C. W. N. 394.

(5) The Government of India have, under s. 27, the power of excluding any description of arms from the operation of the Act. But the Act does not empower the Government to define what is an arm within the meaning of the Act. If anything is not, in the opinion of the Court, an arm within the meaning of the Act, it is immaterial whether the Government have or have not excluded it from the operation of the Act. Arms of the kind described in the notification, no 827, dated the 15th June 1893, as excluded from the operation of the Act, are not arms within the meaning of the Act and it is therefore unnecessary to exclude them from the operation of the Act.

NGA NE U

L. B. R. 1893-1900. 416.

(6) *Vide* note no. (48) under s. 19—ABDUL GHAFUR—A. I. R. 1929 ALL. 68—page 110.

(7) *Vide* note no. (3) under s. 20 AHMED HUSAIN—27 Cal. 692=4 C. W. N. 750, pages. 120-121.

(8) As the notification of the Government of India exempts all soldiers in the service of Her Majesty the Queen-Empress of India from the operation of certain provisions of ss. 13-16 of the Arms Act, 1878, and as by the orders of the Government of India the term 'soldiers' includes reservists the possession of a double barrelled gun by the accused did not constitute an offence against the provisions of the Arms Act. There is no provision of law or of any rule having the force of law whereby the Army Regulations, India, can be held legally to restrict the powers exercised by the Governor General in Council under s. 27 of the Arms Act

BISHAN SINGH

1 P. R. 1902 CR.=5 P. L. R. 1902.

*The words "Central Government" in section 26 were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel, and furniture thereof, or so much thereof as is necessary.

Abetment and attempts. 12. Whoever abets, within the meaning of the Indian Penal Code, the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall, be punished as if he had committed the offence.

Power to arrest persons committing dangerous offences 13. Whoever is found committing any act for which he is punishable under this Act, or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

Saving for manufacture, possession, use, sale, transport or importation by Government

14. Nothing in this Act shall apply to the manufacture, possession, use, sale, transport or importation of any explosive—

(a) by order of *(any Government in British India), or

(b) by any person employed *(under any Government in British India) in the execution of this Act, or as a keeper of a magazine, artizan, soldier, sailor, policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, XX of 1869, in the course of his employment or duty as such.

Saving of Indian Arms Act, 1878,

15. Nothing in this Act shall affect the provisions of the Indian Arms Act, XI of 1878 :

Provided that an authority granting a licence under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the licence is granted, direct by an order written on the licence that it shall have the effect of a like license granted under the said Indian Arms Act.

Saving as to liability under other law. 16. Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence* against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules :

Provided that a person shall not be punished twice for the same offence.

* The words within brackets were substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

17. The Governor-General in Council may, from time to time, by notification in the Gazette of India, declare that any substance which appears to the Governor-General in Council to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act; and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

Procedure for making, publication and confirmation of rules.

18. (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect until * * * it has been published in the Gazette of India.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

NOTES.

* Words omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

(1) Section 17.—Picric acid with certain exception has been declared to be an explosive within the meaning of this Act (G. of I. notn. no. 1317 M. dated the 20th November 1926 and Madras G. O. no. 699 dated the 1st December 1926).

(2) Acetylene with certain exceptions has been declared to be an explosive within the meaning of this Act (G. of I. notn. no. 526 D. dated the 6th December 1919).

*ACT VI OF 1908.

AN ACT FURTHER TO AMEND THE LAW RELATING TO
EXPLOSIVE SUBSTANCES. [8th June 1908.]

Whereas it is necessary further to amend the law relating to explosive substances ; It is hereby enacted as follows :—

Short title, extent
and application.

1. (i) This Act may be called the Explosive Substances Act, 1908.

(2) It extends to the whole of British India and applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India ;

(b) all other British subjects within the territories of any native prince or chief in India.

2. In this Act the expression "explosive substance," shall be
Definition of "ex- deemed to include any materials for making
plosive substance." any explosive substance ; also any apparatus,
machine, implement or material used, or intended to be used, or
adapted for causing, or aiding in causing, any explosion in or with
any explosive substance ; also any part of any such apparatus,
machine or implement.

3. Any person who unlawfully and maliciously causes by any
explosive substance an explosion of a nature
likely to endanger life or to cause serious injury
to property shall, whether any injury to person or
property has been actually caused or not, be
punished with transportation for life or any shorter term, to which
fine may be added, or with imprisonment for a term which may
extend to ten years, to which fine may be added or with imprisonment
which may extend to ten years to which fine may be added.

Punishment for
causing explosion
likely to endanger
life or property.

*Statement of Objects and Reasons [6th June 1908.]

Recent events have brought prominently to notice the inadequacy of the existing law to deal with crimes committed by means of explosive substances. The Indian Explosives Act, 1884, was framed to prevent accidents rather than to prevent crime and its provisions are clearly inadequate to meet the present emergency. No sentence of imprisonment can be imposed under that Act, and the maximum penalty is only a fine of three thousand rupees. The Indian Arms Act, 1878, though it applies to the possession of explosives as well as arms, is also inadequate in respect both of the penalties it allows and the scope of its provisions for dealing promptly with preparations to manufacture bombs and other explosives. The Penal Code provides for the punishment of persons who cause hurt or mischief by means of explosive substances and it also deals with attempts to cause hurt or mischief but only when any act towards the commission of the offence is actually done. But it does not provide any penalty for making or possessing explosive substances with unlawful intent and it does not in other cases always provide such severe penalties as are requisite. The Governor-General in Council therefore considered it necessary to supplement the existing law by an Act on the lines of the English *Explosive Substances Act, 1883*, which was enacted for the express purpose of dealing with anarchist crimes. The Bill which has been drafted to give effect to this decision provides for the punishment of any person who causes an explosion likely to endanger life or property, or who attempts to cause such an explosion, or makes or has in his possession any explosive substance with intent to endanger life or property. It further makes the manufacture or possession of explosive substances for any other than a lawful object a substantive offence and throws on the person who makes or is in possession of any explosive substance the onus of proving that the making or possession was lawful. It also provides adequately for the punishment both of principals and accessories.

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

4. Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance, or conspires, to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other person by means thereof to endanger life or cause serious injury to property in British India;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

NOTES.

(1) The accused got made for him an iron arch and also gave a false name when he got the arch made. It was also proved that a piece of a paper found at the house of the accused was taken from a copy of a certain book, and the scraps found at the scene of explosion were taken from a copy of the same book. *Held* that the facts proved were not sufficient to sustain the conviction of the accused for the offence of murder and for an offence under section 3 of the Explosive Substances Act, 1908. *Per Chief Justice*.—The essence of the offence under section 3 of Act VI of 1908, is the unlawfully and maliciously causing, by an explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property. *Per Abdur Rahim, J.*—Under section 5 of the Explosive Substances Act, it is not necessary to come to any more definite finding than that the accused had possession of the explosive substance under suspicious circumstances. The gist of section 3 of the Act is the causing of an explosion unlawfully and maliciously, which must be proved in the ordinary way. The law makes the contents of a report of a Chemical Analyst to the Government, evidence, and dispenses with the necessity of examining the expert as a witness in the case. But such report can be of no use, unless there is proof of identity of the articles found during investigation and sent to the Chemical Examiner with the articles examined by him. *Per Benson, J.*—The facts proved in this case lead one clearly to the belief that the first accused either himself made the bomb and burned it in the path where it exploded, or caused it to be made and burned there by some other person, and in either case he is equally guilty on the principle *qui facit per alium facit per se*. If a person buries a bomb in a frequented path where it is almost certain to be trodden on, and to explode and cause the death of any one treading on it, and if it does, in fact, explode and cause death, that person is guilty of murder, unless he can explain his action in such a way as to negative the inference as to his intention which the nature and circumstances of the act suggest. CHUKKAPALLI RAMAYYA (1910) 20 M. L. J. 657

(2) Malice in the legal sense is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In the legal sense it means a wrongful act done intentionally without just cause or excuse. It is in the legal sense that the word "maliciously" in s 3 is used. BHAGAT SINGH A. I. R. 1930 Lah. 260

(3) Where a complaint was filed by Sub-Inspector of Police before the sub-divisional magistrate, of an offence under s. 369, I. P. C., and the facts disclosed also an offence under s. 4 (b) of the Explosive Substances Act of which the Magistrate could not then take cognizance for want of the consent of Government, under s. 7 of the Act, and a complaint was subsequently filed by the Superintendent of Police, with such consent obtained before the additional district magistrate:—*Held*, that the latter had jurisdiction to take cognizance of the offence and that the initiation and continuation of the proceedings

by him were legal, notwithstanding that he had not withdrawn the original case to his own file :—*Held*, also, that, in any case, having regard to secs. 529 (e), 530 (k), and 531, Cr. P. C., unless it appeared that the proceedings wrongly held had, in fact, occasioned a failure of justice, they could not be set aside. A search for explosives by police officers of rank not below that of an inspector is legal under rule 32 (1) (b) of the Government Rules framed under the Indian Explosives Act (IV of 1884). S. 309 (1), Cr. P. C., requires the opinions of the assessors to be stated orally, and not in writing or in the form of a judgment under s. 367. Under s. 399, I. P. C., having in possession or immediate control, any explosive substance is one of several means to the end, whereas, under s. 4 (b) is the offence itself provided the necessary intent is proved. In order to render documents found in the possession of a party admissible against him as proof of their contents, it is necessary to show that he has in some way identified himself or, in other words, has by any act, speech or writing manifested an acquaintance with and knowledge of the contents of all or any of them. The rule would apply more strongly where some of the papers and letters were received, and others written, by the party against whom they are sought to be used. ¹

LALIT CHANDRA CHANDA CHAUDHURI

39 Cal. 119, = 15 I. C. 665, = 13 C.L.J. 433.

(4) An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him. But where the accused fully understood the nature of the offence with which they were charged, they had clearly not been prejudiced by the omission of the words "unlawful and maliciously" and "in British India" occurring in s. 4 (b). Such an omission can be cured by the verdict. Where the illegal act charged under s. 120 B, I. P. C., is unlawful and malicious possession of explosive substances within the meaning of s. 4, it is not essential to specify in the charge the explosive substance which the accused have conspired to have in their possession or under their control. If A, B and C conspire to make, or have in their possession or under their control, an explosive substance within the meaning of the Act, and, if in pursuance of such conspiracy, A makes or has in his possession or under his control an explosive substance, they may, if the Court thinks fit, be charged and tried together under s. 120 B, I. P. C., and s. 4 (b) of Act VI of 1908. If all the known conspirators named in the charge are not placed on their trial, the trial of some (separately) without the others is not vitiated. If the accused have committed an offence under s. 4 (b) in pursuance of criminal conspiracy, it is open to the Crown to prosecute them for such offences, irrespective of the question of ultimate design of the alleged conspiracy. S. 4 substantially reproduces the provisions of s. 3 of 46 ch. 3 (Explosive Substances Act, 1883) consequently the expression "unlawfully and maliciously" may be interpreted in the sense in which it is familiarly used in the criminal law of England. "Unlawfully" signifies "not for a lawful object", and "maliciously" signifies "intentionally and without justification or excuse or claim of right." The term "explosive substance" as used in s. 4 (b) includes any part of an apparatus, machine or implement intended to be used or adapted for causing or aiding in causing any explosive substance, and "by means thereof does not mean by means thereof *alone*". The reference of fact may legitimately be drawn that the "explosive substance" made and possessed by Sasanka were intended for use in British India. It is the duty of the prosecution, not so much to secure a conviction as to place all the available evidence in the case fairly and fully before the tribunal by which alone the guilt or innocence of the accused is to be determined. The proof of the case against the prisoner must depend for its support not upon the absence or want of any explanation on the part of the prisoner, but upon the positive affirmative evidence of his guilt that is given to the crown. But if there is a certain appearance made out against a party, if he is involved by the evidence in a state of considerable suspicion, he is called upon, for his own sake and his own safety, to state and bring forward the circumstances, whatever they may be, which might reconcile such suspicious appearances with perfect innocence. While it is not necessary to prove manual possession of the explosive substance by the accused it must be proved that it was in his power or control. Possession to be punishable must also be possession with knowledge and assent. The mere fact that the other accused were in the room does not show they were in possession of all or any of the things contained therein. When the evidence at the disposal of the prosecution is insufficient to secure a conviction for the crime committed, it is inexpedient, even though it may be lawful, to prosecute the accused for a conspiracy the proof whereof really rests on the establishment of that very crime. A man's guilt is to be established by proof of the facts alleged and not by proof of his character, such evidence might

create a prejudice but not lead a step towards substantiation of guilt. In India, as in England, the accused are entitled in cross-examination to elicit facts in support of their defence from the prosecution witnesses wholly unconnected with the examination-in-chief. In the course of cross-examination of this character the defence are entitled, in view of the generality of s. 143 of the Evidence Act, to ask leading questions. The defence is not entitled to elicit from the individual prosecution witnesses whether he was a spy or an informer, or to discover from police officials the names of persons from whom they had received information, but a detective cannot refuse, on grounds of public policy, to answer a question as to where he was secreted. In strictly carrying out the provision of s. 360 (1), Cr. P. C., by the daily reading over in open Court of the deposition of such witness, the Court does not lay itself open to criticism though that procedure should occupy considerable time.

AMRITA LAL HAZRA

43 Cal. 957=19 C. W. N. 676=21 C. L. J. 331.

(5) In regard to a criminal charge, when an article is found in a room to which several persons have access, it cannot be held to be in the possession of anyone of them. When a bomb was found in one of the rooms of a house to which all the inmates of the house had access, *held*, that it could not be held that a particular inmate was in possession of the bomb within the meaning of the Act, although the finding of the bomb in a room assigned to one of the inmates might be fair ground for imputing to him the possession or control of the bomb within the meaning of the Act. The evidence of conduct of an accused person unless it is incompatible with his innocence, is in fact a make weight and nothing more, and care should be taken that it may not have an exaggerated effect. Other circumstances as to how a man would act in a particular situation and it is dangerous to convict on a charge which covers a wide period of time and which is supported by evidence indefinite as to the point of time when the offence was committed. When a charge of conspiracy against the accused was framed in these words — "That you—on or between the 8th of June 1908 and 31st July 1908, at Midnapur, unlawfully and maliciously conspired to cause by an explosive substance, *viz*, a bomb an explosion in British India of a nature likely to endanger life, and thereby committed an offence, etc." *Sentle*—That the charge should have specified with what other persons the accused had conspired. In a criminal trial, two documents were made exhibits one of which purported to be a record of contemporaneous statements made to the police by an informer in their service and the other a document written up by a police officer for the purpose of assisting the informer in connection with the evidence, which the police, then expected he would give: *held*, that the statements contained in the documents were not evidence against the accused but they were useful in so far as they tended to expose the methods employed in getting up the prosecution case their evidentiary value was in no sense constructive, but if anything, destructive of the case against the accused.

JOGJIBAN GHOSH

13 C. W. N. 861.

(6) *Vide* note no. (85), Dula Singh, A. I. R. 1928 Lah. 272, under sec. 19 of the Arms Act on page 114.

(7) Where there is no means of discriminating between the cases of the various persons found in house where incriminating articles are discovered and the circumstances point to the conclusion that every person found in the house was a member of the occupancy, absence of proof that a particular person was there innocently leads to the conclusion that no one's presence was innocent. Temporary residence in a house containing explosive articles, even with the knowledge of their existence there is not possession within the meaning of s. 5 of the Explosive Act. Conspiracy to possession connotes some act of possession of attempted possession.

HARI NARAYAN CHANDRA AND ORS.

A. I. R. 1928, Cal. 27.

(9) *Vide* note [2] under sec. 7, Kullappa Dandappa, A. I. R. 1927, Bom. 21—page 144, *post*.

(10) Possession must be conscious and intelligent possession and not merely the physical presence of the accused in proximity or even in close proximity of the offending object. These are the important elements which go to make up an offence under s. 4 (b) of the Explosive Substances Act.

KULDIP CHAND

A. I. R. 1934 Lah. 718.

(11) The fact that sanction of the Local Government is obtained only for a prosecution under s. 4 of the Explosive Substances Act does not make an alternative charge under s. 5 and conviction thereon illegal. It is competent to the Sessions Judge, under s. 236 Cr. P. Code, to frame a charge under s. 5 as well, even if no charge has been framed under s. 5 by reason of the provisions of s. 237, Cr. P. Code.

NATHURAM

4 A. W. R. 672=1934 A. L. J. 1088=1934 Cr. C. 1302 (2)=A. I. R. 1934 All. 983.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

Punishment for making or possessing explosives under suspicious circumstances.

NOTES.

(1) The accused person had pointed out that he was a mere tool for disclosing the existence of some explosives from places of which he had no exclusive possession. Held that still it was for the prosecution to show that from the facts it could be inferred that these articles were in control and possession of the accused.

AMRIKH SINGH

A. I. R. 1931 Lah. 50.

(3) It is not that every person in a joint Hindu family should merely on the ground that a bomb is found in the joint family residence, be liable to be imprisoned and tried for an offence under s. 5. If, the article is found in the portion of the house of which one member of the family have the exclusive use, such member must *prima facie* be held responsible for anything that is found there. But if the article is found in a portion of the house of which all the members of the family have use, then *prima facie* the *katta* (head of the family) is responsible. But in either case it is only a presumption which may be rebutted and if the police act on the information, which they believe, showing the article found in a house is in the exclusive possession of one member of the family and the article is found in a portion of the joint family residence of which all the members of the family have the use, then the head of the family is not liable to arrest merely on the ground that the article is found in a portion of the house to which all the family can resort.

PEARY MOHAN DAS

16 C. W. N. 145=13 Cr. L. J. 65.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Punishment of abettors.

NOTES

The intention to procure, counsel, aid, abet or to be accessory to the commission of the offence is a necessary ingredient of the offence under sec. 6 and ordinarily, it is the primary intention of the accused that must be taken into consideration in determining his guilt.

BIMAL PRASAD JAIN

35 Cr. L. J. Lah. 752.

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Governor-General in Council.

NOTES.

(1) A Court convicting an accused under the act on a consent given under s. 7 may convict him of an offence under a section of the Act even different from what the consenting authority mentions in the order of consent, provided that the fact stated in the consent order and those upon which the conviction is based are the same. S. 230 Cr. P. C. fully authorises such a course.

AMAR SINGH

31 P. R. 1919 Cr.=55 I C. 102

(2) The failure to obtain necessary consent of Government as required by sec. 7 does not invalidate the commitment proceedings conducted by Magistrate for an offence under s. 4 and exclusively triable by the Sessions Court as the committal proceedings are only inquiry as defined in cl. (K) of s. 4, Cr P. C.

KULAPPA DANDAPPA

A. I. R. 1927, Bom. 21.

Under s. 7 of the Explosive Substances Act, it is not necessary that the sanction of the local Government for a prosecution under the Act should be obtained before taking cognisance of Magistrates. * Sanction obtained when the case proceeds to trial in Sessions Court is sufficient.

NATHU RAM. 4 A.W.R. 672=1934 A L J 1088=1934 Cr.C.1302 (2)=A.I.R.1934, All. 982.

* The words "of the Local Government or" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Government of India, Home Department, Notification No. 106/1/37 dated the 24th March, 1938.—In exercise of the powers conferred by sections 4, 10, 17 and 27 of the Indian Arms Act, 1878 (XI of 1878), the Central Government is pleased to direct that the following further amendments shall be made in the Indian Arms Rules, 1924, namely :—

(1) In the said Rules—

- (i) Except where otherwise expressly provided in this notification, for the words "Governor General in Council", "Government of India" or "Local Government" wherever they occur, the words "Central Government" shall be substituted.
- (ii) For the words "Indian State Forces" wherever they occur, the words "Indian States Forces" shall be substituted.
- (iii) The word "Rangoon" and the words "or Rangoon," wherever they occur, shall be omitted.

(2) In rule 2 of the said Rules—

- (i) in sub-rule (1) the words "in the case of Aden, the Superintendent of Police" shall be omitted.
- (ii) in sub-rule (2) for the words "an Act of the Governor General in Council" the words "a Central Act" shall be substituted.

(3) In clause (a) of the proviso to sub-rule (1) of rule 3 of the said Rules, the words "or the transport within the province of Burma of arms, ammunition or military stores" shall be omitted.

(4) In rule 8 of the said Rules in clause (b), the word "Aden", clause (c), the first proviso and in the second proviso the word "further" shall be omitted.

(5) In rule 9 of the said Rules, clause (b) shall be omitted.

(6) In rule 15 of the said Rules—

- (i) in clause (b) of sub-rule (1) for the words "Cochin or Aden", the words "or Cochin" shall be substituted ;
- (ii) in sub-rule (2) the words, brackets and figure "Save as otherwise provided in sub-rule (3)" and clause (c) shall be omitted ;
- (iii) Sub-rule (3) shall be omitted.
- (iv) in sub-rule (4) the brackets and letter "(c)" and the words, brackets and figure "and in sub-rule (3)" shall be omitted.

(7) In rule 16 of the said Rules—

- (i) in clause (a) of sub-rule (1)—
 - (a) for the words "Cochin or Aden", the words "or Cochin" shall be substituted ;
 - (b) in the proviso, for the words "of the Political Resident at Aden" the words "of the Government of the Protectorate of Aden" shall be substituted ;

- (u) for sub-rule (2) the following sub-rule shall be substituted, namely—

“(2) A copy of every licence issued under this rule for the export of arms, ammunition or military stores to any port in a State in India or to any port in the political charge of the Government of the Protectorate of Aden or of the Political Resident in the Persian Gulf shall forthwith be sent by the authority granting it to the Government of the Protectorate of Aden or to the Political Resident concerned, as the case may be.”

- (8) In rule 17 of the said Rules, for sub-rule (2) the following sub-rule shall be substituted, namely :—

(2) A licence for the export by land or river of arms, ammunition or military stores to a State in India may be granted by such officer as may be empowered by the Central Government in that behalf.

- (9) Rule 21 of the said Rules shall be omitted.

- (10) In rule 28 of the said Rules—

(i) in sub-rule (2) the brackets and letter “(i)” and the words, brackets and letters “or (i) in Sind, by the Commissioner in Sind” shall be omitted ;

(ii) in sub-rule (3), the words “or, in Sind, the Commissioner in Sind” and the words “or him” shall be omitted.

- (11) In rule 33 of the said Rules—

(i) in clause (a) of sub-rule (1) the words “and in Rangoon—by the Assistant Commissioner of Police, Rangoon” shall be omitted ;

(ii) after clause (c) of sub-rule (1) the following clause shall be inserted, namely :—

“(d) in the case of a resident of a tribal territory of the North-West Frontier Province, or of a person serving in connection with the administration thereof—by the Political Resident on the North-West Frontier.”

(iii) in sub-rule (3) for the words “a local Government in regard to its own Province” the words “the Central Government” shall be substituted

- (12) In sub-rule (1) of rule 38 of the said Rules, the words “or the Commissioner in Sind” shall be omitted,

(13) In sub-clause (iii) of clause (b) of sub-rule (1) of rule 39 of the said Rules, for the words “the Political Resident at Aden” the words “the Government of the Protectorate of Aden” shall be substituted.

(14) In clause (b) of sub-rule (1) of rule 43 of the said Rules, for the words “local Government”, at both places where they occur, the words “Provincial Government” shall be substituted.

- (15) In rule 46 of the said Rules, sub-rule (4) shall be omitted.

(16) In the Table set forth in Schedule I to the said Rules—**(i) in the first column, in clause (a) of entry (1)—**

(a) for the words 'Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, Bihar and Orissa, the Central Provinces, and Assam' the word "Provinces" shall be substituted,

(b) the words "the Commissioner in Sind" shall be omitted,

(c) for the words "Members of the Council of India" the words "Advisers to the Secretary of State for India" shall be substituted,

(d) for the words "Members of the Executive Councils of the Governor General and Governors", the words "Members of the Executive Council of the Governor General" shall be substituted, and,

(e) for the words "Chief Justices and Puirne Judges of High Courts, Judges of Chief Courts, Judicial and Additional Judicial Commissioners" the words and figures "the Chief Justice and Judges of the Federal Court, Chief Justices, Judges and temporary and Additional Judges of the courts deemed to be High Courts under Section 219 of the Government of India Act, 1935" shall be substituted,

(ii) in the first column, in entry (1)

(a) in clause (b) the words "local Government or" shall be omitted,

(b) for sub-clauses (i) and (iv) of clause (c) the words "the Central Government" shall be substituted,

(c) in the third column, in entry (2) the words "the local Government or" and "and as the case may be" shall be omitted,

(iii) in the third column, in entry (3) for

"(a) the Governor General in Council, or

(b) a local Government in respect of the territories administered by it or subject to its control

may declare to be reasonable for such person to carry or possess" the following shall be substituted, namely —

"the Central Government may declare to be reasonable for such person to carry or possess"

(iv) in the first column, in entry (b)

(a) in clause (b), for the words "Government of Bombay" the words "Central Government" shall be substituted

(b) clause (e) shall be omitted,

(v) in entry 9—

(a) in the first column for the words "local Government" the words "Provincial Government" shall be substituted,

(b) for "(a) the Governor General in Council, or

(b) a local Government in respect of territories administered by it or subject to its control, may direct."

the following shall be substituted, namely,—"the Central Government may direct"

(17) In the table set forth in Schedule II to the said Rules—

(i) in entry 1—(a) in the first column the word "Burma" shall be omitted,

(b) in the third column for the words "local official gazette" the words "official gazette" shall be substituted,

(ii) in the third column in the entry against clause (iii) of entry 2, for the words "local official gazette" the words "official gazette" shall be substituted,

(iii) in the first column in entry 2-A, the words "except Burma" shall be omitted;

(iv) in entry 3—(a) in the first column, the word "Burma" shall be omitted,

(b) in the second column

(x) in clause (iv) the words "Burma and" shall be omitted;

(y) the proviso to clause (vi) shall be omitted

(z) in clause (vii) for the words "local Government" the words "Provincial Government" shall be substituted,

(v) in entry 3A, in the third column, for the words and figures "Those contained in sections 13 and 15" the following shall be substituted, namely—

"All, with the exception of those contained in section 5: Provided that the Provincial Government may, by notification in the official gazette, retain all or any of the prohibitions and directions contained in the Act in respect of any class of persons or of any specified area or areas."

(vi) in the first column, in entry 4,—the words "Burma, Aden" shall be omitted ;

(vii) in the first column, in entry 5,—

(a) the words "Burma, Aden and" shall be omitted ;

(b) for the words "in the Bombay Presidency" the words "in the province of Sind" shall be substituted ,

(viii) in the first column, in entry 6, the word "Aden" and the words "outside Burma" shall be omitted ,

(ix) in the first column, in entry 6A—(g) the word "Aden" and the words "outside Burma" shall be omitted ;

(b) for the words "in the Bombay Presidency" the words "in the Province of Sind" shall be substituted ,

(a) in the first column, in entry, 7—(a) the words "Burma and" shall be omitted;

(b) for the words "in the Bombay Presidency" the words "in the Province of Sind" shall be substituted ,

(x) entry 9 shall be omitted

(18) In the Table set forth in Schedule III to the said Rules—

(a) in the first column, in entry II for the words "the Political Resident at Aden" the words "the Government of the Protectorate of Aden" shall be substituted ,

(ii) entry III shall be omitted.

(19) In the first column of the table set forth in Schedule IV to the said Rules, in entry (I) for the words "in the Madras Presidency" the words "in the Provinces of Madras and Orissa" shall be substituted

(20) In Schedule V to the said Rules—

(i) for the entry in the third column against item (1), the following entry shall be substituted, namely —"Ports in French India" ;

(ii) in the third column for clauses (i) and (v) relating to entry (2) the following clauses shall be substituted respectively, namely —

"(i) Ports in Portuguese India" and "(v) Ports in Iraq"

(iii) in the third column for clause (ii) relating to entry (3) the following clause shall be substituted, namely —"(ii) Ports in Iraq" ,

(iv) in entry (4)—(a) in the first column, for the words "The Commissioner in Sind" the words "The Secretary to the Government of Sind" shall be substituted ,

(b) in the third column, in clause (i) for the word "Kutch" the word "Cutch" and for clause (iii) the following clause shall be substituted, namely .—

'(iii) Ports in Iraq' ,

(v) entry (5) shall be omitted ;

(vi) for entry (6) the following entry shall be substituted, namely —

"(6) The Resident for the States of Western India, "	Any port in British India.	Any port in any State in Kathi- awar or in the Cutch State.
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(vii) for the entry in the first column relating to item (i) the following entry shall be substituted, namely —

"(7) The Agent to the Governor General, Resident and Chief Commissioner in Baluchistan, and the Political Agent, Kalat";

(viii) for the entry in the first column relating to item (8) the following entry shall be substituted, namely :—"(8) The Resident for the Madras States."

(ix) for the entry in the first column relating to item (9) the following entry shall be substituted, namely .—"(9) The Resident for Kolhapur and the Deccan States."

(#1) In Schedule VI to the said Rules—

(i) In the first column, in sub-entry (i) of entry (3) the words, brackets and letter "and (d) Rangoon" shall be omitted.

(ii) in entry (8)—(a) in the second column, in clause (ii) the word "Chitral" shall be omitted.

(b) in the third column—(x) the word "Chitral", where it occurs for the first time, shall be omitted ;

(y) in clause (d) for the words "Agents to the Governor General in" the words "Residents for", for the words "Political Officer for Dir" the words "Political Agent for Dir", for the words "Assistant Political Officer in Chitral" the words "Assistant Political Agent at Chitral", and for the words "Political Officer, Tochi, or the Political Officer, Wana, according as the consignment is for Tochi or for elsewhere in Waziristan" the words "Political Agent for North or South Waziristan, as the case may be" shall be substituted ,

(iii) in the first column for the entries in item 11 the following entries shall be substituted, namely :—

(a) All Political Officers in

- | | |
|----------------------------------|---|
| (1) Hyderabad | (8) Baroda and the Gujerat States Agency, |
| (2) Mysore, | (9) Kashmir, |
| (3) Central India Agency, | (10) Gwalior, Rampur and Benares, |
| (4) Rajputana Agency, | (11) Sikkim, |
| (5) Baluchistan, | (12) Madras States Agency, |
| (6) Western India States Agency, | (13) Kolhapur and the Deccan States Agency, |
| (7) Punjab States Agency, | (14) Eastern States Agency, |

(b) The Political Officer in Manipur.

(c) All Political Officers and Deputy Commissioners in the North-West Frontier Province.

(d) The Deputy Commissioner in the Khasi and Jaintia Hills.

(iv) in entry (12)—

(a) in the first column, in clause (a) after the words "Governor General" the word "Resident" shall be inserted ,

(b) in the second column for the words "and Agent of the Government of India in Khorasan or of His Britannic Majesty's Consul for Sistan and Kain" the words "for Khorasan" shall be substituted ,

(v) entry (13) shall be omitted.

(22) In Schedule VII to the said Rules—

(i) in the first column in clauses (f) and (g) of entry (1) the words "Burma Military Police" shall be omitted ,

(ii) in the first column in entry (6) for the words "local Government" the words "Provincial Government" shall be substituted ,

(23) In Schedule VIII to the said Rules —

(i) in Form II.—

(a) for the words "Secretary to the Government of Madras" the words "Board of Revenue in Madras" shall be substituted ,

(b) the words "at Aden in such Government warehouse as the Political Resident may from time to time appoint in this behalf and elsewhere" shall be omitted ,

(ii) in Form V, for the words "Secretary to the Government of India, Foreign and Political Department" the words "Secretary to the Central Government External Affairs Department" shall be substituted ;

(iii) in Form VI.—

(a) for the heading the following heading shall be substituted namely —

"Licence for the export by land or river of arms ammunition or military stores to in the . . . State"; and

(b) for the words "Secretary to the Government of India, Foreign and Political Department" the words "Secretary to the Central Government, External Affairs Department" shall be substituted ;

(iv) in Forms IX and X -

(a) in the last column of the tables the words, letters and figures "In Burma—The 31st March, 19 . . , Elsewhere—" shall be omitted .

(b) in condition 11, the words "or, in Sind, by the Commissioner in Sind" shall be omitted ;

(c) condition 13 shall be omitted ; and

(d) conditions 14 and 15 shall be re-numbered 13 and 14, respectively ;

(v) in Forms XI and XII—

(a) in the last column of the tables the words, letters and figures "In Burma—The 31st March, 19—, Elsewhere—" shall be omitted ;

(b) the words "Commissioner in Sind" shall be omitted

(c) condition 11 shall be omitted and conditions 12 and 13 re-numbered 11 and 12, respectively ;

(d) in the last column of the Form for renewal of the Licence the words "Commissioner in Sind" shall be omitted ;

(vi) in Form XVI in the last column of the "Form of renewal of Licence" the words "Assistant Commissioner" shall be omitted ;

(vii) In Forms XVI and XVII—

(a) In condition 3, for the words "a local Government in respect of the territories administered by it or subject to its control" the words "the Central Government" shall be substituted ;

(b) In condition 10, for the words "local Government" the words "Provincial Government" shall be substituted.

Government of India, Home Department, Notification No. 21/50/37 dated the 20th June 1938.—In exercise of the powers conferred by sub-section (1) of section 124 of the Government of India Act, 1935, the Governor General in Council is pleased with effect from the 1st day of April 1938, to entrust to Provincial Governments, with their consent, for a period of five years, the functions of the Central Government under the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1924, specified in the first column of the Schedule whether in force of its own operation or as extended or applied with or without modifications to any local area subject to the general conditions hereinafter mentioned, namely :—

- (1) that the Provincial Governments shall, in the exercise of these functions, be subject to the like control by the Central Government as was exercisable by the Governor General in Council immediately before the commencement of Part III of the Government of India Act, 1935 ;
- (2) that the Provincial Governments shall observe the existing policy and instructions laid down by the Central Government and shall not initiate new policies or issue instructions inconsistent with those of the Central Government without that Government's consent ; and to such conditions, if any, as is specified in respect of functions under any of the said provisions in the corresponding entry in the second column of the Schedule.

SCHEDULE.

Provisions of Act and Rules. 1	Conditions subject to which functions entrusted. 2
Sections 6, 7, 13, 15, 16 (1), (2) and (4), 17 (c), 25, 26, 30 and 32.	
Section 11	The power to establish searching posts shall be exercised with the previous sanction of the Central Government
Section 18	This entrustment is limited to the territories under the administration of the Provincial Government and is without prejudice to the power of the Central Government to cancel or suspend licences throughout the whole or any portion of British India.
Rules 2 (1), 3 (1) (b), 28 (2), (3) and (4), 29, 31, 32 and 33 (1)	
Rule 33 (3)	The restriction which may be imposed by any general or special order by a Provincial Government under this rule shall be limited to the province
Rules 34 (1) (b), 35, 36, 37, 39 (1) (a) and (2) and 42 (3) (a)	
Rules 46 (a)	<p>The entrustment under this rule is of the following power only, namely, by general or special order, to remit or reduce the fee payable in respect of grant or renewal of any licence -</p> <p>(a) for the import, transport or possession of sulphur in reasonable quantities proved to the satisfaction of the Provincial Government to be required in good faith for medicinal, agricultural, manufacturing or industrial purposes other than the manufacture of ammunition, or</p> <p>(b) granted under rule 10 to any person for the import of any arms, ammunition or military stores in reasonable quantities proved to the satisfaction of the authority granting the licence to be required in good faith for the protection of persons or property</p>
Schedule I, entries (3) and (4)	The power exercised by a Provincial Government under these entries shall be in respect of the territories administered by it or subject to its control.
Schedule I, entry (6).	
Schedule I, entry (9)	The power exercised by a Provincial Government under this entry shall be in respect of the territories administered by it or subject to its control.

SCHEDULE—*contd.*

Provisions of Act and Rules. 1	Conditions subject to which functions entrusted. 2
*Schedule II. entries 1, 2, 3A, 4, 5, and 6.	
Schedule VII, entry (7),	
Schedule VIII.	
Forms IX and X—Conditions 2, 3, 7, 8 and 11 and condition 12 in the case of Bengal and Assam only	
Forms XI and XII—Conditions 2, 3 and 7	
Form XIII—Conditions 3 and 4	
Form XIV—Condition 3.	
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Form XVI—Conditions 3, 6 and 9	
Form XVII—Conditions 3 and 9.	
Form XVIII—Condition 5.	
Form XIX—Conditions 6 and 7.	
Form XX—Conditions 7 and 8	

Government of India, Home Department, Notification No. 21/48/36, dated the 25th July 1938.—In exercise of the powers conferred by section 17 of the Indian Arms Act, 1878 (XI of 1878), the Central Government is pleased to direct that the following further amendments shall be made in the Indian Arms Rules, 1924, namely:—

I. In sub-clause (iii) of clause (b) of sub-rule (1) of rule 39 of the said Rules, for the words "such Political Resident" the words "such Government or Political Resident" shall be substituted.

II. In the Forms set out in Schedule VIII to the said Rules—

(i) in the "Form for renewal of the Licence" annexed to Forms XI and XII, the words, brackets and figures "Commissioner (if empowered under the proviso to rule 37 (3))" shall be omitted;

(ii) in Form XVI, under the head *Fee*, in clause (c) of paragraph I, the words "provided that in Burma licenses granted for the purpose of village defence shall be free of all fee" shall be omitted, and

(iii) in Forms XVI and XVII, at the end of the "Licence for the possession ^{sport} of arms and ammunition and for going armed for the purpose of ^{display} protection" and "Licence for the possession by a retainer of arms and ammunition and for going armed for the purpose of ^{sport} protection," respectively, the words "Assistant Commissioner" shall be omitted.

* Amended by notification no. 196/1/37 dated the 12th Jany. 1939, on page 153.

NOTNS. DATED THE 14TH & 29TH NOV. '38 & 12TH JANY. '39, 158

Government of India, Home Department, Notification No. 106/1/37 dated the 14th November, 1938.—In exercise of the powers conferred by sections 17 and 27 of the Indian Arms Act, 1878 (XI of 1878) the Central Government is pleased to direct that the following further amendments shall be made in the Indian Arms Rules, 1924, namely :—

1. In the said Rules—

(1) in clause (d) of sub-rule (1) of rule 3 for the words "Gazette of India" the words "official Gazette" shall be substituted ;

(2) in clause (1) of rule 4 for the words "Saltpetre and" the word "Saltpetre" shall be substituted.

(3) In sub-rule (1) of rule 5—

(a) in clause (c) the word "or" shall be omitted ; and

(b) in clause (d) for the word "ammunition" the words "ammunition or" shall be substituted, and

(4) in sub-rule (1) of rule 43, for the words "Madras Presidency" the words "Province of Madras" shall be substituted.

(II). In the table set forth in Schedule II to the said Rules—

(a) in entry 3-A in the third column for the words "the Provincial Government" the words "Central Government" shall be substituted, and

(b) in entry 8 in the first column for the words "Bombay Presidency" the words "Province of Bombay" shall be substituted.

Government of India, Home Department, Notification No. 106/1/37, dated the 29th November, 1938.—In exercise of the powers conferred by section 17 of the Indian Arms Act, 1878 (XI of 1878), the Central Government is pleased to direct that the following further amendment shall be made in the Indian Arms Rules, 1924, namely :—

In the "Form for renewal of the Licence" annexed to Forms XI and XII of the Forms set out in Schedule VIII to the said Rules, for the words "Secretary to the Central Government" the words "Signature of renewing authority" shall be substituted.

Government of India, Home Department, Notification No. 106/1/37, dated the 12th January 1939.—In exercise of the powers conferred by sub-section 124 of the Government of India Act, 1935, the Central Government, with the consent of the Provincial Government of the Punjab, is pleased to direct that the following amendment shall be made in the notification of the Government of India in the Home Department No. 21/50/37, Police, dated the 20th June, 1938, namely :—

In column 1 of the Schedule annexed to the said notification, for the entry "Schedule II, entries 1, 2, 4, 5 and 6" the entry "Schedule II, entries 1, 2, 3A, 4, 5 and 6" shall be substituted.

Government of India, Home Department Notification No. 21/50/37, dated the 22nd February 1939.—In exercise of the powers conferred by section 17 of the Indian Arms Act, 1878 (XI of 1878), the Central Government is pleased to direct that the following further amendment shall be made in the Indian Arms Rules, 1924, namely :—

In rule 48 of the said Rules, for the words "by means of non-judicial stamps or in cash at the option of the applicant" the words "in cash" shall be substituted.

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GOVERNMENT OF INDIA, HOME DEPARTMENT,

NOTIFICATION, NO. F. 829-1-22, DATED THE 3RD NOVEMBER, 1923,
(as amended up to the 1st June, 1939.)

In exercise of the powers conferred by sections 4, 10, 17 and 27 of the Indian Arms Act, 1878 (XI of 1878), the Central Government is pleased to make the following rules :—

1. **Short title.**—(1) These rules may be called the Indian Arms Rules, 1924.

(2) They shall come into force on the 1st January, 1924.

2. **Interpretation.**—(1) In these rules, unless there is anything repugnant in the subject or context,—

“District Magistrate” means in the case of the suburbs of Calcutta, as defined in the Government of Bengal notification dated the 21st September 1880, the Commissioner of Police, Calcutta, and, in cases where the Central Government so directs in respect of any districts or part thereof, an Additional District Magistrate ;

“Form” means a Form as set out in the Schedule VIII ; and

“the Act” means the Indian Arms Act, 1878 (XI of 1878).

(2) The General Clauses Act, 1897, shall apply for the purpose of the interpretation of these rules in like manner as it applies for the purpose of the interpretation of a Central Act.

[NOTE—In Bihar the powers and duties, by clause (1) of rule 2, of a “Magistrate of the District” shall be exercised and performed by the additional District Magistrate of Manbhum within the Dhanbad Sub-division of that District. (B. and O. notn. no. 4400 P, dated the 8th November, 1921.)]

Application of the Act.

3. **Exemption, exclusion and withdrawal.**—(1) The persons and classes of persons, the arms and ammunition, and the parts of British India specified or described in Schedules I to IV are, respectively, exempted, excluded and withdrawn to the extent and subject to the conditions therein specified from the operation of prohibitions and directions contained in the Act :—

Provided that the exemptions specified in Schedule I are made subject to the following conditions, namely :—

(a) they shall not be deemed to render lawful the import of arms or ammunition, save from Berar, through the medium of the Post Office ;

(b) save in the case of persons included in entry (1) (b), entry (2) or entry (6) (e) of the said Schedule, any person so exempted shall register, in such manner as the Central Government may prescribe, any firearm or ammunition for the same in respect of which he is exempted from the operation of any provision of the Act ;

NOTE (1) *Vide* para. 1 of notn. no. 106/1/37 dated the 24th March 1938, page 145.

NOTE (2) *Vide* the amendments made by Notifications printed on pages 145-153.

(c) every person shall, on the loss or theft of any arm in respect of which he is so exempted, forthwith report the occurrence at the nearest police station; and

*(d) the Central Government may, by notification in the *Official Gazette*, direct that any such exemption conferred on a class of persons shall cease to extend to any person included in that class who may be named in the notification.

(2) Any person failing to comply with any condition of exemption set out in provisos (b) and (c) to sub-rule (1) shall be deemed to have violated these rules.

4. **Extension.**—For the purposes of the definition of “military stores” in section 4 of the Act all sections of the Act are extended throughout British India to all—

(i) lead, sulphur and saltpetre and

(ii) asphyxiating, poisonous, irritant or other gases and analogous liquids, materials or devices and,

(iii) Chlorates.

Import.

5. **Restriction upon import of cannon and certain other articles.**—(1) A licence for the import of—

(a) cannon,

(b) articles designed for torpedo service,

(c) war-rockets, or

(d) machinery for the manufacture of arms or ammunition,

(e) continuous fire firearms—

may be granted in Form I only by the Central Government.

(2) A copy of every licence granted in accordance with sub-rule (1) shall forthwith be sent—

(a) where the articles are consigned to a Presidency town—to the Commissioner of Police; or

(b) where they are consigned to any other place—to the District Magistrate of the district in which such place is situated.

6. **Restriction upon import of arms, ammunition and military stores from Portuguese India.**—A licence shall not be granted for the import of any arms, ammunition or military stores from Portuguese India :—

Provided that nothing in this rule shall be deemed to limit or otherwise affect any power conferred by these rules to grant a licence for the import of ammunition which, in the opinion of the authority granting the licence, is intended in good faith for blasting purposes.

7. **Restriction upon import of certain rifles.**—(1) A licence shall not be granted for the import by sea or by river or land, save from Berar—

* *Vide* footnotes to items (4) (5), (6) and (6), (g) of Schedule I, page 184.