MANUAL

OF

Indian Military Law

1911

Government of India Army Department, 1911

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
1912

Price Re. 1 annas 6.

PREFACE

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

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

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

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

Part IV contains all "notifications" issued by the Governor General in Council under the Indian Army Act, 1911, up to the date of publication of this manual; also the forms sanctioned for use in the preparation of court-martial warrants under that Act.

An index, which has been made as full as possible, completes the volume.

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

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

NOTE.

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

The Editor,
(Manual of Indian Military Law),
Care of the Judge Advocate General in India,
Simla.

CONTENTS.

PART I.

CHAPTER.		PAGE
I.	Indian Military Law—its Origin and Extent	1
II.	The Indian Army Act	5
III.	Arrest and Investigation of Charges	14
IV.	Courts-Martial	18
V.	Evidence	26
VI.	Civil Offences	59
VII.	Miscellaneous	87

PART II.

The Indian Army Act, with notes		93
The Indian Army Act Rules, with notes		159
	Appendix I.—(Forms of Enrolment)	252
	Appendix II.—(Forms of Charges)	253
	Further Illustrations of Charges	270
	Appendix III.—(Forms as to Courts-Martial)	285
	Subsidiary Orders	311
	Memoranda for the guidance of Courts-Martial	312
	Appendix IV.—(Warrants under sections 107 and 109 of the Act)	314

PART III.

MISCELLANEOUS ENACTMENTS AND STATUTORY RULES.

Extracts from the Indian Penal Code	321
The Indian Evidence Act, 1872	369
The Indian Reserve Forces Act, 1888	415
The Indian Official Secrets Act, 1889	417
Extracts from the Code of Criminal Procedure, 1898	421
The Indian Tolls (Army) Act, 1901	425
Rules under the above Act	429
The Whipping Act, 1909	433

PART IV.

Notifications and Warrants issued under the Indian Army Act	435

PART I.

CONTENTS OF CHAPTERS.

CHAPTER I.—INDIAN MILITARY LAW—ITS ORIGIN AND EXTENT.

(i) *Introductory.*

PAGE

Origin of the Indian Army 1

East India Company's Mutiny Act 1

Each Presidency frames its own Code 2

(ii) *The Articles of War.*

Government of India Act, 1833, and the "Articles of War" 2

Amendment of Articles in 1894 3

The Indian Army Act, 1911 3

(iii) *Present Code.*

Rules and other "subordinate legislation" 3

Persons permanently subject to Indian Military Law . . 3

Persons temporarily subject to Indian Military Law . . 4

Other military bodies in India 5

CHAPTER II.—THE INDIAN ARMY ACT.

(i) *Application of the Act.*

Scheme of Chapter 5

Indian Army Act, sections 2 and 3 5

Indian Army Act, section 5 6

Indian Army Act, section 6 6

(ii) *Definitions.*

Definitions 7

(iii) *Enrolment and Attestation.*

Enrolment and attestation explained 7

(iv) *Dismissal and Discharge.*

Dismissal and discharge explained 8

(v) *Summary Reduction, etc.*

Summary reduction and minor punishments 9

Losses of arms 9

(vi) *Offences.*

PAGE

Military and civil offences 10
Subject to " general exceptions " of Indian Penal Code . 10

(vii) *Punishments.*

System on which punishments are arranged . . . 10
Corporal punishment 11

(viii) *Penal Deductions.*

Penal deductions 11

(ix) *Courts-Martial; their Constitution and Jurisdiction.*

Four kinds of court-martial 11
The summary court-martial 12
Constitution of courts-martial 12

(x) *Powers of Courts-Martial.*

Powers of courts-martial 13

(xi) *Courts-Martial; their Confirmation, etc*

Confirmation, etc. 13

(xii) *Execution of Sentences.*

Effect of Prisoners' Act, 1900 14
Committal warrants 14

(xiii) *Other Provisions.*

Other provisions of Indian Army Act 14

CHAPTER III.—ARREST AND INVESTIGATION OF CHARGES.

(i) *Arrest.*

Military custody of person charged with an offence . . 14
Offender in arrest not to perform military duty . . . 15

(ii) *Investigation of Charges.*

Charge to be promptly investigated 15
Preliminary investigation 15
Investigation by commanding officer 16
Caution as to expressing opinion 16
Adjournment for taking a summary of evidence . . . 16
Mode of taking summary 16
Remand for court-martial 17
Use of summary of evidence 17
Convening court 17

(iii) *Summary Power of Commanding Officer.*

Minor punishments where specified 18

Chapter IV.—Courts-Martial.

(i) *Summary Courts-Martial.*

	Page
Application for sanction to try by summary court-martial in certain cases	18
Non-combatant commanding officers	19
Assembly of court	19
Arraignment of accused. Plea of " guilty "	19
Procedure on plea of " not guilty "	20
Sentence	20
Proceedings not open to revision and do not require confirmation	20

(ii) *General and District Courts-Martial.*

Application for general court-martial or district court-martial	21
Duty of convening officer	21
Considerations to be borne in mind by convening officer	21
Convening order	22
Assembly of court	22
Eligibility and freedom from disqualification of members to be ascertained	22
Amenability of accused to jurisdiction	23
Appearance of prosecutor and accused	23
Objections by accused	23
Pleas, etc.	23
Plea of " guilty "	23
Plea of " not guilty," and duty of prosecutor	23
Defence when no witnesses to facts of case called by accused	24
Defence when accused calls witnesses to facts of case	24
Latitude allowed to defence	24
Court not to be influenced by supposed intention of convening officer	24
Confirmation required	24
Procedure after conviction	24
Revision	25
Mitigation, etc., of sentence	25

(iii) *Summary General Courts-Martial.*

Constitution and powers of summary general courts-martial	25
Summary general courts-martial in time of peace	25
Summary general courts-martial on active service	25
Proceedings of summary general courts-martial	26

Chapter V.—Evidence.

(i) *Introductory.*

Indian Evidence Act applies to courts-martial under Indian Army Act	26

PAGE

Questions to be determined at every trial 27
Nature of evidence 27
Difference between judicial and non-judicial inquiries . 27
Reasons for excluding certain classes of evidence . . 28
" Proved " 28
" Disproved " 28
" Not proved " 28
These definitions to be borne in mind 28

(ii) *What must be proved.*

Charge must be proved 28
But its substance only need be proved 29

(iii) *Arrangement of the Indian Evidence Act.*

Arrangement of the Act 29
" Facts in issue " 29

(iv) *Relevant Facts.*

What evidence is admissible 30
Circumstantial evidence 30
Relevant facts 30
Facts forming part of one transaction 30
Facts which are occasion, cause, etc., of a relevant fact . 31
Facts showing motive or preparation 31
Complaints 31
Distinction between a statement and a complaint . . 31
Explanatory and introductory facts 32
Acts of conspirators 32
Inconsistent facts 32
" Alibi " 32
Facts showing state of mind or body 32
Further illustrations 33
Facts showing intention 33
Course of business 33

(v) *Admissions and Confessions.*

Rule as to admissions 34
Confession only admissible against person who makes it . 34
Confession must be voluntary 35
What this means 35
Subject continued 35
Confession obtained by fraud. etc. 35
Confession voluntary if made after removal of impression produced by inducement, etc. 36
Confessions to police officers 36

PAGE

Whole confession must be given in evidence . . . 36
Confession made on oath in previous proceedings . . 36

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

" Hearsay " excluded 37
Reasons for exclusion of " hearsay " 37
Statements of absent persons which are specially admitted . 37
Comparison with English law 37
Comparison with English law 38
Evidence at previous inquiry, when admitted . . . 38
Subject continued 38
Summary of evidence, how far admissible 39

(vii) *Statements made under special circumstances.*

Documents 39
Entries in books of account 39
Entries in public records, etc. 39
Special provisions of Indian Army Act 40
Judgments of courts of law 40

(viii) *Opinion of third persons, when relevant.*

Rule as to opinion 40
Exception in case of " Experts " 40
Examples 40
Grounds on which opinions are based—when relevant 41
Handwriting—who may give opinions regarding it . . 41
Proof of handwriting by comparison 41
Other methods of proof 42
Summary of law as to proof of authorship of document . 42
Evidence of belief not excluded 42
Opinion as to conduct—how far admissible . . . 43

(ix) *Character, when relevant.*

Evidence of character—when admissible 43
Evidence of character, etc., after conviction . . . 43
Effect of evidence as to character 43
Evidence tending to show disposition not admissible . . 44
Conclusion of list of " relevant facts " 44

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

Two categories of facts which need not be proved . . 44
Judicial notice 44
Books of reference may be consulted 45
Facts admitted 45
Plea of " guilty " 45

(xi) *Oral Evidence.*

	PAGE
Oral evidence defined	45
Special rule as to treatises by experts	46
Court may require production of thing referred to	46

(xii) *Documentary Evidence.*

Rule as to documentary evidence	46
Primary evidence	46
Document which must be attested	47
Secondary evidence, when given	47
Secondary evidence, nature of	48
Public documents defined	48
Private documents defined	48
Provisions as to extracts and copies of certain documents	48

(xiii) *Presumptions as to Documents.*

" Shall presume " and " may presume "	49
Contract, etc., rule as to	49

(xiv) *Burden of Proof.*

Burden of proof	49
Rule as to general and special exceptions	50
Presumptions	50
Burden of proof may be shifted	50

(xv) *Witnesses.*

Competency of witnesses	50
Comparison with English law	50
Accused cannot give evidence but may make a statement	51
Persons jointly tried cannot give evidence	51
Evidence of accomplice should be corroborated	51
Deaf or dumb witness	51
Member as witness	51

(xvi) *Privilege of Witnesses.*

Incriminating questions	52
Official matters	52
Confidential reports	52
Courts of inquiry	52
Privilege which cannot be waived	53
Communications during marriage	53
Legal advisers—communications to	53
Procedure when privilege claimed	53

(xvii) *Of the Examination of Witnesses.*

	PAGE
Points requiring attention of court	53
How examination of witnesses is conducted	54
Leading questions	54
Test of what are leading questions	55
Rule as to directing attention to articles	55
Hostile witnesses	55
Rules as to cross-examination	55
Subject of cross-examination continued	55
Subject of cross-examination continued	56
Injurious questions	56
Exclusion of evidence to contradict answers to questions testing veracity, etc.	57
Impeaching credit of witnesses	57
Subject continued	57
Corroboration of witnesses	57
Former statements by witnesses	57
Re-examination	58
Refreshing memory	58
Notes referred to are not evidence of themselves	58

(xviii) *Conclusion.*

Rule as to evidence improperly received or rejected	58
How to act when in doubt	59

CHAPTER VI.—CIVIL OFFENCES.

(i) *Introductory.*

Definition of a civil offence	59
The Indian Penal Code	59
Table of offences and punishments	60
Corporal punishment	60
Punishments discussed	60
Courts are subject to their own limitations	60

(ii) *Responsibility for Crime.*

Everyone responsible for natural consequences of his actions	61
Illegal omissions	61
Example	61
Further examples	61
Criminal responsibility for offences committed by others	62
Assisting in offence	62
Common intent	62
Framing charges in certain cases	62
Abetment	63

PAGE

Innocent agent 63
Harbouring offenders 63
Indian Penal Code to be consulted 63

(iii) *Murder.*

Culpable homicide 63
Murder 64
Exceptions 64
Grave and sudden provocation 64
Subject to certain provisos 65
Culpable homicide of person other than the one intended . 65
Burden of proof 65
Penalty for murder 66

(iv) *Hurt and Grievous Hurt.*

"Hurt" and "grievous hurt" defined 66

(v) *Criminal Force and Assault.*

"Force" defined 66
"Assault" 66
Difference between assault and use of criminal force . . 67

(vi) *Rape.*

Penetration 67
Consent, when valid 67
Caution as to evidence in cases of alleged rape . . . 67
Attempted rape 67

(vii) *Theft and Cognate Offences.*

Property which can be subject of theft 68
Movable property 68
Property must be in possession of some one 68
Possession through another 68
What constitutes theft 69
Moving 69
Other allied offences 69
Dishonest misappropriation 69
Criminal breach of trust 70
Stolen property, receipt of 70
Presumption from recent possession 70

(viii) *Concurrent Jurisdiction.*

Concurrent jurisdiction of criminal courts and courts-martial 70

Table of Offences and Punishments 72

Chapter VII.—Miscellaneous.

(i) *Duties in aid of the Civil Power.*

	Page
Comparison with English law	87
Protection to military men in India	87
Meaning of "good faith"	87

(ii) *Military Privileges.*

Pay protected	88
Pension protected	88
Civil suits	88
Exemption from court-fees in certain cases	88
Receipts for pay need not be stamped	88
Exemption from tolls when on duty	88
Privileges under the Arms Act and Rules	89

(iii) *Indian Army Reserve.*

Indian Reserve Forces Act, 1888	89
Obligations of the reservist	89
Composition of the reserve	89

(iv) *Other Forces existing in India.*

Military Police, Militia, and Levies	90
Imperial Service Troops	90
Arrangement for the discipline of the Imperial Service Troops	90

MANUAL OF

INDIAN MILITARY LAW.

PART I.

CHAPTER I.

INDIAN MILITARY LAW—ITS ORIGIN AND EXTENT.

(i) *Introductory.*

Origin of the Indian Army.

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

E. I. Company's Mutiny Act.

2. Statutory provision was first made for the discipline of the Honourable East India Company's troops by an Act[2] passed in 1754 for "punishing Mutiny and Desertion of officers and soldiers in the service of the United Company of Merchants of England trading to the East Indies, and for the punishment of offences committed in the East Indies, or at the Island of Saint Helena." Section 8 of this Act empowered the Crown to make Articles of War for the government of these troops, and such articles were accordingly made and published. The terms of the Act are wide enough to cover both European and native troops, but the language of the articles themselves shows that they were originally intended for Europeans only. In the absence of any other code, however, the Governments of Bengal, Madras, and Bombay seem to have applied these articles, with such modifications and omissions as appeared necessary, to the bodies of native troops maintained by them, of which the present Indian Army is the descendant. In 1813, owing to doubts having arisen as to the legal validity of the existing arrangements for the

[1] Imperial Gazetteer of India, 1907, Vol. IV, Ch. XI.
[2] 27 Geo. II, Cap. 9.

Ch. I.

discipline of the native armies, provisions were inserted in the Act[3] which was passed in that year to extend the Company's privileges for a further term, which legalised the existing system and gave power to each of the Governments of Fort William, Fort Saint George and Bombay to make laws, regulations, and Articles of War for the government of all officers and soldiers in their respective services who were "natives of the East Indies or other places within the limits of the Company's Charter." It was further provided in 1823[4] that such legislation should apply to the native troops of each presidency, wherever serving, and whether within or beyond His Majesty's dominions.

Each Presidency frames its own code.

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

(ii) *The Articles of War.*

Government of India Act, 1833, and the "Articles of War."

4. By section 73 of the Government of India Act, 1833,[5] the power to legislate for the whole native army was restricted to the Governor General in Council, and laws so made were given general application to all "native officers and soldiers" wherever serving. Obviously the native officers and soldiers here referred to are the "natives of the East Indies or other places within the limits of the Company's Charter" of the earlier legislation. This is confirmed by the fact that in later legislation[6] the existence in India of three military codes is recognised—*i.e.*, that of the Queen's troops, that of the Company's Europeans, and that of the Company's troops who are "natives of the East Indies or other places within the limits of the Company's Charter." Under the powers conferred upon it by the Act of 1833 the Indian Legislature for the first time provided a common code for the native armies of India in 1845, "Articles of War" for those armies being enacted by the Governor General in Council as Act XX of that year. This Act was shortly after repealed and replaced by Act XIX of 1847 which, having been frequently amended[7] in the intervening period, was in its turn repealed by Act XXIX of 1861 (an Act to consolidate and amend the Articles of War for the Government of the Native Officers and soldiers in Her Majesty's Indian Army). This was repealed by Act V of 1869 ("the Indian Articles of War") which replaced it. In the preamble to this Act reference is for the first time made to "native officers, soldiers, *and other persons* in Her Majesty's Indian Army," thus recognising the existence of what are commonly known as "followers."

---

[3] 53 Geo III, Cap. 155, sections 96 and 97.
[4] 4 Geo. IV, Cap 81, section 63.
[5] 3 and 4 Will. IV, Cap. 85.
[6] 7 and 8 Vic., Cap. 18; 12 and 13 Vic., Cap. 43.
[7] Acts of Governor General in Council, VI of 1850, XXXVI of 1850, III of 1854, X of 1856, VIII of 1857, XXXII of 1857, and VI of 1860.

Amendment of "Articles" in 1894.

5. The amalgamation of the three native armies into one in 1895 necessitated considerable amendments in the "Indian Articles of War." These amendments were effected by Act XII of 1894 and the Indian Articles of War, as altered by this Act, and by various minor amending Acts,[8] furnished the statutory basis of the Indian military code until 1911. As time went on, however, and the Indian Army began to take its share in the imperial responsibilities of the British Army, it was found that an Act originally framed for three separate local forces, each serving as a rule in its own Presidency, failed to provide adequately for the discipline and administration of that army under modern conditions. Owing also to the mass of amendments super-imposed on the original articles, these were often difficult to understand, and sometimes even self-contradictory.

The Indian Army Act, 1911.

6. The amendment of the Indian Articles of War was therefore again taken up in 1908, but the consideration then given to the subject showed that a new consolidating and amending Act would be necessary, any further amendment of the articles of 1869 being only likely to accentuate the existing confusion. A Bill was accordingly drafted consolidating the existing law as to the Indian Army into one simple and comprehensive enactment and adding such provisions as experience had shown to be necessary. This was passed into law on the 16th March 1911 as the "Indian Army Act" and will come into effect shortly after the appearance of this work. All previous Acts dealing with the subject are repealed by section 127 of this Act.

(iii) *Present Code.*

Rules and other "subordinate legislation."

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

Persons permanently subject to Indian military law.

8. We have now to consider what persons are made subject to this code.

The Regular Forces include the Indian Army,[9] and all persons in the Regular Forces are *primâ facie* subject to the Army Act,[10] *i.e.*, to the code of the *British* Army. Such of the Regular Forces, however, as are officers, soldiers or followers in His Majesty's Indian Forces are, if "natives of India," made subject to Indian military law[11] and are, to be tried and punished in accordance with that law. "Natives of India" are, for the purposes of the Army Act, defined[12] as "persons triable and punish-

[8] Acts of Governor General in Council, XII of 1891, I of 1900, I of 1901, IX of 1901, XIII of 1904, and V of 1905.
[9] A. A., section 190 (*8*).
[10] A. A., sections 175 (*1*), 176 (*1*).
[11] A. A., section 180 (2) (*a*).
[12] A. A., section 190 (22).

Ch. I.

able under Indian military law,"—which is, in its turn, defined[13] as "the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force under the authority of the Government of India." The position therefore is that those persons in His Majesty's Indian Forces for whom the Indian legislature, acting within the extent of its legislative powers, has provided a military code, are subject to that code and are tried and punished in accordance with it instead of in accordance with the Army Act. The Indian legislature has, by section 73 of the Government of India Act, 1833,[14] referred to above, power to make laws for all native officers and soldiers—that is for all persons permanently subject to military law and regularly commissioned, appointed, or enrolled into the military service of the Crown in India who are "natives of the East Indies or other places within the limits of the Company's Charter"—in fact for all Asiatics in the Indian Army. Under the power thus conferred upon it, that legislature has applied[15] the Indian Army Act to the following classes—

(1) Native Officers, who are defined[16] as persons commissioned, gazetted or in pay as officers holding a native rank in His Majesty's Indian Forces. These are sometimes called "Indian Officers."

(2) Warrant officers, who are defined[17] as persons appointed, gazetted or in pay as native warrant officers in His Majesty's Indian Forces. At present these exist only in the Indian Subordinate Medical Department.

(3) Persons enrolled under the Indian Army Act, or any previous Act which it has superseded.[18]

These classes are subject to the Act at all times and wherever they may be serving.[19] All persons commissioned, appointed or enrolled into the Indian Army must, of course, be natives of the East Indies or other places within the limits of the Company's Charter. The enlistment of Europeans for service in India only is absolutely forbidden by an Imperial statute,[20] while the enlistment into the Indian Army of any other persons who are not natives of the East Indies, etc., would not subject these persons to the Indian military code when outside of British India or the territories of allied States. Such persons might then however become subject to the Army Act.

Persons temporarily subject to Indian military law.

9. In addition to those persons who are permanently included in the military forces of the Crown, civilians who accompany these forces into the field must of necessity be subject to military discipline. Accordingly we find that the Indian Army Act is also[21] applied to—

"Persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any

[13] A. A., section 180 (2) (b).
[14] 3 and 4 Will. IV, Cap. 85.
[15] I. A. A., section 2 (1) (a), (b).
[16] I. A. A., section 7 (2).
[17] I. A. A., section 7 (3).
[18] I. A. A., section 127.
[19] 3 and 4 Will. IV, Cap. 85, section 73, also A. A., section 180 (2) (a).
[20] 23 and 24 Vic., Cap. 100.
[21] I. A. A., section 2 (1) (c).

frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces."

The power of the Indian legislature to make laws for this class of persons does not rest upon the Government of India Act, 1833, cited above, but on certain other statutes,[22] and it is only necessary now to point out that the above provision does not operate so as to subject Europeans, British or foreign, to Indian military law when they accompany His Majesty's Forces under the circumstances mentioned. Such persons are however subject to the Army Act (British) when they accompany these forces on active service beyond the seas as defined in that Act.[23] Its operation as to non-Europeans who are not native Indian subjects of His Majesty is in some cases doubtful, and may depend on the employment of the person concerned and the locality of the service. Any civilian, however, who is on active service with a British-Indian force, and is not subject to the Indian Army Act, will be subject to the Army Act,[23] so that no one will escape entirely from military discipline.

Other military bodies in India.

10. The position of other military and semi-military bodies such as the Imperial Service Troops, the Military Police, the Frontier Militia, and Levies, will be considered in another chapter.[24]

CHAPTER II.

THE INDIAN ARMY ACT.

(i) *Application of the Act.*

Scheme of chapter.

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

I. A. A., sections 2 and 3.

2. The first chapter of the Indian Army Act is concerned with the application of Indian military law, certain matters connected with that application, and the definition of terms used in the Act. The application of Indian military law has already been fully considered.[25] Persons subject to the Indian Army Act under clause (*a*) or (*b*) of section 2 (*1*) remain so subject till dismissed or discharged, those subject under clause (*c*) only so long as the conditions contemplated therein continue. Section 3 corresponds to article 2 of the "Indian Articles of War," as amended in 1894,[26] and paragraph 4 of the Statement of Objects

[22] 24 and 25 Vic., Cap. 67, section 22; 28 and 29 Vic., Cap. 17, section 1; 32 and 33 Vic., Cap. 98, section 1.
[23] A. A., sections 175 (*7*), (*8*), 176 (*9*), (*10*).
[24] See Chapter VII.
[25] See Chapter I.
[26] Repealed by section 127 of the I. A. A.

Ch. II.

and Reasons which accompanied the Indian Articles of War Amendment Bill of that year shows that this article was suggested by section 175 (*8*) of the Army Act. The old article 2, however, went a good deal further than the Army Act by making it possible for those who were "deemed to be" native officers, warrant officers and non-commissioned officers to enjoy the privileges of these positions not only as regards their personal status [which is all that section 175 (*8*) of the Army Act contemplates in the case of civilians who are subject to it as officers] but also in their relations to others. The present section, however, makes it clear that the status conferred[27] is a personal one and does not give any command over others. The effect of such a notification as is referred to is that those who rank as native officers, warrant officers and non-commissioned officers must, in their relations to military law, be treated in the same way as those who hold corresponding ranks in the Indian Army;—for instance, a native civil official who ranks as a native officer can be tried by no military tribunal inferior to a general court-martial, while one who ranks as a warrant officer can be tried by a district court-martial but cannot be awarded corporal punishment by it.[28]

I. A. A., section 5.

3. Section 5 enables the provisions of the Indian Army Act to be applied to any force (of military police, for instance) raised and maintained in India by the Government of that country, but which does not form part of the regular native army. It also enables Government to arrange for such application by providing suitable authorities and tribunals. Such a notification as it contemplated by this section might, for instance, provide that, as regards the force in respect of which it is issued, the functions of the Commander-in-Chief or the officer commanding a division should be exercised by some civil official, and those of a general court-martial by some civil court or official.[29] A force to which the Indian Army Act is thus applied does not thereby become part of the regular army, nor subject to its tribunals. It merely adopts, as *its* code, a similar code to the code in force in that army.

I. A. A., section 6.

4. Section 6 provides for the discipline and administration of Indian troops when serving in colonies and dependencies under the Imperial Government. The powers conferred by the Indian Army Act on the commanders of armies, divisions and brigades are, in the first instance, restricted to the officers holding such commands in India or subject to the Indian authorities,[30] and the Governor General in Council is here authorised to make rules as to the officers who shall exercise these powers as regards Indian troops serving abroad, and also the limitations, if any, to be placed upon such exercise. Cases can thus be provided for as they arise, and in accordance with local circumstances, without the necessity for fresh legislative action to meet every new development. The want of a similar provision caused grave inconvenience under the former "Indian Articles of War."

[27] Any notifications under this section which appear before this work goes to press will be found in Part IV.

[28] I. A. A., sections 72, 73 and 45.

[29] For an example of such a notification under the corresponding provision of the I. A. W., see Gazette of India, July 4th, 1908, Part I, p. 592.

[30] I. A. A., section 7 (*3*).

(ii) *Definitions.*

Ch. II, Definitions.

5. All the definitions in section 7 must be understood as being subject to the reservation in the opening clause of that section, *i.e.*, they are not to be read into the Act if "there is something repugnant in the subject or context." An instance of such a repugnance will be found in section 92 of the Act. "Officer" in this section cannot be used in the restricted sense indicated in definition (5), as such a meaning would be repugnant to the context, and must therefore be taken in its wider meaning of "official." It will be noticed that, in some cases, terms are defined in section 7 as "meaning" such and such, and in others as "including" some other person or thing. In the former case the term defined is used as a synonym for a longer or more cumbrous expression, but the legal effect of the enactment would not be altered if the longer expression were used throughout instead of the shorter. For instance, if, wherever "officer" occurs in the Indian Army Act (but subject to the reservation mentioned above) the words "a person holding a commission in His Majesty's land forces or a person commissioned, gazetted or in pay as an officer holding a native rank in His Majesty's Indian Forces" were used instead of that word, and wherever "non-commissioned officer" occurred the words "a person attested under this Act holding a native non-commissioned rank in His Majesty's Indian Forces" were used, the legal effect of the enactment would not differ from what it now is. The effect of those definitions, or parts of definitions, which declare that a term "includes" something else is somewhat different. Here the result is that wherever the law, as it stands, applies to the class of persons, or things, indicated by the first term, it will also apply to the class or classes who are "included," though the natural meaning of the English language might not indicate that it did apply to the latter. For instance the expression "non-commissioned officer" does not, as it stands, necessarily cover an acting non-commissioned officer, but the result of the concluding words of definition (4) is that, wherever the words "non-commissioned officer" occur in the Act, they are also to be taken as applying to acting non-commissioned officers, and an acting non-commissioned officer cannot therefore be subjected to imprisonment as a summary award under section 20, neither can he be summarily flogged by the provost marshal under clause (2) of section 24. Similarly the words "Judge-Advocate General" do not, as they stand, indicate a Deputy Judge-Advocate General, but the explanation to section 85 of the Indian Army Act shows that, wherever in that section a power or duty is conferred or imposed on the Judge-Advocate General in India a similar power or duty is conferred or imposed on each Deputy Judge-Advocate General.

(iii) *Enrolment and Attestation.*

Enrolment and attestation explained.

6. Everyone who is permanently subject to Indian military law (except native officers and warrant officers) is subject to that law by virtue of his "Enrolment." This process, and the subsequent attestation of certain enrolled persons, is described in Chapter II and in the Rules made by the Governor General in Council under the powers therein conferred upon him. The

Ch. II.

principle underlying these provisions is that no person should be permanently subjected to an exceptional and severe code, like that contained in the Indian Army Act, without a definite act on his part, such act being susceptible of easy proof. "Enrolment" is therefore made a definite act recorded in a formal document, the enrolment paper, which is itself made legal evidence of the facts stated in it,[31] and which shows clearly all the conditions of the bargain which the enrolled person has made with the State. In these respects it resembles the British soldier's "attestation." The latter term is, in Indian military law, applied to the administration to the enrolled person of the oath or affirmation of military fidelity. It forms no part of the process of enrolment and this oath or affirmation is only administered to combatants and the higher classes of non-combatants. The ceremony takes place when the candidate is fit for duty, or has completed a prescribed period of probation, and confers on the person admitted to it a certain status and the privilege of not being ordinarily dischargeable without reference, at least, to his Brigade Commander.[32] Only attested persons can rise to non-commissioned rank in the Indian Army.[33] Under the old law "enrolment" (the entry of a person's name with his consent on the list of a corps or department) did not involve any liability to "general service"—*i.e.*, there was no obligation upon the enrolled person to "go wherever he was ordered by land or sea," which latter obligation attestation carried with it. It was on this account that a practice set in of attesting everyone, menials included, who it was intended should accompany the army into the field. There is no such necessity under the present law as enrolment under the Indian Army Act is, as a rule, for general service though special conditions of enrolment can, if necessary, be "prescribed" to meet special cases. It has therefore been found possible to restrict attestation, as indicated above, to combatants and those higher classes of non-combatants whom the Government of India considers deserving of being treated on the footing of combatants.[34] The enrolment paper referred to above contains an official record of the bargain made with the enrolled person on behalf of the State, and the conditions of that bargain cannot be altered except with the consent of the person concerned. An instance of such consent is when a man, on being trained in special duties, agrees to serve for longer than the term for which he originally engaged. Such a variation of the conditions of service is therefore recorded on the man's enrolment paper and signed by him. No separate attestation document is required for the classes who are attested. The fact of attestation is in each case recorded on the enrolment paper and authenticated by the signature of the attesting officer.

(iv) *Dismissal and Discharge.*

Dismissal and discharge explained.

7. Having thus provided for the formal entry into the military service of the Crown of those persons who are enrolled under the Indian Army Act, that Act goes on to legislate for their dismissal and discharge, as well as for the dismissal and dis-

[31] I. A. A., section 91.
[32] Rule 13.
[33] I. A. A., section 7 (*d*).
[34] For a list of these classes see Rule 8.

charge of all others who are permanently subject to Indian military law, *i.e.*, native officers and warrant officers. A person once subject to Indian military law as a native officer, warrant officer or person enrolled under the Act, remains so subject until he dies or is formally dismissed or discharged. Ordinary discharge (the process by which a person ceases to be subject to military law) is dealt with in section 16 of the Act and in Rules 10, 11 and 13. The chief points to notice are that the discharge must in every case be authorized as provided for in Rule 13 and will take effect on the day on which a "discharge certificate" [Rule 11 (A)] is furnished to the person discharged, or from some *subsequent* date specified in that certificate. In no case can a discharge take effect from a date previous to that on which the certificate is furnished. Dismissal, *i.e.*, penal discharge, is legislated for in sections 13, 14 and 15 of the Act and also (as a court-martial punishment) in section 43. It involves, under existing Regulations, the loss of any pension or gratuity which the dismissed person may have earned. No authority except the Governor General in Council, the Commander-in-Chief in India, or a court-martial can dismiss a native officer unless he is dismissed as a convict under section 15. The obligation imposed by section 15 upon the immediate commanding officer of every convict, and the extent to which he may, or in some cases *must*, delay his compliance with the section should be particularly noticed.[35] Dismissal is, like discharge, completed by the delivery of a "discharge certificate."[36]

(v) *Summary Reduction, etc.*

Summary reduction and minor punishments.

8. Chapter IV deals with the summary reduction of non-commissioned officers, including acting non-commissioned officers, and with punishments which are of a summary nature. As to the former it need only be mentioned that any non-commissioned officer, including an acting non-commissioned officer,[37] can be reduced to a lower grade or the ranks by the officer commanding a brigade or by any higher military authority and that an acting non-commissioned can also be reduced by his commanding officer.[38] Such reduction may, in each case, be ordered either as a punishment or simply because the non-commissioned officer or acting non-commissioned officer has been found to be unsuited to the position in which he was placed. "Minor punishments" and the officers who can award them have been legislated for in orders issued by the Commander-in-Chief under the authority conferred upon him by section 20. These punishments are set forth in Army Regulations, India, Volume II. Were it not that misunderstandings on this point have actually occurred, it might be considered unnecessary to remark that these punishments should only be awarded magisterially and after due investigation of the case in the presence of the accused.

Losses of arms.

9. Section 21 permits of collective responsibility for losses of arms being legally enforced. Experience has shewn that such

[35] See Rule 12, and notes thereto.
[36] See Rules 11 and 154 (*a*).
[37] I. A. A., section 7 (*f*).
[38] I. A. A., section 19 (*g*).

Ch. II.

responsibility is the best safeguard for the security of the arms of a company. The amount and incidence of fines levied [39] under this section, and the procedure to be observed in such cases, are regulated by Rules 156 and 157 of the "Indian Army Act Rules." Section 22 provides for the punishment of civilian followers in camp and at frontier posts, while the remainder of the chapter deals with the powers and duties of provost marshals. It will be noticed that, except on active service, those officials are no longer empowered to punish corporally persons under the rank of non-commissioned officer who commit certain offences in their view or the view of their assistants; and that, when they do punish such persons corporally on active service, the punishment must be inflicted with the regulation cat.[40]

(vi) *Offences.*

Military and civil offences.

10. Chapter V of the Indian Army Act classifies under various heads and defines the military and civil offences contained in the late Indian Articles of War.[41] These offences have been defined in the same, or nearly the same, language as that of the Articles. This language has been generally adhered to, though not always the best possible, as it was considered inadvisable to change the forms of expression with which the army had become familiar. In only a few cases therefore, where the language of the articles was obscure or misleading, has any material alteration been made. The principle of classification adopted in the British Army Act has been followed in the arrangement of the present Act. Offences of a similar character are grouped together and the groups have, as regards military offences, been arranged in such an order as to emphasise their relative military importance. It must be remembered that Chapter IV of the Indian Penal Code ("General Exceptions")[42] applies to offences under special laws, such as the Indian Army Act.[43] The definitions of all these offences must therefore be read as subject to the above "general exceptions." Thus, if a non-commissioned officer is charged under section 39 (*b*) with striking a sepoy and proves that he only did so in the exercise of his right of private defence, he will be entitled to an acquittal (I. P. C., section 96). Similarly, if a person charged with any offence under the Indian Army Act is proved to have committed the offence while incapable, by reason of insanity or *involuntary* intoxication, of knowing the nature of his act or that it was either wrong or contrary to law, he is entitled to the benefit of section 84 or 85 of the Indian Penal Code, as the case may be, and cannot be punished for what he has done.

Subject to "general exceptions" of I. P. C.

(vii) *Punishments.*

System on which punishments are arranged.

11. It will have been noticed that in Chapter V a *maximum* penalty is assigned to each offence or group of offences, and that courts can award that penalty "or such less punishment as is in this Act mentioned." This is followed up, in Chapter VI, by full directions as to the award of punishments and their nature.

---

[39] I. A. A., section 113 (2) (*b*)
[40] I A. A., section 24 (2).
[41] Act V of 1869.
[42] See Part III.
[43] I. P. C., section 40.

The opening section of this chapter details the punishments which are ordinarily awardable by courts-martial and classifies them in order of severity. A court can thus, subject to the limits imposed by the Act upon its own powers,[44] sentence an offender to the maximum penalty assigned to the offence of which it has convicted him or to any other punishment, appropriate to his class, which stands below it in the scale given in this section. As a rule a court-martial can only award one penalty (section 44), but, by section 47, an exception is made as to certain punishments which may be combined with each other or with any other punishment.

Corporal punishment.

12. Section 45 is very important and specifies the *only* cases in which corporal punishment can now be awarded as a court-martial sentence. Before passing such a sentence, therefore, courts should carefully study this section and the notes appended to it. The remaining sections of this chapter call for no remarks.

(viii) *Penal Deductions.*

Penal deductions.

13. Chapter VII permits of certain penal deductions being made from the pay and allowances of persons subject to Indian military law, and follows, to a great extent, the corresponding provisions of the Army Act.[45] As in that Act, a wide range of deductions which *may* be made is indicated, the exact deductions which, within these limits, *shall* actually be enforced, being left to regulations. Throughout this chapter the words "pay and allowances" are used instead of "ordinary pay," which is the Army Act term. They cover staff pay and other allowances, deductions from which are, as regards the British soldier, legalised by Royal Warrant. In the Indian Army, on the other hand, all such matters are provided for by regulations, which, unlike the Royal Warrant, have not themselves the force of law. So long, however, as the deductions ordered in these regulations do not exceed the limits laid down in this chapter as to what *may* be deducted, the position is legally as secure as under the Home procedure.

(ix) *Courts-martial; their constitution and jurisdiction.*

Four kinds of court-martial.

14. In Chapter VIII are collected all the provisions of the Indian Army Act relating to courts-martial. It deals, among other matters, with the constitution and jurisdiction of these courts as well as with the more important points connected with the procedure to be observed at trials before them, less important points being left to be provided for in statutory Rules framed under the Act. The chapter begins by enumerating the four different kinds of court-martial known to Indian military law, *viz.*:—

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

The list is identical with that in the Indian Articles of War, as amended in 1894, with the exception of regimental courts-

[44] I. A. A., sections 73 and 76.
[45] A. A., section 137 et seq.

Ch. II.

martial which, owing to the existence of the summary court-martial, were rarely held and have therefore been abolished. The general and district courts-martial correspond to the tribunals under the Army Act which are similarly designated, and the summary general court-martial to the field general court-martial, the only important differences being in the numbers of members required in some cases, and in the circumstance that the president is not, in Indian Army Act trials, appointed by name, the senior officer sitting as president as a matter of course.[46] Minor differences in procedure will be noticed in the chapter dealing with courts-martial.[47]

15. The summary court-martial is peculiar to the Indian Army and therefore calls for more detailed notice. These courts are of comparatively recent origin and were not introduced into the regular army till after the mutiny of the greater part of the Bengal Army in 1857. The discipline of the regular native army had, for some time before that catastrophe, seriously deteriorated and it was noticed that the irregular troops, and more especially the Punjab Irregular Force, were in this respect in a much better state than their comrades of the regular army. After the suppression of the mutiny the reason for this difference was sought, and it was found to be largely due to the position of comparative insignificance occupied by the commandant of a regular regiment, who had practically no power to punish or reward his own men. In contrast to this, the commanding officer of a regiment of the Punjab Irregular Force had almost absolute power in that regiment, and could, under the system prevailing in the Force, *himself* deal promptly and effectively with all military offenders. This system appears to have had its origin in the union, frequent in those days on the Frontier, of the functions of deputy commissioner, political officer, and military commandant, in one and the same person. This union enabled the commanding officer, as such, to convict and sentence a military offender, and thereafter to issue a warrant for the execution of his sentence which was respected by the civil and prison officials as emanating from him in his civil and magisterial capacity. When a new Indian Army came to be organised on the ruins of the old, it was realised that the hands of the regimental commanding officer must be strengthened if the evils which had led to the practical disappearance of the Bengal Army were to be avoided. With this object summary courts-martial were at first introduced tentatively, and were in 1869 definitely established as part of the legal machinery of the Indian Army.[48] They have proved peculiarly suited to the conditions of that army and are now the tribunals by far the most frequently utilised in it for the trial of military offenders.

16. Having thus enumerated its tribunals the Act goes on to arrange for their constitution. A general, district or summary general court-martial must in the first place be convened by an officer properly empowered to do so. The Commander-in-Chief in India has statutory power to himself convene (and confirm) general courts-martial and to issue warrants empowering other

[46] I. A. A., section 77
[47] Chapter IV.
[48] Act V of 1869.

officers to do the same.[49] The Commander-in-Chief, himself, and any of these officers, can convene (and confirm) district courts-martial and can issue warrants empowering other officers to do the same.[50] The authorities who can convene (and, where necessary, confirm) summary general courts-martial are detailed in section 62. A summary court-martial can be held by any of the officers specified in section 64. The definition of "commanding officer" [section 7 (*6*)] must be remembered when interpreting this, and a summary court-martial can therefore only be held by a *British* officer, who is *in actual command* of one of the bodies mentioned in section 64. The jurisdiction of courts-martial is next dealt with, second trials prohibited, and conflicts of jurisdiction between civil and military courts provided for. Section 71 is somewhat technical in its language, but the result is that, as stated in the side note, "trial by court-martial is no bar to subsequent trial by criminal court." The criminal court which convicts a person who has been already punished under military law for the same offence, or on the same facts, is however bound to have regard to that punishment when passing its sentence.

(x) *Powers of Courts-martial.*

Powers of courts-martial.

17. Sections 72 to 76 deal with the powers of courts-martial as to persons, offences, and punishments. A general or summary general court-martial can try any person subject to Indian military law for any offence, a district court-martial can try any person, except a native officer, for any offence, while a summary court-martial is restricted both as to persons and offences, though the restriction as to offences can be removed by superior authority. Their powers of punishment also vary; a general or summary general court-martial has full powers, a district court-martial cannot award a higher punishment than two years' rigorous imprisonment, while a summary court-martial is limited to one year or six months according to the status of the officer holding the trial. Sections 77 to 87, supplemented by the greater part of the Rules issued under section 113, describe the procedure to be observed at trials by court-martial under the Indian Army Act, and will be considered together in a later chapter. Section 88 directs that the Indian Evidence Act shall, subject to the provisions of the Indian Army Act, apply to the proceedings of all courts-martial held under the latter Act. Most of these provisions are contained in sections 89 to 93 but a few occur elsewhere in the Act.[51]

(xi) *Courts-martial; their cŏnfirmation, etc.*

Confirmation, etc.

18. The chapter concludes by making confirmation necessary for the validity of all findings and sentences by general and district courts-martial and of certain findings and sentences of summary general courts-martial. The approval of superior authority is also required in the case of summary courts-martial held by junior officers in time of peace. Provision is made in

[49] I. A. A., sections 54 and 95.
[50] I. A. A., sections 55 and 96; for forms of warrants see Part IV.
[51] See, for instance, the proviso to section 2 (*1*).

Ch. II.

section 103 for a valid sentence being substituted for an invalid one by certain of the higher military authorities, when such a course appears to be necessary.

(xii) *Execution of sentences.*

Effect of Prisoners' Act, 1900; committal warrants.

19. The offender having been duly sentenced, and his sentence, where necessary, confirmed, Chapter IX provides for its execution. The Prisoners' Act, 1900,[52] renders unnecessary the elaborate provisions as to the execution of sentences of transportation and imprisonment which found a place in the former Articles of War, and all that is now required, in ordinary cases, is to arrange for the transmission of military convicts and prisoners to civil prisons, after which the above-mentioned Act provides for their discipline and, when necessary, their transfer to other such prisons or to convict establishments. Forms of committal warrants under section 107 are provided in an Appendix[53] to the Indian Army Act Rules as well as warrants for use under section 109 when sentences, orders or warrants are set aside or varied. This last class of warrant brings the change, as it affects the prisoner, to the official notice of the superintendent of the civil prison where he is confined and provides for his release or the modification of the punishment to be inflicted upon him. There are several forms of warrant for use in different circumstances, and particular attention should therefore be paid by officers using them to the notes to section 109 where the proper warrant to be used in each case is clearly indicated. The use of a wrong form of warrant might have serious consequences.

(xiii) *Other provisions.*

Other provisions of I. A. A.

20. The remaining chapters of the Indian Army Act deal with Pardons and Remissions, Statutory Rules, the disposal of the Property of Deceased Persons and Deserters, and miscellaneous subjects. They call for no remarks in addition to those which will be found in the notes appended to the various sections.

CHAPTER III.

ARREST AND INVESTIGATION OF CHARGES.

(i) *Arrest.*

Military custody of person charged with an offence.

1. Whenever any person subject to Indian military law is charged with an offence he may be taken into military custody,[54] which means his arrest or confinement according to the usages of the service.[55] Officers, warrant officers and non-commissioned officers are, as a rule, placed in arrest, while other persons are confined in charge of a guard, piquet, patrol, or sentry, or of the provost marshal. If the offence is a slight one, the accused

[52] Act III of 1900.
[53] See Appendix IV to these Rules in Part II.
[54] I. A. A., section 124.
[55] I. A. A., section 7 (*14*).

person need not be taken into custody, such cases being generally investigated without this formality. Arrest may be either close or open according to the direction of the officer who ordered it. An officer, warrant officer, or non-commissioned officer in close arrest must not leave his quarters or tent except to take exercise under supervision; if in open arrest, he may be permitted to take exercise at stated periods within certain limits, which are usually the precincts of the regimental lines or camp; he must not however appear out of uniform, nor at any place of amusement or public resort, nor may he wear sash, sword, belts or spurs. An officer, warrant officer or non-commissioned officer may, if the circumstances of the case require it, be placed in the charge of a guard, piquet, patrol or sentry, or of the provost marshal. An officer, or other person, under arrest may be ordered or permitted to attend as a witness before a court-martial, or before a civil court.

Offender in arrest not to perform military duty.

2. An offender while in close arrest is not required to perform any military duty further than may be necessary to relieve him from the care of any cash, stores, etc., for which he is responsible; nor is he permitted to bear arms, except by order of his commanding officer in case of emergency or on the line of march; but if by error he is ordered to perform any duty, his offence is not thereby condoned. Persons who are subject to military law as native officers, warrant officers, and non-commissioned officers (see Chapter II, para. 2) may, when charged with an offence, be placed in arrest under the same conditions as persons holding these ranks.

(ii) *Investigation of Charges.*

Charge to be promptly investigated.

3. The charge against every person taken into military custody must be promptly investigated by the proper military authority.[56] This is generally the commanding officer of the accused, who is in every case responsible for the investigation being begun within forty-eight hours of the person being taken into custody unless this seems to him to be impracticable with due regard to the public service. In the latter case he must report the circumstance, and the reason for the delay, to superior authority.[57]

Preliminary investigation.

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

---

[56] I. A. A., section 124 (*3*).
[57] Rule 14.

Investigation by commanding officer.

5. The manner in which the investigation of charges by the commanding officer is to be carried out is regulated by Rules 15 to 17. This duty requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused. The investigation must be in presence of the accused. After the nature of the offence charged has been made known to him, the witnesses present on the spot who depose to the facts on which the charge is based are examined. The accused must have full liberty of cross-examination. The commanding officer, after hearing what is urged against the accused, will, if he is of opinion that no military offence at all, or no offence requiring notice, has been made out, at once dismiss the charge.[58] Otherwise, he must ask the accused what he has to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and of supporting it by evidence. The commanding officer will then again consider whether to dismiss the case or not. If he decides not to dismiss it he has further to consider which of the courses mentioned in Rule 15 (C) he will adopt. It must be remembered that he cannot adopt (4), *immediate* trial by summary court-martial, unless the offender is amenable to the jurisdiction of such a court and the offence is one which a commanding officer can try without reference to superior authority. If the offence is one requiring such reference, the commanding officer who wishes to try it by summary court-martial must, in the first instance, adopt (3), the preparation of a summary of evidence, unless he is prepared to certify that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline.[59] In the latter case he can, of course, try forthwith, attaching the above certificate.

Caution as to expressing opinion.

6. During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the accused person's guilt, or one which might prejudice him at a subsequent trial. It frequently happens that officers who have been present at the investigation are detailed as members of the court convened in consequence of it; therefore, nothing should be said or done which might, though unconsciously, bias their judgment beforehand.

Adjournment for taking a summary of evidence.

7. Where a commanding officer adjourns a case for the purpose of having the evidence reduced to writing, the evidence given by any witnesses before him must be taken down in writing in the presence of the accused; the accused must be allowed to cross-examine within reasonable limits, especially if there is any variance between the evidence as taken down and that given on the prior investigation. Any statement made by the accused, which is material to his defence, will also be added in writing, but the accused must be warned that this will be done.[60]

Mode of taking summary.

8. The evidence and statement, if any (called the summary of evidence), must be taken down in the presence of the com-

[58] Rule 15 (B).
[59] I. A. A., section 74, proviso.
[60] Rule 15 (D to G).

manding officer himself, or of some officer deputed by him. Great care is necessary in the performance of this duty. The difference not unfrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial may often be traced rather to the hasty or careless preparation of the summary, than to any prevarication or desire to mislead on the part of the witnesses.

Remand for court-martial.

9. When the summary of evidence has been taken, the commanding officer must consider it and determine whether or not to remand the accused for trial by court-martial.[61] It may be that on reading the evidence the commanding officer will come to the conclusion that the case is one which ought to be disposed of summarily. If a court-martial is ordered or applied for, the accused can be kept in arrest or confinement until the charge is disposed of. It is the duty of the commanding officer on reading the summary of evidence to note whether or not the evidence taken down in the summary corresponds with the evidence given at the inquiry before him. If the commanding officer determines to remand the accused for trial by court-martial he must next consider by what class of court he should be tried. As a general rule this will be a summary court-martial, sanction being previously obtained where such sanction is necessary.[62] The summary of evidence should be forwarded with the application for this sanction. When applying for a general or district court-martial or for sanction to hold a summary court-martial, a charge-sheet, showing the charges on which it is proposed that the accused should be tried, should be submitted by his commanding officer.

10. The summary of evidence may be used for certain limited purposes at the trial, and also for the purpose of giving to the accused notice of the charge he will have to meet, and to the convening officer of the court, as well as to the president, judge-advocate or superintending officer, notice of the case to be tried. Either the summary itself or a true copy of it must be laid before the court-martial before which the accused is tried. The convening officer in the case of a general or district court-martial should always order a copy of the summary of evidence to be given to the accused if the case is complicated.

Convening court.

11. An application for a general or district court-martial or for sanction to hold a summary court-martial should usually be disposed of at once; but if the convening or sanctioning officer detects matter showing culpable neglect or improper conduct on the part of the superiors of the accused, he may delay assembling a court, or sanctioning the holding of one, for the purpose of making inquiry. The officer who convenes a general or district court-martial is responsible for the correctness of the charges,[63] and will, if necessary, revise them after considering the evidence as shown in the summary. The charge-sheet containing the charges, as approved by the officer convening the court-martial, will be sent to the president, judge advocate or superintending officer,[64] as well as the summary of evidence or a true copy

[61] Rule 16.
[62] I. A. A., section 74, proviso.
[63] Rule 27 (A).
[64] Rule 27 (D).

Ch. III.

thereof, and will be laid by him before the court-martial. The prosecutor should have a copy of the charge-sheet and summary, or at least should have access to them.

(iii) *Summary power of Commanding Officer.*

Minor punishments where specified.

12. The power of the commanding officer to punish summarily a person under his command rests on section 20 of the Indian Army Act, in pursuance of which various minor punishments, and the persons to whom they can be awarded by their commanding officer, have been specified. These, as also certain other lesser punishments awardable by junior officers, will be found in A. R., I., Vol. II. When an offender has been punished by his commanding officer, or other such officer, he cannot be tried by court-martial for the same offence. Similarly, he cannot be subjected to a minor punishment for an offence of which he has been acquitted or convicted by a court-martial or a criminal court.

CHAPTER IV.

COURTS-MARTIAL.

(i) *Summary Courts-martial.*

Application for sanction to try by summary court-martial in certain cases.

1. This court, as being that most frequently met with in the Indian army,[65] will be considered first. When a commanding officer remands a person subject to Indian military law for trial by summary court-martial he must first consider whether the charge is one which he can ordinarily try in this manner without reference to superior authority.[66] If it is one which he cannot ordinarily try without such reference, and he is not prepared to certify that such an emergency as is contemplated in the proviso to section 74 of the Indian Army Act exists, he must submit an application for sanction to try the case by summary court-martial to the officer empowered to convene a district court-martial for the trial of the alleged offender. This application should be accompanied by the summary of evidence and the charge-sheet on which it is proposed to try the accused. On receiving these documents the officer empowered to convene a district court-martial will, if he considers the case should be tried by summary court-martial, inscribe, or cause to be inscribed, on the charge-sheet, his order for trial by that tribunal. In arriving at a decision on this point he should remember that a summary court-martial is the proper court to try all charges against persons amenable to its jurisdiction (*i.e.*, all persons below the rank of warrant officer and under the command of the officer holding the trial)[67] except only those for offences which merit higher punishment than it can award, or which the commanding officer should not be allowed to dispose of because he is personally interested

[65] See Chapter II, para. 15.
[66] I. A. A., section 74, proviso.
[67] I. A. A., section 75.

in the case. Any offence, no matter how grave and no matter how interested the commanding officer is in the result, may however *legally* be tried by summary court-martial provided the proper sanction is given. It is obvious however that sanction should, in such cases as are indicated above, be generally withheld.

Non-combatant commanding officers.

2. The restriction which formerly[68] existed on the powers of *non-combatant* commanding officers (*e.g.*, medical officers in command of station hospitals) has been removed, and such officers can now hold summary courts-martial. A medical officer is not, however, the "commanding officer," for summary court-martial purposes, of a patient in hospital or a soldier acting as "sick attendant" over a comrade, as he does not, either by regulations or the custom of the service "tell off" the man for an offence.[69] If the corps of the patient or sick attendant is not in the station, the proper officer to "tell off," or to hold a summary court-martial on, either is the commanding officer of the corps to which he is attached for discipline, etc.

Assembly of court.

3. These preliminaries being settled, the accused is warned for trial in the manner provided in Rule 23 and an early date fixed for the assembly of the court. On that date the officer holding the trial, the two officers attending the trial, and the interpreter (if one is considered necessary) assemble and the accused person is brought before them.[70] The presence throughout the proceedings of two officers in addition to the officer holding the trial is *essential* to its legality.[71] If, however, an interpreter has been appointed and he is an officer, other than the officer holding the trial, he can perform that duty in addition to attending the court as one of the two officers referred to. The two officers may be both British, both native, or one British and one native. The first business is the swearing or affirming of the officer holding the trial and the interpreter (if any).[72] Any evidence which the court or the accused does not understand must be translated by a properly sworn or affirmed interpreter[73] and a conviction cannot be sustained, if it is based on such evidence, unless the evidence has been so translated. It will generally, therefore, be convenient that the commanding officer should (if competent to interpret in the language of the accused) himself[74] take the interpreter's oath or affirmation at this stage, so that nothing may be translated to the accused by an unsworn interpreter.

Arraignment of accused. Plea of "guilty."

4. The accused is next arraigned and required to plead to each charge.[75] If he pleads guilty to any charge the court (*i.e.*, the officer holding the trial) must first see that he understands the charge and the result of his plea and that he has not pleaded guilty under a misapprehension.[76] If no such impediment appears to exist, his plea is then recorded as the finding of the court. The court then reads the summary of evidence (trans-

[68] I. A. W., 93.
[69] I. A. A, section 7 (*6*).
[70] Rule 94.
[71] I. A. A., section 64 (2).
[72] Rule 95.
[73] Rule 96.
[74] Rule 93.
[75] Rule 97.
[76] Rule 101 (B).

Ch. IV.

lating it to the accused if he does not understand it) and attaches it to the proceedings, or, if there is no summary of evidence, takes and records sufficient evidence to enable it to determine its sentence, and the reviewing officer to know all the circumstances of the case. The court then hears anything which the accused has to say in reference to the charge or in mitigation of punishment.[77]

Procedure on plea of "not guilty."

5. If the accused pleads not guilty, the evidence for the prosecution is first taken, then that for the defence, the accused being allowed to address the court either before or after his witnesses are examined.[78] Prosecution witnesses may be cross-examined by the accused, and defence witnesses by the court, each may also re-examine his own witnesses after cross-examination. The officer holding the trial then comes to a finding on the evidence. If the finding on each of the charges in a charge-sheet is "not guilty" it is announced in open court and the accused is released in respect of these charges.[79]

Sentence.

6. If the finding on any charge is guilty, evidence as to the character and service of the accused is taken, or the officer holding the trial records such as of his own knowledge,[80] and sentence is passed. Even if the accused has been convicted on more than one charge, only one sentence is awarded.[81] The sentence must be one authorised by the Indian Army Act. These, and the circumstances in which they may be awarded, are detailed in chapter VI of the Act. If the court is held by the officer commanding a "corps" [as defined in Rule 161 (C)] or department any sentence up to one year's rigorous imprisonment may be passed, in other cases the limit of imprisonment is six months.[82] In passing sentences of three months' rigorous imprisonment or less, summary courts-martial must be careful to either add dismissal to the sentence, or to include *in the sentence* a direction that the imprisonment is to be undergone in military custody. The reason for this is that the offender *must* otherwise undergo his sentence in a civil prison,[83] and, as sentences of rigorous imprisonment for three months and under do not involve dismissal,[84] he will return from that prison to serve in the army on the expiry of his sentence. This is considered undesirable and steps, as above indicated, should therefore be taken to prevent such a result.

Proceedings not open to revision and do not require confirmation.

7. The proceedings of a summary court-martial are not open to revision and do not require confirmation, and its sentence should, except as provided in section 101 of the Indian Army Act, be carried out at once, the proceedings being afterwards sent for review (through the deputy judge-advocate general of the army, if the trial is held in India) to the officer commanding the division or brigade, in which the trial was held.[85] This

[77] Rule 102.
[78] Rule 104.
[79] Rule 108.
[80] I. A. A., section 93, and Rule 109.
[81] Rule 110.
[82] I. A. A., section 76.
[83] I. A. A., section 107.
[84] I. A. A., section 15.
[85] I. A. A., section 102, and Rule 119.

officer can, for reasons based on the merits of the case, set aside the proceedings or reduce a legal but excessive sentence to any other which the court might have passed. If the sentence is illegal he may either decide to treat it as a nullity, or may transmit the proceedings of a court which has passed such a sentence to one of the higher military authorities referred to in section 103 of the Act who can substitute a valid sentence for the illegal (and therefore invalid) one. If he is himself such an authority he can, of course, take action under section 103 at once. If he decides to treat an illegal sentence as a nullity, he should direct it to be struck out from the proceedings and the accused to be relieved from all consequences of the sentence, though not of the conviction.

(ii) *General and District Courts-martial.*

Application for general court-martial or district court-martial.

8. When a commanding officer remands a person subject to Indian military law for trial by general or district court-martial he should at once submit an application for such a court to superior authority, accompanied by the summary of evidence and the charges on which it is proposed to bring the accused to trial, as well as by certain other documents specified on the form provided for such applications.

Duty of convening officer.

9. An officer receiving an application to convene a general or district court-martial must consider the nature of the case, the statutory provisions, and the regulations (if any) applicable to it, and, subject thereto, must use his discretion as to the mode of disposing of the application. He must satisfy himself that the charge is for an offence under the Indian Army Act, and properly framed in accordance with the rules, and that the evidence justifies the trial of the accused.[86] If he thinks it does not, he should order the accused to be released; if he doubts, he can order the release or refer the case to superior authority. If he thinks it should be disposed of summarily or by summary court-martial, he should give directions to that effect. If he thinks it should be tried by a general or district court-martial, he will either convene such a court or apply for such a court to be convened.

Considerations to be borne in mind by convening officer.

10. In forming his decision the convening officer will give due weight to the prevalence of the particular crime charged, to the general state of discipline in the unit or in his command, to the character of the individual, and to all the different circumstances which may render it expedient at one time to try an offence by a summary or district court-martial, and at another time to take a more serious view of it. A case should not, as a rule, be sent for trial unless there is reasonable probability that the accused person will be convicted; at the same time there may be cases where disgraceful charges have been preferred and where a court-martial affords the only means to the accused of decisively clearing his character. In any event, members of courts-martial should not allow the fact of a case being sent for trial, or the fact of a particular description of

[86] Rule 27.

Ch. IV. court-martial having been selected, in any degree to influence their estimate of the evidence. When a person is to be arraigned on a serious charge, charges for any minor offence may be dropped if the convening officer thinks proper.

Convening order.

11. The convening officer directs the trial of the accused person, on the charges as finally selected by him, by means of an order inscribed on the charge-sheet and in addition issues his "convening order."[87] In this the members and officials of the court are appointed or detailed as well as such waiting members as may be thought necessary. The members and waiting members may, at the discretion of the convening officer, be either all British officers or all native officers, unless the accused has claimed trial by British officers when the court must be so constituted. They *cannot* be partly British and partly Native officers.[88] The president is not appointed by name (as is done in the case of Army Act courts) the senior member presiding as a matter of course.[89] On the receipt of orders for his trial, the accused is warned for trial.[90] He should have proper opportunity to prepare his defence and liberty to communicate with his witnesses and legal adviser, or other friend. This liberty is subject to the limitation that they are available, as the object of the rule is to give the accused full opportunity to prepare his defence, but not to enable him to postpone his trial.

Assembly of Court.

12. The court having assembled at the time and place named in the "convening order" the members take their seats according to their rank. The judge-advocate or superintending officer (if either has been appointed) must be present. The first duty of the court is to read the "convening order." If this order appears on the face of it to be proper, the court will have complied with Rule 31 requiring them to ascertain that the court has been convened in accordance with the Indian Army Act and Rules.

Eligibility and freedom from disqualification of members to be ascertained.

13. The court will then[91] proceed to ascertain that the proper number of officers is present, and that each of those officers is capable of serving, that is to say, is eligible and not disqualified to serve on the court-martial, and is of the rank required by the order convening the court. The eligibility of an officer depends on his status as an officer, that is, on his being subject to military law, and holding a commission. Disqualification is a personal question, and depends on his being, or having been, in any manner a party to the case. The corps to which officers belong, and their rank, are matters merely for the convening officer, except that the court should ascertain that the provisions of Rule 30 are observed. If any officer appears not capable of serving he will retire, and one of the officers in waiting will be directed to serve in his stead, and his capacity for serving must be considered in the same manner. It will usually be convenient, where there are officers in waiting, to consider their capacity to serve before proceeding further.

---

[87] For form, see Appendix III to Rules, Form No. 1
[88] I. A. A., section 60.
[89] I. A. A., section 77.
[90] Rule 23.
[91] Rule 31.

Amenability of accused to jurisdiction.

14. The court having ascertained the validity of their constitution, will then consider whether the accused to be tried is amenable to their jurisdiction and whether the charge is properly framed; if not satisfied the court should adjourn and report to the convening authority.[92]

Appearance of prosecutor and accused.

15. On the conclusion of these preliminary proceedings the prosecutor will take his place and the accused be brought before the court. The accused, if an officer, will be in the custody of an officer; if a non-commissioned officer in the custody of a non-commissioned officer; and if a private or follower in the custody of an escort. If necessary, an escort may be employed in any case. The accused is allowed a seat as a matter of course in the case of an officer, and in any other case when the court think proper. Accommodation is to be afforded, on the application of the accused, for his friend or counsel.

Objections by accused.

16. Any objection by the accused to the members of the court will first be disposed of in accordance with section 80 of the Indian Army Act and Rule 34. The members and officials of the court will then be sworn or affirmed[93] and the accused arraigned and required to plead to the charges. If the charges are contained in more than one charge-sheet the arraignment, as well as the prosecution, defence and finding, in the case of each charge-sheet must be kept separate.[94]

Pleas, etc.

17. The various pleas and objections which are open to the accused, with the procedure to be adopted on each, are set forth in the Rules and are fully explained in the notes thereto.[95] They correspond exactly to the pleas and objections admissible at trials under the Army Act.

Plea of "guilty."

18. If the accused pleads guilty to any charge the procedure will be the same as has been already described when discussing that of summary courts-martial under similar circumstances, except that the accused may address the court twice,—the addresses in reference to the charge and in mitigation of punishment being separate.

Plea of "not guilty" and duty of prosecutor.

19. On a plea of not guilty, the prosecutor will, if the case is complicated, make an opening address, giving an outline of the evidence he intends to call, but abstaining from any argument and comments not required to explain the nature of the case. The duty of the prosecutor is fully laid down and explained in Rules 46 and 66 and the notes thereto; and it is only necessary here to observe generally that the prosecutor is an officer of justice, whose first duty is to ascertain the truth—not to obtain a conviction independently of the truth; and that he is bound to act with scrupulous candour and fairness towards the accused and the court, and to conduct the case throughout in a fair and moderate spirit. Any deviation from the above line of conduct will be at once checked by the court. On the conclusion of his address, the prosecutor will call the evidence for the prosecution. The accused is at liberty to cross-examine the witnesses, and the prosecutor may then re-examine them on matters raised by the cross-examination.

---

[92] Rule 32.
[93] For forms, see Rules 35 and 36
[94] Rule 68.
[95] Rules 39 to 43.

Ch. IV.

Defence when no witnesses to facts of case called by accused.

20. At the close of the case for the prosecution the accused will be called on for his defence. The course of procedure on the defence differs according to whether the accused does or does not call witnesses to the facts of the case.[96] When he calls no such witnesses, the prosecutor may first sum up his evidence, and the accused may then make an address in defence and call his witnesses (if any) as to character; the judge-advocate (if any) will then sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding.[97]

Defence when accused calls witnesses to facts of case.

21. If, on the other hand, the accused calls witnesses to the facts of the case, he may make an opening address; he will then call his witnesses who may be cross-examined by the prosecutor and re-examined by the accused. The accused may then sum up his case in a second address, and the prosecutor may reply. After the reply of the prosecutor, the judge-advocate (if any) will sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding.[98] In exceptional cases witnesses in reply may be called for the prosecution before the second address of the accused.

Latitude allowed to defence.

22. The accused is to be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations. The court must never forget that an accused person is presumed to be innocent until proved to be guilty, and that, although there are cases where the prosecution may, by proving certain facts, raise a presumption of guilt which the accused must rebut, yet, generally speaking, the burden of proof lies on the prosecution, and any doubt as to the sufficiency of proof must be decided in the accused person's favour.

Court not to be influenced by supposed intention of convening officer.

23. The court, in considering their decision, should not allow themselves to be influenced by the consideration of any supposed intention of the convening officer in sending the case for trial. It may be very right to send for trial a person who, when tried, ought to be acquitted, and therefore an acquittal is not in itself a reflection on the convening officer. Even if it were, this should not lead a court to convict, unless the evidence establishes the charge to their satisfaction.

Confirmation required.

24. Every finding of a general or district court-martial under Indian military law requires confirmation[99] and remains secret till confirmed, and this applies to acquittals equally with convictions. In this respect Indian military law differs from the Army Act where an acquittal does not require confirmation and is announced at once.

Procedure after conviction.

25. If the finding on any charge is guilty the court is re-opened and evidence as to character and particulars of service recorded. The accused may address the court on this evidence and the court then closes to consider their sentence. Only one sentence is awarded on however many charges the accused may have been convicted. This sentence must be one allowed by the

[96] All witnesses, except as to character, are witnesses to the facts of the case.

[97] Rule 47.

[98] Rule 48.

[99] I. A. A., section 94.

Indian Army Act.[100] On the conclusion of the proceedings the record is signed by the president and judge-advocate or superintending officer (if any) and transmitted for confirmation.

Revision.

26. The confirming officer can send the proceedings of a general or district court-martial back once for revision.[101] This applies to all findings, including those of acquittal, and a court can, on revision, reverse such a finding and convict the accused. It is for this reason (*i.e.*, because an acquittal is not final) that such a finding is not, as under the Army Act, read in open court and the accused released. Further differences from Army Act procedure on revision are that additional evidence can, if the confirming officer so orders, be taken, and that a sentence can be increased on revision.

Mitigation, etc of sentence.

27. The confirming officer can, when confirming the sentence, whether after revision or without it, mitigate, remit, or commute the punishment.[102] After confirmation, however, only the higher authorities referred to in sections 103 and 112 can interfere with a sentence.

(iii) *Summary General Courts-martial.*

Constitution and powers of summary general courts-martial.

28. In addition to those which we have already considered, another court exists in the Indian army. It is of an exceptional character, is called a summary general court-martial, and corresponds roughly to the field general court-martial of the Army Act. In consists of three officers, who may be British or Native or partly British and partly Native, need have no recorded proceedings beyond a schedule of accused persons, crimes, findings and punishments, and has the same powers as a general court-martial. If it passes a sentence not exceeding that awardable by a district court-martial its proceedings require no confirmation, unless specially ordered, and the sentence is carried out at once.[103] In other cases the finding and sentence must be confirmed by the convening officer.

Summary general courts-martial in time of peace.

29. A court of this character is obviously only suited to active service conditions, and the power of ordering the assembly of such courts in time of peace is therefore restricted to the Governor General in Council and the Commander-in-Chief. It might sometimes be necessary to resort to them for the trial of an offender at a remote station where enough officers to constitute a general court-martial were not available. In such cases, however, directions are generally given that the evidence and the statement of the accused in his defence shall be recorded,[104] the proceedings being thus assimilated, so far as circumstances permit, to those of an ordinary general court-martial.

Summary general courts-martial on active service.

30. On active service these courts can be assembled by,—

(1) The officer commanding the forces in the field.

(2) An officer empowered by him in this behalf.

---

[100] I. A. A., Chapter VI.
[101] I. A. A., section 100.
[102] I. A. A., section 99.
[103] I. A. A., section 98 (2).
[104] Rule 146.

Ch. IV.

(8) An officer commanding any detached portion of His Majesty's troops.[105]

The last mentioned officer, No. (3), can however only do so when, in his opinion, the exigencies of the service prevent the offence being tried by an ordinary general court-martial. When therefore such an officer assembles a summary general court-martial he must be careful to record such an opinion in the convening order.

Proceedings of summary general courts-martial.

31. A simple form for the convening of these courts and the record of their proceedings has been provided and will be found in the third appendix to the Rules. Members are sworn or affirmed as at ordinary courts-martial and the evidence is taken on oath or affirmation in the presence of the accused, who can cross-examine the witnesses for the prosecution, address the court, and call witnesses. If the proceedings do not require confirmation, the finding and sentence are announced in open court and the sentence carried into effect as soon as possible.[106] If they require confirmation the proceedings are at once transmitted to the convening officer (who is also the confirming officer of all such courts) and the sentence (if any) carried out as soon as possible after his confirmation has been received. The remarks in para. 26 above, as to the revision of general and district courts-martial apply also to those summary general courts-martial the proceedings of which require confirmation.[107] Those which require no confirmation cannot be revised.

CHAPTER V.

EVIDENCE.

(i) *Introductory.*

Indian Evidence Act applies to courts-martial under Indian Army Act.

1. The Rules of Evidence for courts-martial under the Indian Army Act are contained in the Indian Evidence Act, 1872[108] and in certain provisions of the Indian Army Act which deal with the same subject.[109] The Indian Evidence Act is based on the English law of evidence, modified to suit Indian conditions, while most of the sections of the Indian Army Act which deal with the matter in hand are suggested by corresponding provisions of the Army Act. The principles on which the rules of evidence applicable to courts-martial under the Army Act are based, an admirable summary of which by an eminent authority is contained in the War Office Manual of Military Law,[110] are therefore to a great extent applicable to trials under Indian Military law. This summary therefore has been largely drawn upon in the compilation of the present chapter. The structure

[105] I. A. A., section 62.
[106] Rule 148.
[107] I. A. A., section 100.
[108] Act I of 1872.
[109] I. A. A., sections 88 to 93 and others referred to in Chapter II, para. 17 (last line).
[110] Chapter VI of M. M. L. written by Sir Courtenay Ilbert.

of the Indian Evidence Act, and the way in which the subject of "relevancy" is treated,[111] have however prevented its being either followed closely, or adopted as a whole.

Questions to be determined at every trial.

2. The object of every criminal trial is, or may be, to determine two classes of questions—questions of fact and questions of law. If the accused person pleads guilty, there is no question of fact involved in the trial, but if he does not, he raises two questions or issues; first, whether the facts charged against him happened; and next, if they did happen, what is their legal consequence. In trials before courts-martial, the members of the court both find the facts and lay down the law, assisted as to the latter by the advice of the judge-advocate where one has been appointed.[112] It is their duty when applying their minds to these questions of fact to be guided by the rules of evidence above referred to.

Nature of evidence.

3. A member of a court-martial is supposed to bring with him to the consideration of the questions which he has to try common sense, and a general knowledge of human nature and of the ways of the world. But he is not supposed to bring with him any special knowledge enabling him to answer the particular questions of fact raised in the trial. His knowledge of these matters is derived from what is proved to him at the hearing.[113] The means of proof, or evidence, usually consists of statements made by witnesses under examination, or of documents produced for inspection, and is therefore commonly classified as being either oral evidence or documentary evidence. But the members of the court may supplement by direct information the knowledge derived from these sources. Thus they may inspect for themselves anything sufficiently identified by evidence and produced in court as material to their decision; or they may go to view any place the sight of which may help them to understand the evidence.[114]

Difference between judicial and non-judicial inquiries.

4. There is no difference in principle between the method of inquiry in judicial and in extra-judicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen tries, in the first place, to obtain information from persons who were present and saw what happened (*direct* evidence), and, failing that, to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (*indirect* evidence). But in judicial inquiries the information given must be on oath or affirmation, and be liable to be tested by cross-examination, and the Indian Evidence Act, by allowing[115] evidence to be given only regarding facts which are "in issue" or "relevant," excludes particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements so excluded are said to be "not admissible as evidence."

[111] See para. 10 below.

[112] I. A. A., section 78.

[113] But see I. A. A., section 89, and I. E. A., sections 56 and 57, as to judicial notice."

[114] Rules 70 and 114.

[115] Indian Evidence Act, section 5.

Ch. V.

Reasons for excluding certain classes of evidence.

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

(1) It assists the court.

(2) It secures fair play to the accused.

(3) It protects absent persons.

(4) It prevents waste of time.

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

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

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

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

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

These definitions to be borne in mind.

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

(ii) *What must be proved.*

Charge must be proved.

8. What must be proved, in order to obtain a conviction, is the particular charge brought. As a general rule, every charge alleges, or ought to allege, a specific offence constituting a breach of a specific enactment; and, subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of

requiring a person to meet a charge for which he is not prepared. And the exceptions[116] will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical; or to cases where the distinction is one of degree, but not of kind, and the accused, having been charged with the more serious, is allowed to be convicted of the less serious offence.

But its substance only need be proved.

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

(iii) *Arrangement of the Indian Evidence Act.*

Arrangement of the Act.

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

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

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

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

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

"Facts in issue."

11. The facts which are "in issue" in a criminal trial are those on which, either by themselves or in connection with other facts, the existence, non-existence, nature or extent of the accused person's liability to punishment depends.[117] For

[116] I. A. A., section 86; Criminal Procedure Code, sections 237, 238.
[117] Indian Evidence Act, section 3.

Ch. V.

in authority—the police, for instance, or a parent, or some other person to whom the complainant was justly entitled to look for assistance and protection. The distinction is of importance; because while a complaint is always relevant, a statement not amounting to a complaint will only be relevant under particular circumstances, *e.g.*, if it amounts to a dying declaration, or can be used as corroborative evidence."[126]

Explanatory and introductory facts.

19. Facts necessary to explain or introduce a fact in issue or relevant fact are relevant, as well as those which support or rebut an inference suggested by a fact in issue or relevant, establish the identity of a person or thing whose identity is relevant, fix the time or place at which any fact in issue or relevant fact happened, or show the relation of the parties.[127] The facts here referred to are only relevant in so far as they are necessary for the purposes indicated.

Acts of conspirators.

20. In cases of conspiracy, after *primâ facie* evidence has been given of the existence of the plot, and of the connection of the accused therewith, anything said done or written by one conspirator in reference to their common intention is a relevant fact as against each and all of the conspirators.[128]

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

Inconsistent facts.

21. Facts which are inconsistent with, or which render highly probable or improbable, a fact in issue or relevant fact are themselves relevant.[129]

"Alibi."

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

Facts showing state of mind or body.

22. Facts showing the existence of any relevant state of mind or body are relevant.[130]

[126] Norton Evidence, 114.
[127] Indian Evidence Act, section 9.
[128] Indian Evidence Act, section 10.
[129] Indian Evidence Act, section 11.
[130] Indian Evidence Act, section 14.

Thus, where any state of mind (*e.g.*, intention, knowledge, the absence of good faith, negligence, rashness, or ill-will) is an ingredient of an offence, the commission of the principal act being either admitted or proved, evidence may, for the purpose of proving the existence of such a state of mind in reference to the particular matter in question, be given of similar acts committed by the accused on different occasions. Thus, although on a charge of murder, evidence as to the accused person's disposition, is inadmissible, yet former attempts by him to assassinate the deceased are admissible as a proof of intention. So also, evidence is admissible as to former menaces or expressions of vindictive feeling towards the deceased. Again, on a charge of uttering base coin, proof that the accused uttered base coin on other occasions is admissible as evidence that he *knew* the coin to be base.

Further illustrations.

23. In support of a charge for malicious, disrespectful, or unbecoming language, addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter, after having proved the words in the charge, the prosecutor, to show the spirit and intention of the accused, may prove also that he spoke or wrote other disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the letter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the crime charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge; and the accused may give in evidence, as negativing a deliberate purpose, or as palliating, though not justifying his conduct, that he had been provoked to act as he had by the conduct of his superior towards him.

Facts showing intention.

24. Facts which show whether an act was intentional or accidental by indicating the existence of a series of acts of which it formed part are relevant.[121]

This is really a special case of the principle just discussed. Thus on a charge for murder by shooting, if it is questionable whether the shooting was by accident or design, proof may be given that at another time the accused intentionally shot at the same person. Similarly when a warrant officer was tried for fraudulently issuing passage warrants to certain persons who were not entitled to them, after it was proved that the accused had issued the actual warrants complained of, evidence of a series of similar transactions extending over many years was admitted as negativing the theory of the defence that the issue of these warrants might have been a mere mistake on the part of the accused.

Course of business.

25. Facts which show a course of business according to which a fact in issue or relevant fact would naturally have been done, are relevant.[122] For example, the question is whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

[121] Indian Evidence Act, section 15

[122] Indian Evidence Act, section 16.

(v) *Admissions and Confessions.*

Ch. V.

Rule as to admissions.

26. Admissions are statements made by a party to the proceedings, or his representative, as to the subject matter of the case, or the facts relevant thereto;[123] the general rule is that they may be proved against those who made them but not in their favour.[124] In connection with crime admissions usually occur in the form of confessions. "A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference, that he committed that crime."[125] The value of a confession, if true, is obviously very great, but special provision as to their receipt has been made in the Indian Evidence Act, in order to guard against torture or duress for the purpose of extorting them. Confessions are therefore only relevant subject to certain conditions. These conditions will now be considered.

Confession only admissible against person who makes it

27. The general rule is, that a confession is not admissible as evidence against any person except the person who makes it.[126] But a confession made by one accomplice in the presence of another is admissible against the latter to this extent, that, if it implicates him, his silence under the charge may be used against him, whilst on the other hand his prompt repudiation of the charge might tell in his favour.[126] The Indian law, differing in this respect from the English, further enacts that when two or more persons are tried jointly for the same offence, a confession made by one of such persons, affecting himself and any other of the accomplices jointly tried with him, when proved, may be *taken into consideration* by the court against that other accomplice as well as against the person who made it.[127] The confession may have been made at any time and not necessarily in the presence of the accused; but the confessing person must implicate himself substantially to the same extent as the accomplice against whom the confession is taken into consideration. Though the confession of an accomplice may thus, under certain circumstances, be "taken into consideration" and thus be an element in the consideration of the case against the other co-accused, it must necessarily be of less weight than sworn evidence, less even than the sworn evidence of an accomplice who is not jointly tried. The courts have accordingly established the following rules with regard to this species of evidence:—

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

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

[123] Indian Evidence Act, section 18.
[124] Indian Evidence Act, section 21.
[125] Stephen Dig. Art. 21.
[126] Indian Evidence Act, section 8.
[127] Indian Evidence Act, section 30. When one of several persons under joint trial pleads guilty, he no longer continues to be "tried jointly" with the others and therefore any confession made by him cannot be taken into consideration against the others.

Confession must be voluntary.

28. To be relevant, and therefore admissible as evidence, a confession must be voluntary.[128] Under the English law the onus lies upon the prosecution to prove that a confession is voluntary before it can be used in evidence. Under the Indian law, though it is highly desirable that the prosecutor should prove the circumstances under which a confession was made, the onus lies upon the accused of showing that a confession made by him was not voluntary and therefore irrelevant. Unless therefore, it appears doubtful whether a confession is voluntary, a court need not require the prosecutor to affirmatively establish that fact.

What this means.

29. A confession is not deemed to be voluntary, if it appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority (*e.g.*, the prosecutor or a person having the custody of the accused) and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him to be reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.[127] Thus, if a hand-bill issued by the Government promising a reward and pardon to any accomplice in a certain crime who would confess were brought to the knowledge of an accomplice in the crime, who, under the influence of a hope of pardon confessed, that confession would not be voluntary and could not be used at his trial.

Subject continued.

30. But a confession is not involuntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution, or examination of the accused. Thus a confession made by a prisoner to a gaoler in consequence of a promise by the gaoler that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence. In short, to make a confession involuntary, the inducement must have reference to the accused person's escape from the criminal charge against him, and must be made by some person having power to relieve him, wholly or partially, from the consequences of that charge.

Confession obtained by fraud, etc.

31. It is, of course, improper to endeavour to extort a confession by fraud, or under the promise of secrecy; but if a confession is otherwise admissible as evidence, it does not become inadmissible merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, or because he was not warned that he was not bound to make the confession, and that evidence of it might be given against him.[129]

[128] Indian Evidence Act, section 24.

[129] Indian Evidence Act, section 29.

Confession voluntary if made after removal of impression produced by inducement, etc.

32. A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement, threat, or promise which would otherwise render it involuntary.[140] Thus, A is accused of a military crime, B, an officer, tries to induce A to confess by promising to get the commanding officer to dismiss the case with an admonition if he does so. The commanding officer informs B that he cannot give any such undertaking. This is communicated to A. After this A makes a statement. This is a voluntary confession.

Confessions to police officers.

33. Two provisions which are peculiar to Indian law may be mentioned here.

(1) No confession made to a police officer can be proved against a person accused of an offence.[141]

(2) No confession made by any person whilst in the custody of a police officer, unless it be made in the immediate presence of a magistrate, can be proved as against such person.[142]

In both these cases however facts discovered in consequence of a confession which is itself inadmissible under (1) or (2) above, and so much of the confession as distinctly relates to the facts thereby discovered, may be proved.[143] Thus A accused of house-breaking by night makes a confession to a policeman. Part of it is that A had thrown a lantern into a certain pond; the fact that he said so, and that the lantern was found in the pond in consequence, may be proved.

Whole confession must be given in evidence.

34. If a confession is given in evidence, the whole of it must be given, and not merely the parts disadvantageous to the accused person.

Confession made on oath in previous proceedings.

35. Evidence amounting to a confession may be used as such against the person who gives it, though it was given on oath and though the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be used; but if, *after refusing to answer any question*, the witness was compelled to answer, his answer is not admissible against him.[144] Thus A is charged with causing hurt to B. A had voluntarily appeared as a witness for C, who was charged with the same offence at a previous trial, and had not declined to answer any question. A's evidence can be used against him on his own trial. The same rule would appear to apply to statements made by an accused person before his commanding officer; but the proceedings of a court of inquiry, or any confession or statement made at a court of inquiry, cannot be used as evidence against a person subject to the Indian Army Act before a court-martial, unless the court-martial is one for the trial of such

[140] Indian Evidence Act, section 28.
[141] Indian Evidence Act, section 25.
[142] Indian Evidence Act, section 26. The term police officer in sections 25 and 26 should be construed according to its more comprehensive and popular meaning; it includes any sort of police officer, from a Deputy Commissioner of Police down to a village chowkidar. It has been held to include a member of the garrison or military police, but this is doubtful.
[143] Indian Evidence Act, section 27.
[144] Indian Evidence Act, section 132.

person for wilfully giving false evidence before the court of inquiry.[145] Ch. V.

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

"Hearsay" excluded.

36. As a general rule the statements of persons not called as witnesses are inadmissible as evidence of the truth of the facts stated. This does not mean that evidence of what absent persons said is absolutely excluded. Such statements may, for instance, be admissible as part of the transaction,[146] as conduct influenced by it[147] or as indicative of states of mind or body which are relevant.[148] The cries of a mob led by the accused, the complaints referred to in para. 17 above, and statements made by the victim in a poisoning case before his illness as to his health, and during his illness as to his symptoms, are examples of this.

Reasons for exclusion of "hearsay."

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

Statements of absent persons which are specially admitted.

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

(1) Statements by persons since dead as to the cause of their death;[149]

(2) Statements or entries made in the ordinary course of business;[150]

(3) Statements which are against the interests of their authors, or which would have exposed them to a criminal prosecution or a suit for damages.[151]

Comparison with English law.

39. The law of India as to all these differs in a greater or less degree from that of England. As to (1) the English rule is that a dying declaration is only admissible in trials for the murder or manslaughter of the declarant, and only if it is proved that he was at the time in actual danger of death and had given

[145] Rule 158.
[146] Indian Evidence Act, section 6.
[147] Indian Evidence Act, section 8.
[148] Indian Evidence Act, section 14.
[149] Indian Evidence Act, section 32 (*1*).
[150] Indian Evidence Act, section 32 (*2*).
[151] Indian Evidence Act, section 32 (*3*).

Ch. V.

up all hope of recovery. Under Indian law, however, the statement of a person who has since died is admissible in *any* proceeding in which the cause of his death comes into question, and there are no conditions as to the declarant being in danger of death or having abandoned all hope of recovery. These considerations do not therefore affect the *admissibility* of such evidence, though they may materially affect the weight which should be attached to it.

Comparison with English law.

40. The statements, etc., referred to in (2) and (3) are, under English law, only admissible when their author is dead. The Indian Evidence Act,[152] however, allows of such statements being given in evidence when he cannot be found, or has become incapable of giving evidence, or when his attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court to be unreasonable.

Ditto.

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

Evidence at previous inquiry when admitted.

42. It may sometimes happen that a material witness, who has given evidence at a preliminary inquiry, cannot attend at the trial. If the evidence was given in a judicial proceeding before a person authorized by law to take it and was taken on oath or affirmation, with liberty to the accused to cross-examine, (as for instance, the inquiry before a committing magistrate) the Indian Evidence Act[152] allows it to be used at the subsequent trial of the accused on the same charge, if the witness,—

(1) is dead,

(2) cannot be found,

(3) is incapable of giving evidence,

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

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

Subject continued.

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

[152] Indian Evidence Act, section 33

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

Summary of evidence, how far admissible.

44. There is no provision making the summary of evidence taken before a commanding officer, when an accused person is remanded for trial by court-martial, evidence under the same circumstances as depositions taken on oath and in a judicial proceeding. Accordingly, the summary cannot be admitted as evidence *of the facts* recorded by it except where the prisoner has pleaded guilty.[153] But where a statement recorded in the summary of evidence is put in issue before a court-martial, as, for example, where a discrepancy is alleged between the statement made in the summary and the evidence given before a court-martial; or where the alleged wilful falsehood of such a statement becomes the occasion of a trial by a court-martial, the summary, if purporting to give the *verbatim* statement of the witness, may be given in evidence as confirmatory of the statement having been made.

(vii) *Statements made under special circumstances.*

Documents.

45. The rule excluding hearsay evidence is applicable to written, or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is none the less "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, under express statutory provisions, admissible as evidence of the matters to which they relate.

Entries in books of account.

46. Thus by the Indian Evidence Act entries in books of account regularly kept in the course of business are relevant, but such entries are not, by themselves, sufficient to charge any person with a liability.[154]

Entries in public records, etc.

47. So also an entry in any public or other official book, register or record made by a public servant in the discharge of his official duty or by any other person in the discharge of a duty imposed on him by law, is admissible as evidence of the facts to which it relates.[155] Statements in maps generally offered for public sale, or prepared under the authority of Government, are similarly admissible as evidence as to matters usually represented in such maps,[156] as are also statements of the law of any country contained in the official publications of its Government;[157] and a statement of any fact of a public

[153] Rules 44 and 102.
[154] Indian Evidence Act, section 34.
[155] Indian Evidence Act, section 35.
[156] Indian Evidence Act, section 36.
[157] Indian Evidence Act, section 38.

Ch. V.

nature, if made in a recital contained in any act of Parliament, or in any act of the Governor General in Council or a local Government, or in any "notification," is admissible as evidence of that fact.[158]

Special provisions of I. A. A.

48. Under the special provisions of the Indian Army Act the enrolment paper, the reply of a Government officer to a communication addressed to him under section 92 of the Act, a record of illegal absence, etc., duly made in a court-martial book, and the "return" of a commission are made evidence of the facts stated in them.[159]

Judgments of courts of law.

49. The judgments of courts of law are also in some cases relevant facts.[160] Courts-martial are chiefly interested in this matter so far as it concerns pleas in bar of trial and the proof of previous convictions. As regards the former it need only be remarked that the production of the judgment of a criminal court convicting the accused of the same offence, or a certified copy thereof, effectually bars his trial; while as to the latter, a previous conviction may be proved either by a verbatim extract from the regimental books or by the production of a properly certified extract from the records of the court which convicted the accused.

(viii) *Opinion of third persons, when relevant.*

Rule as to opinion.

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

Exception in case of "Experts."

51. The chief exception to the rule excluding opinion is that the opinion of an "expert"—*i.e.*, a person specially skilled in a foreign law, in any science or art or in the identification of handwriting or finger impressions, is admissible on any point within the range of his special knowledge.[161]

Examples.

52. Thus, in a poisoning case, a doctor may be asked as an expert whether, in his opinion, a particular poison produces particular symptoms. And, where lunacy is set up as a defence, an expert may be asked whether, in his opinion, the symptoms exhibited by the alleged lunatic commonly show unsoundness of

[158] Indian Evidence Act, section 37.
[159] I. A. A., sections 85, 91, 92 and 126.
[160] Indian Evidence Act, sections 40 to 44.
[161] Indian Evidence Act, section 45.

mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of their acts, or of knowing that what they do is either wrong or contrary to law. An officer may be asked, as an expert, to give his opinion on a point within his special military knowledge, but to make his opinion admissible his knowledge must be of a kind not possessed by the court generally. Thus, in a trial before a court-martial, it is not proper to ask a witness for an opinion depending on military science generally, though it may be perfectly proper to put questions involving opinion to an engineer as to the progress of an attack, or to an artillery officer as to the probable effect of his arm, if directed as assumed; since these matters, though having reference to military science, are not of such a nature as to be presumably known to each member of a court-martial.

Grounds on which opinions are based when relevant.

53. When an opinion is relevant, facts which support or are inconsistent with it, and the grounds on which it is based, are also relevant.[162] Evidence as to the grounds on which an opinion is based can, except as mentioned in para. 71, below, only be given when the author of the opinion is alive, as the grounds on which a deceased person's opinion was based must obviously be either guess-work or hearsay.

Handwriting—who may give opinions regarding it.

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

(1) he has seen that person write;

(2) he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person; or

(3) documents purporting to be written by that person have been habitually submitted to him in the ordinary course of business.[163]

Proof of handwriting by comparison.

55. Handwriting may also be proved by comparison, under section 73 of the Indian Evidence Act. It will, therefore, be convenient to consider this section here, though it occurs in a later portion of the Act. It allows a writing admitted or proved to be written by any person to be compared with another which *purports* to be written by that person, in order that the genuineness of the latter may be established or rebutted. Nothing is said as to who is to make the comparison, and it may therefore be made either by the court or by an expert. A combination of both methods is the safer course. A comparison of handwriting is at all times as a mode of proof hazardous and inconclusive, and especially so when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts.[164]

[162] Indian Evidence Act, sections 46 and 51.
[163] Indian Evidence Act, section 47.
[164] Per Jenkins, C. J.; I. L. R., 37 Cal., 503

Ch. V.

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

Other methods of proof.

56. The methods referred to above are the usual ones by which an individual's authorship of a document are proved. They are not, however, the only ones, and in addition to the writer's own admission or the evidence of some one who saw him write it, the authorship of a document may be proved by circumstantial evidence.[165] For instance, A, whose credit is unimpeachable, is able to swear that B was the sole occupant of a room, and that, as soon as B left it, he (A) entered and found a letter, with the ink still wet, lying on the table. There could be no more convincing proof that B wrote the letter, however unlike his ordinary penmanship the writing might be. Again, the writing of an anonymous letter is the subject of a court-martial charge. Circumstances directing suspicion to a particular regiment, company, or class have come to light and specimens of the handwriting of all suspected persons have been procured from the regimental school or otherwise. One of these corresponds with the writing of the anonymous letter. Section 73 cannot be invoked as the anonymous letter does not purport to be by any one. The opinions of one or more experts as to the letter and the specimen being by the same writer and evidence as to the authorship of the specimen are, however, relevant (Indian Evidence Act, sections 45 and 11) and from them the authorship of the anonymous letter may be inferred.

Summary of law as to proof of authorship of document.

57. The result of the foregoing remarks is that the authorship of a document may be proved by,—

(*a*) the evidence of experts (para. 51),
(*b*) the evidence of persons acquainted with the handwriting of the alleged writer (para. 54),
(*c*) comparison under Indian Evidence Act, section 73 (para. 55),
(*d*) the admission of the writer or the evidence of someone who saw him write it (para. 56), and
(*e*) circumstantial evidence (para. 56).

Evidence of belief not excluded.

58. The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief of the identity of a person or thing, or of the fact of a certain handwriting being the handwriting of a particular person, though he will not swear positively to those facts. It has been decided that a witness who falsely swears that he "thinks" or "believes," may be convicted of perjury equally with the man who swears positively to that which he knows to be untrue.

[165] Per Carr-duff. J.; I. L. R., 37 Cal., 525

Ch. V.

Opinion as to conduct how far admissible.

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

(ix) *Character, when relevant.*

Evidence of character when admissible.

60. In criminal proceedings (in which term are included trials by court-martial) the fact that the accused is of good character is always relevant,[166] but the fact that he has a bad character is irrelevant unless evidence has been given that he has a good character.[167] "Character" by Indian law includes both reputation and disposition, but evidence may be given only of *general* reputation and *general* disposition, and not of particular acts by which reputation or disposition were shewn;[168] as an exception, however, to this, previous convictions can be proved as evidence of bad character, when such evidence is otherwise admissible, *i.e.*, when evidence of good character has been given.[169]

Evidence of character, etc., after conviction.

61. By a special provision[170] of the Indian Army Act, evidence of character (good or bad), previous convictions, and certain other prescribed matters, information on which is necessary to enable the court to decide upon their sentence, is admitted after the accused has been convicted, while at a summary court-martial the officer holding the trial may record such matters of his own knowledge. With these exceptions, no unfavourable evidence as to character is admissible unless the accused has brought it on himself by calling or eliciting evidence of his good character.

Effect of evidence as to character.

62. Evidence of general good character cannot avail the accused against the evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence; and where intention is a principal ingredient in the offence, or where presumptive proof only is adduced, evidence as to character, bearing on the charge, may be highly important and serve to explain his conduct. On a charge of stealing, character for honesty may be entitled to great weight. So also on a charge implicating the courage of a soldier,

---

[166] Indian Evidence Act, section 53.
[167] Indian Evidence Act, section 54.
[168] Indian Evidence Act, section 55, explanation.
[169] Indian Evidence Act, section 54, explanation 2
[170] I. A. A., section 93.

Ch. V.

character for bravery and resolution might be of vast importance. But it would be manifestly absurd on a charge of stealing, to allow character for bravery to weigh in the scale of proof: or on a charge of cowardice, to be biassed by a character for honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the accused by influencing the superior with whom it rests to mitigate or remit the sentence.

Evidence tending to show disposition not admissible.

63. Evidence that the person accused of an offence committed a like offence or acted in a similar manner on another occasion, is not admissible merely for the purpose of showing that he has a general disposition to commit such offences. Thus, of a charge of murder, the prosecutor cannot give evidence of the accused person's conduct in respect of other persons for the purpose of proving a blood-thirsty and murderous disposition. So, on a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasions would not be admissible for the purpose of showing that he would be likely to commit the offence; and on a charge of insubordination, evidence of insubordinate conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct. Evidence as to other crimes committed by the accused may however be admissible under paras. 15, 22 or 24, above, if these crimes form part of the same transaction, show the existence of a relevant state of mind or body, or negative the theory of accident or misfortune.

Conclusion of list of "relevant facts."

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

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

(2) Evidence impeaching the credit of witnesses.

(3) Corroboration of the statements of witnesses.

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

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

Two categories of facts which need not be proved.

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

Judicial notice.

66. A court is said to take judicial notice, in other words not to require evidence, of any facts which are assumed to be so generally known as not to require special proof. By section 89 of the Indian Army Act a court-martial is expressly authorised

to take judicial notice of all matters within the general military knowledge of its members. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally to any matters which an officer, as such, may reasonably be expected to know. The Indian Evidence Act further requires courts to take judicial notice of certain other matters. Among these are:—laws and rules having the force of law in force in British India, Acts of Parliament, the course of proceeding of Parliament and of the Indian legislatures, the accession and sign-manual of the King, the Great Seal and Privy Seal, the seals of all courts of British India and of certain British courts, the seal of any notary public, the existence, title and flag of recognised states, the divisions of time, the geographical divisions of the world, the territories of the Crown, the commencement, continuance, and termination of hostilities between the Crown and any other state or body of persons, and the "rule of the road."

Books of reference may be consulted.

67. In all those cases, and also on all matters of public history, literature, science or art the court may consult appropriate books of reference and may require the party asking it to take judicial notice of a fact to produce such a book, before it takes judicial notice of the fact.[171]

Facts admitted.

68. Facts which the parties admit in court need not be proved, otherwise than by such admissions, unless the court requires them to be so proved.[172] It is the practice of courts-martial to receive admissions made in open court as to collateral or comparatively unimportant facts, not involving criminal intent, which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature of a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that certain details in an enumeration of stores, or in an account, are correctly stated; or that a promise or permission to a certain effect, or a certain order, was actually given, or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court.

Plea of "Guilty."

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

(xi) *Oral Evidence.*

Oral evidence defined.

70. All other facts must be proved by oral or documentary evidence. Oral evidence means statements made to the court by witnesses, while documentary evidence means the production of documents for the inspection of the court.[173] All facts, except

[171] Indian Evidence Act, section 57.
[172] Indian Evidence Act, section 58.
[173] Indian Evidence Act, section 3.

Ch. V.

the contents of documents, may be proved by oral evidence[174] which must in all cases be direct;[175] that is to say—

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

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

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

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

Special rule as to treatises by experts.

71. The opinions, however, of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.[176]

Court may require production of thing referred to.

72. If oral evidence refers to the existence or condition of any material thing, other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.[177]

(xii) *Documentary evidence.*

Rule as to documentary evidence.

73. The existence, condition, or contents of a public document may be proved either by primary or by secondary evidence.[178] The existence, condition, or contents of a private document may be proved by primary evidence, and in certain circumstances may also be proved by secondary evidence.[179] It should be remembered that the *contents* of a document, and not the *truth* of these contents is here referred to. A document is, as a rule, only proof that certain marks have been made on the paper, or whatever it is, on which they are inscribed; *e.g.*, that a certain statement has been written down. It is only in exceptional cases that a document is proof of the truth of the matters recorded; these cases are dealt with separately.

Primary evidence.

74. Primary evidence is the production of the document itself for the inspection of the court, or, if it is one of a number of documents produced by a uniform process (*e.g.*, printing, lithography or photography), the production of one of them.[180] If however a number of documents so produced are copies of a common original, they are not primary evidence of the original. For example, the type of a book is set up from the author's manuscript and a number of copies printed. Every copy is

---

[174] Indian Evidence Act, section 59.
[175] Indian Evidence Act, section 60.
[176] Indian Evidence Act, section 60, proviso 1.
[177] Indian Evidence Act, section 60, proviso 2.
[178] Indian Evidence Act, sections 61 64 and 65 (*e*).
[179] Indian Evidence Act, sections 61, 64 and 65 (*a*) to (*d*), (*f*) and (*g*).
[180] Indian Evidence Act, section 62.

primary evidence of the contents of the others, but not of the contents of the manuscript.[181]

Document which must be attested.

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

(*a*) If there is no attesting witness alive, subject to the process of the court, and capable of giving evidence, or if the document appears to have been executed in the United Kingdom, then it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.[182]

(*b*) If the document is proved, or purports to be, thirty years old or more, and is produced from what the court considers to be its proper custody, an attesting witness need not be called, and it may be presumed without evidence that the document was duly executed and attested.[183]

Secondary evidence, when given.

76. Secondary evidence may be given of the existence, condition or contents of a document[184] in the following cases :—

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

(*a*) the opposite party, or

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

(*c*) any person not legally bound to produce it, and when, after due notice (see section 66 of the Indian Evidence Act), such person does not produce it, any kind of secondary evidence (see para. 77 below) may be given.

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

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

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

(5) When the original is a public document or document of which a certified copy is permitted by law to be

---

[181] Indian Evidence Act, section 62, explanation 2.
[182] Indian Evidence Act, sections 68 and 69.
[183] Indian Evidence Act, section 90.
[184] Indian Evidence Act, section 65.

Ch. V.

used as evidence:[185] in such cases a certified copy is the *only* secondary evidence permissible.

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

Secondary evidence, nature of.

77. Besides certified copies [see clause (5) of the preceding paragraph] secondary evidence of a private document given at a court-martial will generally take one of the following forms,[186]—

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

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

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

Public documents defined.

78. The following are "Public documents,"—

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

(*i*) of the sovereign authority,

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

(*iii*) of public officers.

(2) Public records kept in British India of private documents.[187]

Private documents defined.

All other documents are private.[188] As mentioned above, secondary evidence can always be given of the contents of a public document. The nature of this secondary evidence varies with the character of the document, the most usual kind being a "certified copy,"[189] and if the document is one provable by a "certified copy," this is the *only* secondary evidence admissible.[190] The secondary evidence required to prove the various kinds of public documents is dealt with in sections 76 to 78 of the Indian Evidence Act, which should be consulted in the original, if necessary. The public documents specified in section 78 are provable as therein stated, all others, (except certain English documents specially provided for in section 82 of the same Act and with which courts-martial are unlikely to be concerned) are provable by "certified copies" as provided for in sections 76 and 77.

Provisions as to extracts and copies of certain documents.

79. Under the special provisions of the Indian Army Act extracts from or copies of official records are in certain cases made admissible as evidence,[191] while under the general law referred to above[192] orders and regulations of the Government of

---

[185] *E.g.*, the Banker's Books Evidence Act (XVIII of 1891).
[186] Indian Evidence Act, section 63.
[187] Indian Evidence Act, section 74.
[188] Indian Evidence Act, section 75.
[189] Indian Evidence Act, section 76.
[190] Indian Evidence Act, section 65.
[191] I. A. A., sections 93 and 126.
[192] Indian Evidence Act, section 78.

India are provable by copies purporting to be printed by order of that Government, and orders and regulations of His Majesty or a Department of the Home Government by copies purporting to be printed by the King's printer. Ch. V.

(xiii) *Presumptions as to documents.*

"Shall presume," and "may presume."

80. Sections 79 to 90 of the Indian Evidence Act provide that certain documents shall be presumed to be what they purport to be, unless and until the contrary is proved, and that, as to certain others, courts *may*, in their discretion, either make a similar presumption or require the genuineness of the document to be proved by the party who puts it forward. This distinction between what courts "shall presume" and what they "may presume" should be noticed.[193] An instance of the former class of presumption is found in section 90 of the Indian Army Act which provides that certain signatures shall be presumed to be genuine until the contrary is shewn. An instance of the latter, is that regarding telegraph messages contained in the Indian Evidence Act.[194] A court may either presume that a message forwarded from a telegraph office to the addressee corresponds with a message delivered for transmission at the office of origin, or may require that fact to be proved by the party asserting it. This provision does not, however, authorise the court to make any presumption as to who delivered the message for transmission, nor as to the truth of its contents.

Contract, etc., rule as to.

81. Where a contract, grant, or other disposition of property is reduced to the form of a document, the document itself (or secondary evidence of its contents when admissible) is, save in certain exceptional cases, the only admissible evidence of the matter which it contains, and the written contract cannot therefore, save as aforesaid, be varied by verbal explanations or additions.[195]

(xiv) *Of the Burden of Proof.*

Burden of proof.

82. The burden of proving the existence (or non-existence) of any fact lies on the side which wishes the court to believe in its existence or non-existence, as the case may be, and which would fail if no evidence at all were given on either side.[196] In criminal trials the effect of this is that the burden of proof is, in the first instance, on the prosecutor, or as it is sometimes expressed, "every man is presumed to be innocent until he is proved to be guilty." An exception to the rule which puts the burden of proof on the person who asserts a fact, is that, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.[197] The Indian Evidence Act gives as an illustration of this the case of a man charged with travelling on a railway without a ticket, when, the travelling being established, the burden of proving that he had a ticket is on him. Instances of the application of this principle

[193] Indian Evidence Act, section 4.
[194] Indian Evidence Act, section 88.
[195] Indian Evidence Act, section 91 *et seq.*
[196] Indian Evidence Act, sections 102 and 103.
[197] Indian Evidence Act, section 106.

Ch. V.

to military life are the case of a man found within limits to which soldiers are forbidden to go without a pass, or charged with leaving the ranks or his post without leave. In every such case, the main fact being proved, the burden of proving possession of a pass or leave lies on the accused.

Rule as to general and special exceptions.

83. When any person is accused of an offence, the burden of proving the existence of facts bringing the case within any of the "general exceptions" of the Indian Penal Code or any special exception or proviso applicable to the particular offence is on the accused.[198] For instance, A is accused of murdering B. The burden of proving that A killed B is on the prosecution. A, however, pleads grave and sudden provocation; the burden of proving this provocation is on A.

Presumptions.

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

Burden of proof may be shifted.

85. As the trial goes on, the burden of proof may be shifted from the prosecutor to the accused by the proof of facts which raise a presumption of his guilt. Thus, A is accused of stealing a five-rupee note. The burden of proof is on the prosecution. He is shown to be in possession of the note soon after the fact. The burden of proof is shifted to A. A shows that the note was given him in change for a ten-rupee note. The burden of proof is shifted to the prosecution.

(xv) *Witnesses.*

Competency of witnesses.

86. Under Indian law all persons, other than the accused or persons tried jointly with him,[199] are competent witnesses unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of—

(1) tender years,

(2) extreme old age.

(3) disease of mind or body, or

(4) any other cause of the same kind.[200]

Comparison with English law.

87. The English law adds to these disqualifications "or from knowing that he ought to speak the truth." This omission in the Indian law prevents the occurrence of questions as to the condition of a witness whose age, appearance or circumstances

---

198 Indian Evidence Act, section 105.

199 But the confession of a jointly tried person may be "taken into consideration" against the co-accused, see para. 27 above.

200 Indian Evidence Act, section 118.

suggest the probability of a want of moral perception. All that the court has to consider is whether he can understand the question and give a rational answer to it. Other considerations do not affect the admission of his evidence, though they may affect the question of how much weight is to be attached to it. The English law further disqualifies both the accused and his wife from giving evidence except for the defence, subject, in the case of the wife, to certain statutory exceptions. The Indian law, as already mentioned, absolutely disqualifies the accused from giving evidence. It however makes his wife (subject to the privilege mentioned, in para. 98 below) a competent witness both for the prosecution and defence.

Accused cannot give evidence but may make a statement.

88. Though the accused cannot give evidence, he is permitted to make an unsworn statement in his defence,[201] to which a greater or less degree of credence may be afforded, and which is one of the "matters before it" which the court is bound to consider when arriving at a decision as to whether the charge is or is not "proved."

Persons jointly tried cannot give evidence.

89. Persons jointly tried are incompetent to testify against each other. If, therefore, the evidence of one accused person is required against another the former should be released, or a separate verdict of not guilty taken against him. An accused person so giving evidence is popularly said to turn King's evidence. If an accused person thinks that the evidence of one or more of the other persons proposed to be conjointly arraigned with him will be material to his defence, he should claim a separate trial.[202]

Evidence of accomplice should be corroborated.

90. It follows from what has been stated that the evidence of an accomplice is admissible against his principal, and *vice versâ*, unless they are tried together, but the evidence of an accomplice should always be received with great jealousy and caution. No particular number of witnesses is legally necessary to prove any fact[203] and a conviction on the unsupported testimony of an accomplice is therefore, strictly speaking, legal.[204] It is, however, the practice to require it to be confirmed by unimpeachable testimony in some material part, and more especially as to his identification of the person or persons against whom his evidence may be received.

Deaf or dumb witness.

91. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing or signs must be made in open court. Evidence so given is deemed to be oral evidence.[205] The same rule would, no doubt, apply to a deaf, or deaf and dumb, witness, who might be communicated with by writing or signs provided the court was satisfied with the reality and accuracy of such communication.

Member as witness.

92. A member of a court-martial is a competent witness in favour of the accused, and might, as such, be sworn or affirmed to give evidence at any stage of the proceedings; but the

[201] Rules 47, 48 and 104.
[202] Rule 24.
[203] Indian Evidence Act, section 134.
[204] Indian Evidence Act, section 133.
[205] Indian Evidence Act, section 119.

Ch. V.

Indian Army Act Rules[206] direct that a witness for the prosecution shall not sit on a court-martial for the trial of any person against whom he is a witness. A member of the court must not communicate privately to other members of the court any special knowledge which he has, or thinks that he has, of the accused person's guilt or innocence, or act on private grounds of belief. If he wishes to give evidence, he must be sworn as other witnesses and be subject to cross-examination.

(xvi) *Privilege of Witnesses.*

Incriminating questions.

93. It by no means follows that because a person is *competent* to give evidence he is *compelled* to answer every question he may be asked when in the witness-box. Under English law, for instance, a witness may decline to answer any question which incriminates him, and though, in Indian law, there is no such absolute privilege,[207] still a witness, on such a question being put to him, is entitled to ask to be excused from answering it, and if, *after his asking to be excused*, the court *compel* him to answer (as they are entitled to do), his answer cannot be proved against him at any criminal proceeding, except a prosecution for giving false evidence by such answer.

Official matters.

94. Another class of privilege is based on considerations of public policy. No one is permitted to give evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned.[208] No public officer can be compelled to disclose communications made to him in official confidence, if *he* considers such disclosure injurious to the public interests,[209] and in particular no magistrate or police officer can be compelled to state whence he got any information as to the commission of any offence.[210]

Confidential reports.

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

Courts of inquiry.

96. So also, the proceedings of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents; nor is any confession or statement made at a court of inquiry admissible against an officer or soldier before a court-martial.[211] The only exception to this rule is in the case of a court-martial for giving false evidence before the court of inquiry.

---

[206] Rule 29 (B) (ii).
[207] Indian Evidence Act, section 132.
[208] Indian Evidence Act, section 123.
[209] Indian Evidence Act, section 124.
[210] Indian Evidence Act, section 125.
[211] Rule 158.

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

98. A husband is not compellable to disclose any communication made to him by his wife during marriage; and a wife is not compellable to disclose any communication made to her by her husband during marriage.[212] Communications during marriage.

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

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

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

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

The expression "legal adviser" includes the clerks of legal advisers and interpreters between them and their clients, and the person assisting a prisoner during trial before a court-martial.[213]

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

(xvii) *Of the Examination of Witnesses.*

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

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

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

---

[212] Indian Evidence Act, section 122.

[213] Indian Evidence Act, sections 126 and 127.

Ch. V.

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

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

(*e*) That, if it is a document, it is legally admissible and properly put in evidence.[214]

(*f*) That no document or other thing is used for the purposes of the trial which has not been properly put in.[215]

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

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

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

How examination of witnesses is conducted.

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

Leading questions.

103. Leading questions must not, if objected to by the adverse party, be asked in examination-in-chief or in re-examination, except with the permission of the court.[216] Leading questions as to matters which are introductory, or undisputed, or which the court considers already sufficiently proved are, however, permitted,[217] and the court may also allow leading questions to be put to a "hostile witness."[218] A leading question is one suggesting the answer which the person putting the question wishes or expects to receive.[219] For instance, a witness must not be asked, "Did the prisoner then go into the barrack-room?" but "What did the prisoner do next?" If it were not for this rule a favourable and dishonest witness might be made to give any evidence that is desired. On the other hand, it would be mere waste of time to enforce the rule where the questions asked are simply introductory and form no part of the real substance of inquiry, or where they relate to matters which, though material, are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter

[214] A document is said to be "put in" when it is produced to the court by a witness.

[215] For purposes of identification a document or thing may, however, be shewn to a witness before it has been formally proved and put in.

[216] Indian Evidence Act, section 142.

[217] *Ibid*, second clause.

[218] Indian Evidence Act, section 154.

[219] Indian Evidence Act, section 141.

in issue, or directly and proximately connected with it, the rule should nearly always be strictly enforced, and no question should be allowed in a form which directly or indirectly suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple "Yes" or "No."

Test of what are leading questions.

104. Care must, however, be taken in enforcing this rule not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness.[220]

Rule as to directing attention to articles.

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

Hostile witness.

106. The court may, in its discretion, permit the person who calls a witness to put any questions to him which the adverse party might put in cross-examination.[221] This is called the treating of a witness as "hostile." If a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule forbidding leading questions fails, and the court may allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in *every* respect as though he were a witness called by the other side. In such circumstances he can therefore be asked questions tending to show his bad character, and his credit may be impeached in the same way as that of a witness called by the adverse party; neither of these things can be done under English law.

Rules as to cross-examination.

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

(1) to test his veracity,
(2) to discover who he is and what is his position in life, or
(3) to shake his credit by injuring his character.[222]

Subject of cross examination—continued.

108. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, without such writing being shewn to him, but if it is intended to contradict him by the writing his attention must be called to it before it can be proved.[223] It is often important that when a

[220] For examples of fair and unfair examination see M. M. L., Chapter VI, paragraph 109.
[221] Indian Evidence Act, section 154.
[222] Indian Evidence Act, section 146
[223] Indian Evidence Act, section 145.

Ch. V. witness is under cross-examination as to his previous statements, the fact of their having been reduced to writing should be concealed from him. It is only reasonable, however, that, when he has given his answer, he should be shewn the document and have the chance of correcting himself. The summary of evidence may be used to prove any statement which the witness made, and which it is proposed to contradict, and evidence may be called to prove that the evidence of a witness, though consistent with the summary, is not consistent with the evidence given by him at the investigation before the commanding officer.

Subject of cross-examination—continued.

109. Questions should not be allowed which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact. Nor should a witness be pressed in cross-examination as to any facts, which, if admitted, would not affect the matter at issue or the credit of the witness. And if the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should put to the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining.

Ditto.

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

Injurious questions.

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

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

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

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

Exclusion of evidence to contradict answers to questions testing veracity, etc.

111. It is further provided that when a witness has been asked, and has answered, such a question no evidence can be given to contradict his answer.[224] This rule is however subject to two exceptions :—

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

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

Impeaching credit of witnesses.

112. The credit of a witness may be impeached by the adverse party, or *with the consent of the court* by the party who calls him, by the evidence of persons who testify that they, from their knowledge of witness, believe him to be unworthy of credit.[225] Such persons may not, on their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. When the credit of a witness is so impeached, the party who called the witness may give evidence in reply to show that the witness is worthy of credit.

Subject continued.

113. The credit of a witness may also, under similar conditions, be impeached by proof that he has been bribed or by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted, and at trials for rape or an attempt to ravish it may also be shewn that the woman against whom the offence is alleged to have been committed was of generally immoral character.[226]

Corroboration of witnesses.

114. In order to corroborate the testimony of a witness as to a relevant fact he may be asked questions as to any other circumstances which he observed at or near the time or place at which that fact occurred.[227] Thus A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements by witnesses.

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

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

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

may be proved.[228] The above conditions are, to some extent, a safeguard against fictitious statements designedly made to support subsequent evidence, but it is obvious that the corroborative value of such statements depends on the circumstances of each case, and that they may easily be entirely valueless. The mere fact of a man having, on a previous occasion, made the

---

[224] Indian Evidence Act, section 153.
[225] Indian Evidence Act, section 155 (*1*).
[226] Indian Evidence Act, section 155 (*2*), (*3*), (*4*).
[227] Indian Evidence Act, section 156.
[228] Indian Evidence Act, section 157.

Ch. V.

same assertion often adds but little to the chances of its truthfulness, and courts should distinguish such testimony from really corroborative evidence.

Re-examination.

116. At the conclusion of the cross-examination the person who called the witness may, if he pleases, re-examine him; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it.[229]

Refreshing memory.

117. A witness may not read his evidence or refer to notes of evidence already given by him, but he may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct. Whenever a witness may refresh his memory by reference to any document, he may, if the court, is satisfied that there is sufficient reason for the non-production of the original, be permitted to refer to a copy of such document. An expert may also refresh his memory by reference to professional treatises.[230] Any writing referred to under the provisions of this paragraph must be produced and shown to the adverse party if he requires it, and that party may, if he pleases, cross-examine the witness upon it.[231]

Notes referred to are not evidence of themselves.

118. But a witness who refreshes his memory by reference to writing must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written.[232] If on referring to a memorandum not made by himself he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, as hearsay.

(xviii) *Conclusion.*

Rule as to evidence improperly received or rejected.

119. Having thus dealt with the whole subject of Evidence as it concerns what evidence may be given, how, and by whom, the Indian Evidence Act concludes by putting it on a right level by providing that the improper admission or rejection of evidence shall not be ground of itself for invalidating a trial if it appears that, independently of the evidence improperly admitted, there was sufficient evidence to justify the decision of the court, or that, if the rejected evidence had been received, it ought not to have varied the decision.[233] This provision, while not excusing a court which deliberately breaks the law, will often prevent a miscarriage of justice where, through ignorance, some evidence

[229] Indian Evidence Act, section 138.
[230] Indian Evidence Act, section 159.
[231] Indian Evidence Act, section 161.
[232] Indian Evidence Act, section 160
[233] Indian Evidence Act, section 167.

has been improperly admitted but, apart from it, enough remains to justify the finding, or where evidence has been similarly rejected which, if admitted, ought not to have varied that finding.

How to act when in doubt.

120. If the members of a court-martial are *in doubt* as to whether any evidence is admissible or not, they should remember that the enumeration of relevant matters in the Indian Evidence Act is so wide that (provided the evidence tendered has anything at all to do with the case) "admissibility is the rule and exclusion the exception"[234] and that "where a judge is in doubt as to the admissibility of a particular piece of evidence he should declare in favour of admissibility rather than of non-admissibility."[235]

CHAPTER VI.

CIVIL OFFENCES.

(i) *Introductory.*

Definition of a civil offence.

1. A "civil offence," for the purposes of the Indian Army Act, is one which, if committed in British India, would be triable by a criminal court. Certain of these offences are triable by military law at all times. These are offences of a political character, and murderous or violent crimes committed against persons subject to military law.[236] With these exceptions, civil offences can only come before courts-martial on active service or beyond the limits of British India.[237]

The Indian Penal Code.

2. Most of the offences triable by criminal courts in British India are defined in the Indian Penal Code,[238] an Act which codifies the criminal law of India, but a few, as for example the offences against the Indian Official Secrets Act[239] referred to below, are created by special statutes. None of these are, however, likely to be dealt with by courts-martial and need not be considered here.

Ditto.

3. A certain knowledge of the Indian Penal Code is required by officers who have to administer Indian military law, as many of the definitions of that code are imported into the Indian Army Act by section 7 (22) of the latter. Thus, wherever "theft," "assault" or "house-breaking" are mentioned in the Indian Army Act the offence so defined in the Indian Penal Code is intended, and, as pointed out in a previous chapter, all the penal sections of the former Act are subject to the "general exceptions" of the latter.

Ditto.

4. Extracts of those portions of the Indian Penal Code which are likely to be required for the purposes just mentioned have

---

[234] Jardine, J., I. L. R., 16 Bomb., page 668.
[235] Straight, J., I. L. R., 12 All., page 26.
[236] I. A. A., section 42.
[237] I. A. A. section 41.
[238] Act XLV of 1860, see Part III of this Manual.
[239] Act XV of 1889, see Part III of this Manual.

Ch. VI.

been included in the present volume, while a table of offences against the ordinary law, with the punishment assigned to each, is appended to the present chapter.

Table of offences and punishments.

5. The offences shewn in this table are all contained in the Indian Penal Code, with the exception of the four entries which relate to offences under the Indian Official Secrets Act. Though these offences are unlikely to be tried by court-martial, they have been included as dealing with a subject the law on which ought to be known to military men. The first column of this table shows how civil offences are described, and should be consulted when framing charges under section 41 or 42 of the Indian Army Act. For the full definitions of these offences, the extracts from the Indian Penal Code in Part III of this Manual should be consulted.

Ditto.

6. The last column shows the punishment awardable for each offence, *by the law of British India*.

If the offence is—

(1) one punishable with death or transportation, or

(2) one tried under section 42 of the Indian Army Act,

a court-martial is (subject to what is said below as to corporal punishment) restricted to the punishments shewn in that column as awardable under the ordinary law, or such other[240] punishment as that law allows; while in other cases courts may either award the punishment under the ordinary law or the punishment assigned to an act prejudicial to good order and military discipline (*i.e.*, imprisonment up to 14 years or any less punishment mentioned in the Indian Army Act).

Corporal punishment.

7. The only exception to this rule is that corporal punishment can be awarded to offenders under the rank of warrant officer on conviction of —

(*a*) a civil offence triable by court-martial and for which whipping is awardable by the ordinary law, wherever committed.

(*b*) *any* civil offence, if committed on active service.

The difference between the civil punishment of "whipping" and the military one of "corporal punishment" is explained in the notes to section 45 of the Indian Army Act. Whipping, as mentioned there, is generally an unsuitable punishment for a court-martial to award to a non-commissioned officer or soldier.

Punishments discussed.

8. Though the full penalty should only be awarded in extreme cases, a comparison of the various punishments provided will be useful as a guide to courts-martial as to the heinousness of each offence in the eye of the law.

Courts are subject to their own limitations.

9. Courts are of course subject to their own limitations in awarding punishment, *e.g.*, a district court-martial cannot award a higher penalty than two years' rigorous imprisonment, even though a higher one is shewn against the offence it is trying.

[240] See Indian Penal Code, sections 59 and 75.

(ii) *Responsibility for Crime.*

Ch. VI.

Everyone responsible for natural consequences of his actions.

10. The general rule is that a person is responsible for the natural consequences of his acts. If, therefore, a person's acts, and the natural consequences which follow them, bring him within the penal provisions of the Indian Penal Code, he is criminally responsible under that code, unless his case falls within one of the "general exceptions"[241] or any special exception applicable to the particular offence. Thus, a person who kills another under circumstances which amount to murder as defined in the Code,[242] is liable to the punishment assigned to that offence; but if he killed the other while himself in such a state of involuntary intoxication as would bring him within the terms of section 85, Indian Penal Code, or in the lawful exercise of his right of private defence (general exceptions), he is excused, while if he did it under grave and sudden provocation (a special exception)[243] his offence is reduced to culpable homicide.

Illegal omissions.

11. Words in the code which refer to acts also extend to illegal omissions,[244] that is, omissions to do what a person is legally bound to do. The omission to do anything which one is not bound by law to do is not an offence; thus, if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even *in the hope* that the other may be drowned, still he is not criminally responsible.

Ditto.

12. On the other hand, where the law considers that a person is bound to perform some particular act, he is held responsible if he omits to do so. For example, every person who has charge of another, *e.g.*, a lunatic, an invalid, or a prisoner, is bound to provide him with necessaries if he is so helpless as to be unable to provide himself: and if death results from a neglect of such duty, the person in charge will be responsible unless he can show some good excuse.

Example.

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

Further examples.

14. Similarly, if a person undertakes to do any act the omission of which may endanger human life (as, for instance, warning persons from a range whilst firing is going on), and, without lawful excuse, omits to discharge that duty he is responsible for the consequences. Again, if a person undertakes (except in cases of necessity) to administer surgical or medical treatment, or to do any other act which may be dangerous to human life, he is responsible if death results from a want of reasonable care and skill on his part. For instance, if a soldier were to undertake to cut off the trigger finger of another soldier and mortification set in, he would be responsible for the consequences of his act.[245]

---

[241] Chapter IV, Indian Penal Code.
[242] Indian Penal Code, section 300.
[243] *Ibid*, exception 1.
[244] Indian Penal Code, section 32.
[245] In the class of cases referred to in this paragraph, there would rarely be such intention or knowledge as would make the offence murder or culpable homicide under Indian law. It might often, however, amount to causing death by a rash or negligent act. Indian Penal Code, section 304A.

Ch. VI.

Criminal responsibility for offences committed by others.

15. When a person has no excuse to prevent his being criminally responsible for the result of his actions, his responsibility will not be limited to the simple case where he is present and commits an offence with his own hand.

Assisting in offence.

16. Thus, the Indian Penal Code provides that when a criminal act is done by several persons, in furtherance of the common intention of all, each is liable for that act as if he had done it alone.[246] If, therefore, two or three men go out to commit house-breaking and one waits at the corner of the street to keep watch while the others break into the house, the watcher will be guilty of house-breaking equally with the others, though he never goes near the house. Further, when an offence is committed by means of several acts, whoever intentionally co-operates by doing any one of those acts, commits that offence.[247] If, therefore, in pursuance of a common intention to commit theft, A steals goods in a house and hands them to B who is waiting outside, and B then carries them away, both are guilty of theft. On the other hand, if the offence charged involves some special intent, it must be shewn that the assistant was cognisant of the intentions of the person whom he assisted;[248] thus since B in the last example knew of A's intention to steal, and waited outside the house to assist him, his offence was theft, but if he had been unaware of the intention till the goods were handed to him his offence would not have been theft but receiving stolen property.

Common intent.

17. If several persons go out with a common intention to execute some criminal purpose each is responsible for every offence committed by any one of them in furtherance of that purpose, but not for an offence committed by another member of the party which is unconnected with the common purpose unless he personally instigates or assists in its commission. Thus, if some of the party of house-breakers in the example given above are armed with revolvers, and the others all know it, thus showing a common intention not only to break into the house but to carry out their criminal object there in spite of all resistance, and the owner is killed in defending his property, all the party, including even the watchers outside, are guilty of murder. But if two persons go out to commit theft and one, unknown to the other, puts a pistol in his pocket and shoots a man, the other is not responsible.

Framing charges in certain cases.

18. Another case in which a person incurs full responsibility for the act of another is when an abettor (see para. 19 below) is present at the place when the act or offence he abets is committed.[249] In this case, and in the cases referred to above, the person made responsible for the acts of another is deemed to be guilty of the actual offence committed and should be so charged, *i.e.*, all the party in the first example in para. 16 should be charged with house-breaking, and, if murder results from the pursuit of their common intention (see para. 17), with murder also. Similarly if A instigates B to murder C (abetment) and A is present when B commits the murder, A is guilty of murder and should be so charged.

---

[246] Indian Penal Code, section 34.
[247] Indian Penal Code, section 37.
[248] Indian Penal Code, section 35.
[249] Indian Penal Code, section 114.

Ch. VI.

Abetment.

19. A person may make himself responsible for the crime of another by instigating, conspiring with, or intentionally aiding the actual criminal in one of the ways described in sections 107 and 108 of the Code. In such cases he cannot (except as already mentioned) be charged with the actual offence committed by the other, and must be charged with "abetting" that offence. See forms of charges under sections 40 and 42 of the Indian Army Act in the second appendix to the Rules. The abetment of an offence is punishable under section 109 of the Indian Penal Code and under sections 40 and 42 of the Indian Army Act.

Innocent agent.

20. It does not always follow that the person who commits the offence which is abetted is himself criminally responsible. Thus if A instigates B (a child under seven years of age[250] or a person in a state of *involuntary* intoxication)[251] to murder C, and B does so, A has abetted the murder of C, but B has committed no offence. Similarly, if a soldier, knowing that a pair of boots do not belong to him, induces a comrade to steal them by representing that they are his property and not the property of the actual possessor, the first man is guilty of abetting theft though the other has committed no offence at all.[252]

Harbouring offenders.

21. A person may also incur criminal responsibility even after an offence has been committed by helping the offender to escape from justice, or by destroying the evidence of his guilt. This form of responsibility is provided for in the sections of the Code which deal with harbouring and screening an offender.[253] Persons who offend against these sections do not however make themselves *fully* responsible for the original crime, as in the cases referred to in para. 18 above, and cannot be so charged. The word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting of a person in any way to evade apprehension.[254] The wife or husband of an offender is exempted from any penalty for harbouring that offender, an exception to this rule is, however, the harbouring of a state prisoner who has escaped.[255]

I. P. C. to be consulted.

22. Though the full text of the Indian Penal Code has been, in all material cases, included in this work, and should be consulted, a few words as to certain offences may not be out of place.

(iii) *Murder.*

Culpable homicide.

23. Whoever causes the death of a human being by doing an act—

(1) with the intention of causing death, or

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

---

[250] Indian Penal Code, section 83.
[251] Indian Penal Code, section 85.
[252] Indian Penal Code, section 108, Illustration (*d*).
[253] Indian Penal Code, sections 136 and 212 to 216 B (not reproduced, for summary see Table at end of this chapter).
[254] Indian Penal Code, section 216 B.
[255] Indian Penal Code, section 130.

Ch. VI.

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

commits *at the least* culpable homicide,[256] and his act may amount to murder if certain further conditions as to his intention and knowledge are present. The intention or knowledge, express or implied, of the accused in such a case is therefore all important and it lies on the prosecution to show, by direct evidence or by inference from the facts of the case, that he had such intention or knowledge as is necessary to constitute the offence charged. In arriving at a decision upon this point a court will, however, presume that a man intends the natural consequences of his acts. This presumption will often arise in shooting cases or in other cases where death is caused with a lethal weapon.

Murder.

24. The kinds of intention or knowledge which will make culpable homicide amount to murder are set forth in section 300 of the Indian Penal Code. If these are compared with para. 23 above, it will be seen that, subject to certain exceptions which will be considered later,[257] culpable homicide of the first and second kind is *always* murder, while culpable homicide of the third kind is only murder if the person committing the act which causes death knows it to be imminently dangerous and, without excuse, still does it. A knowledge that the act was likely to cause death is however essential to bring the case under clause (3) above. Thus, where a person hurt another, who was suffering from disease of the spleen, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of the other, it was held that the offence committed was that of voluntarily causing hurt.[258]

Exceptions.

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

(1) Grave and sudden provocation.

(2) Right of private defence exceeded.

(3) Powers of public servant exceeded.

(4) Sudden fight.

(5) Consent by the person killed.

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

Grave and sudden provocation.

26. It must be clearly established in all cases where grave and sudden provocation is put forward as an excuse, that *at the time* when the crime was committed the offender was actually so completely under the influence of passion arising from the provocation, that he was *at that moment* deprived of the power of self-control; and with this view it will be necessary to consider carefully the manner in which the crime was committed, the

[256] Indian Penal Code, section 299.
[257] See para. 25 below.
[258] Empress v. Fox, I. L. R., 2 All., 522.

length of the interval between the provocation and the killing, the conduct of the offender during that interval, and all other circumstances tending to show his state of mind. Ch. VI.

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

(1) The provocation must not be sought by the person provoked. If A provokes B to strike him in the hope that B will do so and thus give him, A, an excuse for killing B, the plea of grave and sudden provocation will not avail to save A if events fall out as he hoped, and he then draws a weapon and kills B.

(2) Provocation given by anything done in obedience to law, or by a public servant in the lawful exercise of his powers, does not avail to reduce murder to culpable homicide. A non-commissioned officer *lawfully* arresting a private may provoke the latter very much, but if the arrest is lawful a plea of grave and sudden provocation will not avail him if he kills the former. On the other hand an *unlawful* arrest would constitute such provocation.

(3) Provocation given in the lawful exercise of the right of private defence does not avail to reduce murder to culpable homicide. For what this right is section 97 *et seq.* of the Indian Penal Code should be consulted. An example would be,—A in defending himself and his property from B who is trying to rob him, strikes B in the face with a whip. This so enrages B that he kills A. B cannot successfully plead grave and sudden provocation.

28. It will be noticed that the intention and knowledge referred to in para. 28 are an intention to kill or vitally injure *anyone*, and a knowledge that the death of *anyone* is likely. Culpable homicide may therefore be committed by a person who intends to kill one man and kills another by mistake. In such a case the character of the culpable homicide is determined by what its character would have been if the person intended had been killed.[359] Culpable homicide of person other than the one intended.

29. In England, malice (*i.e.*, the state of mind which turns manslaughter into murder) is presumed from the fact of killing, and the burden of proof is then on the accused. In India the position is somewhat different. The killing being established, the burden of showing such intention or knowledge as makes the crime murder or culpable homicide is still upon the prosecution.[360] If, however, facts raising a presumption of such intention or knowledge (*e.g.*, the nature of the weapon used) are shewn to exist, the burden is shifted to the accused. The killing, and the requisite intention or knowledge being established, the burden is upon the accused of showing that his case falls within any general or special exception,[361]—as for instance, by showing that he acted under a *bonâ fide* mistake of fact and the fact (if true) would have excused him, or that he acted on grave and sudden provocation. Burden of proof.

[359] Indian Penal Code, section 301.
[360] Indian Evidence Act, section 103.
[361] Indian Evidence Act, section 105.

Ch. VI.

Penalty for murder.

30. The penalty for murder is death, or transportation for life.[262] A court can, at its discretion, award either penalty, but must sentence the offender to one or the other. When a person already under sentence of transportation for life is convicted of murder the death sentence is obligatory.[263]

(iv) *Hurt and grievous hurt.*

"Hurt" and "grievous hurt" defined.

31. Whoever causes bodily pain, disease, or infirmity to any person is said to cause "hurt,"[264] and if that hurt is one of the graver kinds (specified in section 320 of the Indian Penal Code) he is said to cause "grievous hurt." Whoever does an act with the intention of causing hurt to anyone, or knowing that he is likely to cause hurt to anyone, and does thereby cause hurt to the same or any other person, is said "voluntarily to cause hurt." If the hurt intended or known to be likely to be caused is "grievous hurt" and the hurt actually caused is grievous hurt (either of the same or a different kind) he is said "voluntarily to cause grievous hurt."[265]

Voluntarily to cause hurt or grievous hurt to anyone is an offence which varies in its gravity according to the instrument used, the provocation given, the status of the person hurt, and the object of the offender. The table appended to this chapter shows the different descriptions of hurt and grievous hurt and the punishment awardable for causing each. The offence of voluntarily causing hurt or grievous hurt to any person subject to military law when committed by a person subject to the Indian Army Act is triable by court-martial at all times and in all places.[266]

(v) *Criminal Force and Assault.*

"Force" defined.

32. The sections of the Indian Penal Code which deal with these crimes are chiefly of interest to officers as defining the offences described in section 27 (*d*) of the Indian Army Act which are, unfortunately, not uncommon in the service. The definition of force in the Indian Penal Code[267] is of a highly metaphysical nature but, for the ordinary purposes, there is little difficulty in understanding what is meant by the application of force to a person, or through a thing to a person, and whoever intentionally uses force to a person without his consent, in order to commit an offence, or with an intention to cause injury, fear or annoyance, is said to use "criminal force."[268] Whoever makes any gesture or preparation—

'Assault.'

(1) intending to cause anyone to apprehend that the person making the gesture, etc., is about to use criminal force to him, or

---

[262] Indian Penal Code, section 302.
[263] Indian Penal Code, section 303.
[264] Indian Penal Code, section 319.
[265] Indian Penal Code, sections 321, 322.
[266] I. A. A., section 42.
[267] Indian Penal Code, section 349.
[268] Indian Penal Code, section 350.

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

is said to commit an "assault."[269] Mere words cannot amount to an assault, but words accompanied by gestures or preparations may give the latter such a meaning as to amount to an assault.

Difference between assault and use of criminal force.

33. It will be noticed that if actual violence is done to a person, or attempted, an assault is not the proper word to use in a charge-sheet as describing the offence, which then becomes "using criminal force," or "attempting to cause criminal force," as the case may be.

(vi) *Rape.*

Penetration.

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

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

Consent, when valid.

35. A consideration of Indian Penal Code section 375 will show that the offence consists in sexual intercourse with a woman against her will, without her consent, or even with her consent when such consent has been obtained by putting her in fear of death or hurt, or by pretending to be her husband, or with or without her consent when she is under twelve years of age; further, consent is not valid under the Indian Penal Code when given by a person who from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he or she gives consent.[270] Sexual intercourse with a woman who has, by drugs or liquor, been reduced to such a condition as is indicated above will therefore be rape.

Caution as to evidence in cases of alleged rape.

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

Attempted rape.

37. When the offence is incomplete for want of penetration the accused may be convicted of an attempt to commit rape, provided that the court is satisfied that it was his intention to gratify his passions at all events and notwithstanding any resist-

[269] Indian Penal Code, section 351.
[270] Indian Penal Code, section 90.

ance. An indecent assault with intent to have illicit intercourse is not sufficient, in itself, to constitute such an attempt.[271]

(vii) *Theft and Cognate Offences.*

Property which can be subject of theft.

38. Theft is defined in section 378 of the Indian Penal Code. It can only be committed in respect of movable property which is in the possession of someone.

Movable property.

39. All corporeal property except land and things attached to it is movable property.[272] A difficulty which exists in English law is got over by the first and second explanations to section 378, which expressly state that things attached to the land may become movable property by severance, and that the act of severance may of itself be theft. The cutting down of a tree, with the intention of dishonestly removing it without the owner's consent, is thus theft.[273]

Property must be in possession of someone.

40. The property must be in the possession of *someone*, but it does not matter whether that possession is rightful or wrongful. A thing can be stolen from a thief who has himself stolen it, not less than from the rightful owner of the thing. A person cannot steal a thing which is in his own possession, or a thing which is not in the possession of anyone. Wild animals (including game and fish), while at large, not being in the possession of anyone, cannot be the subject of theft, but if they have been tamed or are in confinement they can be stolen like any other property.[274] When a man mislays property in his own house it still remains legally in his possession, and anyone finding it is bound to assume that it belongs to him.

Possession through another.

41. Property in the possession of a person's wife, clerk or servant on that person's account is in that person's possession within the meaning of the Indian Penal Code.[275] The same principle also extends to other cases where a man's property is in the physical possession of someone to whom he has entrusted it and from whom he can demand it unconditionally whenever he pleases. Thus where a servant has his master's plate in his keeping, or a shepherd is in charge of his master's sheep, the legal possession remains with the master; similarly the landlord of an inn retains the legal possession of the forks and spoons which his customers are handling at the dinner table and a shopkeeper retains the legal possession of goods which a purchaser takes up in order to inspect them. The possession of anything by a servant on his master's behalf is thus considered to be the possession of the master or the possession of the servant according to the circumstances under which the servant originally received it. If, for instance, a servant is given the custody of anything by his master, or by a fellow-servant who has been given the custody of it by his master, the servant will have no real possession of the thing, and the possession will remain in the

---

[271] Queen-Empress v. Shankar, I. L. R., 5 Bom., 403.

[272] Indian Penal Code, section 22.

[273] Indian Penal Code, section 378, Illustration (*a*).

[274] Queen v. Revu Potbadu, I. L. R., 5 Mad., 390; Maya Ram Surma v. Nichala Katani, I. L. R., 15 Cal., 402; Queen-Empress v Shaik Adam, I. L. R., 10 Bom., 193.

[275] Indian Penal Code, section 27.

master. Therefore any dishonest taking of the thing by the servant will be theft. If, however, a servant receives anything from a third person on his master's behalf, then the servant will have possession of the thing, and the master will have no possession until the servant does some act by which the possession is transferred from the servant to the master—as, for example, by placing it in a till, cart or godown in which the master's goods are kept or carried.

What constitutes theft.

42. To constitute theft there must be,—

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

(2) a moving of the property in order to such taking.[276]

The intention must be a dishonest one,—that is, an intention to cause wrongful gain to one person or wrongful loss to another,[277] and is therefore inconsistent with a *bonâ fide* claim of right. If the property is taken under the supposition, honestly entertained, that the taker has an immediate right to possession, the intention is not dishonest, and there is no theft; on the other hand a person who has pawned his watch can steal the watch from the pawnbroker, because he has no right to possession until he has redeemed it. A claim of right would not justify a person in taking property out of another's possession without his consent with the intention of thereby coercing the other to pay a debt due to the taker.[278] It must be remembered that consent is not valid if given under fear or misconception.[279] Some cases of what is known in English law as "larceny by a trick" will therefore be theft in Indian law, but in others this will not be so. Such cases, as well as those which are doubtful, should be charged as "cheating." See Indian Penal Code, section 415.

Moving.

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

Other allied offences.

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

Dishonest misappropriation.

45. The dishonest misappropriation of property, honestly come by, is punishable with imprisonment which may extend to two years, or with fine, or with both, and even a temporary mis-

---

[276] Indian Penal Code, section 378.

[277] Indian Penal Code, section 24.

[278] Queen-Empress *v.* Sri Churn Chungo, I. L. R., 22 Cal., 1017; Queen-Empress *v.* Aga Muhammad Yusuf, I. L. R., 18 All., 88.

[279] Indian Penal Code, section 90.

Ch. VI] appropriation, if dishonest, is within the terms of the section.[280] A common instance of this offence is the dishonest misappropriation of lost property by the finder. The mere taking of such property into his possession by the finder is not, in itself, an offence, but he is guilty of dishonest misappropriation if he appropriates it to his own use when he knows or has means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.[281] A person appropriates property to his own use when he sells it, realises it, or in any other way puts it out of his own power to restore it, or when he definitely makes up his mind to keep it at all hazards as his own.[282]

Criminal breach of trust.

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

Stolen property, receipt of.

47. The receiving or retaining of stolen property is itself an offence.[283] For this purpose, the words "stolen property" includes property the possession of which has been transferred by theft, extortion, or robbery as well as property in respect of which criminal misappropriation or criminal breach of trust has been committed.[284]

Presumption from recent possession.

48. The guilty knowledge of the receiver must be established. The recent possession of the goods coupled with inability to give a reasonable account of such possession, justifies the presumption that the receiver got the goods dishonestly. The fact that he bought them much below their value, or that he falsely denied his possession of them, would be *evidence* of guilt. A person is considered to receive the goods as soon as he obtains control over them.

(viii) *Concurrent Jurisdiction.*

Concurrent jurisdiction of criminal courts and courts-martial.

49. A criminal court and a court-martial may sometimes both have jurisdiction in respect of the same offence, either by reason of its being triable by a military court under section 41 of the Indian Army Act at a place outside British India where a criminal court established by the authority of the Governor General in Council exists (*e.g.*, a place where the political officer

---

[280] Indian Penal Code, section 403.
[281] *Ibid*, explanation 2.
[282] Mayne, Criminal Law of India, Third Edition, Chapter XI, para. 582.
[283] Indian Penal Code, section 411. Not reproduced. For punishment see table at end of this chapter.
[284] Indian Penal Code, section 410.

has the powers of a criminal court), or as being a civil offence triable by court-martial in British India under the provisions of section 41 or 42 of the Indian Army Act, or again because the same transaction constitutes both a civil and military offence, as for example, where a soldier steals from a comrade and thus commits both the civil offence punishable under section 379 of the Indian Penal Code and the military one punishable under section 31 (*d*) of the Indian Army Act. Such conflicts of jurisdiction are provided for by sections 69 and 70 of the Indian Army Act. The effect of these sections is to give the military authorities the right of deciding, in the first instance, as to which court is to try the alleged offender, but requiring them, if the civil court so desires, to suspend action and refer the point to the Governor General in Council for final decision, the alleged offender remaining in military custody in the meantime.

Description of offence.	Section of Indian Penal Code.	Punishment.
Abetment—		
of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	109	The same punishment as for the offence abetted.
of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	115	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
ditto, if an act which causes harm be done in consequence of the abetment.	115	Imprisonment of either description for 14 years, or less, and fine. (*a*) (*b*)
of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	116	Imprisonment which may extend to one quarter of the longest term, and of any description provided for the offence, or fine, as for the offence, or both.
of desertion or mutiny, see "Army and Navy, offences relating to."		
of suicide, see "Suicide."		
Adultery	497	Imprisonment of either description for 5 years, or less, or fine, or both.
See also "Enticing, etc., a married woman."		
Affray—		
Committing an affray	160	Imprisonment of either description for 1 month, or less, or fine of 100 rupees, or less, or both.
Apprehension—		
Resistance or obstruction by a person to his lawful apprehension, or escape by a person from lawful custody, or attempt at such escape.	224	Imprisonment of either description for 2 years, or less, or fine, or both.
Resistance or obstruction to the lawful apprehension of another or rescuing or attempting to rescue him from lawful custody.	225	Imprisonment of either description for 2 years, or less, or fine, or both.

ditto, if the person is charged with an offence punishable with transportation for life, or imprisonment for 10 years.	225	Imprisonment of either description for 3 years, or less, and fine. (*a*)
ditto, if the person is charged with a capital offence . .	225	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
ditto, if the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years, or upwards.	225	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
ditto, if the person is under sentence of death	225	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Army and Navy, offences relating to—		
Abetting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.	131	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Abetment of mutiny, if mutiny is committed in consequence thereof.	132	Death, or transportation for life, or imprisonment of either description for ten years, or less, and fine. (*a*) (*b*)
Abetment of the desertion of an officer, soldier or sailor . .	135	Imprisonment of either description for 2 years, or less, or fine, or both.
Harbouring an officer, soldier, or sailor who has deserted . .	136	Imprisonment of either description for 2 years, or less, or fine, or both.
Wearing the dress or carrying any token used by a soldier with intent that it may be believed that he is a soldier.	140	Imprisonment of either description for 3 months, or less, or fine of 500 rupees, or less, or both.
Circulating statements, rumours or reports with intent to cause a soldier or sailor to mutiny or fail in his duty.	505	Imprisonment of either description for 2 years, or less, or fine, or both.
Assault and Criminal Force—		
Assault or use of criminal force—		
(*a*) to a public servant in discharge of his duty or to deter him from discharge of his duty.	353	Imprisonment of either description for 2 years, or less, or fine, or both.
(*b*) to a woman with intent to outrage her modesty . .	354	Ditto ditto.
(*c*) to any person with intent to dishonour him, otherwise than on grave and sudden provocation.	355	Ditto ditto.
(*d*) in attempt to commit theft of property worn or carried by a person.	356	Ditto ditto.
(*e*) in attempt wrongfully to confine a person . . .	357	Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both.

Description of offence.	Section of Indian Penal Code.	Punishment.
Assault and Criminal Force—*contd.*		
Assault or use of criminal force—*contd.*		
(*f*) in all other cases, in the absence of grave and sudden provocation.	352	Imprisonment of either description for 3 months, or less, or fine of 500 rupees, or less, or both.
Assault or use of criminal force on grave and sudden provocation.	358	Simple imprisonment for 1 month, or less, or fine of 200 rupees, or less, or both.
Attempts—		
Attempting to commit, or cause to be committed, an offence punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	511	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine as for the offence, or both. [*N.B.—Transportation for life is, for this purpose, reckoned as equivalent to transportation for 20 years.*]
Attempt to commit murder. See "Murder."		
Attempt to commit culpable homicide. See "Culpable homicide."		
Attempt to commit suicide. See "Suicide."		
Breach of trust. See "Criminal breach of trust."		
Cheating—		
Cheating	417	Imprisonment of either description for 1 year, or less, or fine, or both.
Cheating by personation	419	Imprisonment of either description for 3 years, or less, or fine, or both.
Confinement. See "Wrongful restraint, etc."		
Courts of Justice, offences relating to. See "False evidence," and "Public Servants, etc."		

Criminal Breach of Trust—		
(*a*) by a carrier, warfinger or warehouse keeper . .	407	Imprisonment of either description for 7 years, or less and fine. (*a*) (*b*)
(*b*) by a clerk or servant	408	Ditto ditto. (*a*) (*b*)
(*c*) by a public servant. or by a banker, merchant, or agent.	409	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
(*d*) in all other cases	406	Imprisonment of either description for 3 years, or less, or fine, or both.
Criminal Force—		
See "Assault and criminal force."		
Criminal Intimidation—		
Criminal Intimidation	506	Imprisonment of either description for 2 years, or less, or fine, or both.
Ditto, if threat be to cause death, grievous hurt or the destruction of property by fire, or to cause an offence punishable with death or transportation or imprisonment up to seven years, or to impute unchastity to a woman.	506	Imprisonment of either description for 7 years, or less, or fine, or both. (*b*)
Criminal Trespass	447	Imprisonment of either description for 3 months, or less, or fine of 500 rupees, or less, or both.
Culpable homicide not amounting to murder—		
if act by which death is caused is done with intention of causing death, or such bodily injury as is likely to cause death.	304	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
if act is done with knowledge that it is likely to cause death, but without any intention to cause death or such bodily injury as is likely to cause death.	304	Imprisonment of either description for 10 years, or less, or fine, or both. (*b*)
Attempt to commit culpable homicide	308	Imprisonment of either description for 3 years, or less, or fine, or both.
Ditto, if the act causes hurt to any person	308	Imprisonment of either description for 7 years, or less, or fine, or both. (*b*)
Dacoity	395	Transportation for life, or rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*) (*c*)
Dangerous Acts—		
Causing death by rash or negligent act	304A	Imprisonment of either description for 2 years, or less, or fine, or both.

Description of offence.	Section of Indian Penal Code.	Punishment.
Dangerous Acts—*contd.*		
Doing an act so rashly or negligently as to endanger human life or the personal safety of others.	336	Imprisonment of either description for 3 months, or less, or fine of 250 rupees, or less, or both.
Ditto, if hurt is caused	337	Imprisonment of either description for 6 months, or less, or fine of 500 rupees, or less, or both.
Ditto, if grievous hurt is caused	338	Imprisonment of either description for 2 years, or less, or fine of 1,000 rupees, or less, or both.
Defamation	500	Simple imprisonment for 2 years, or less, or fine, or both.
	Section of Indian Official Secrets Act, 1889.	
Disclosure of Information—		
Entering fortress, arsenal, etc., for purpose of wrongfully obtaining information; unlawful sketching; and similar crimes (see Indian Official Secrets Act, 1889).	3 (*1*)	Imprisonment of either description for 1 year, or less, or fine, or both.
Ditto, with intent to communicate information to a foreign State.	3 (*4*)	Transportation for life or any term not less than 5 years, or imprisonment of either description for 2 years, or less.
Dishonest misappropriation—		
See "Movable property."		
	Section of Indian Penal Code.	
Extortion—		
Extortion	384	Imprisonment of either description for 3 years, or less, or fine, or both.

Extortion by putting a person in fear of death or grievous hurt to himself or another.	386	Imprisonment of either description for 10 years, and fine. (*a*) (*b*)
False Evidence—		
Giving or fabricating false evidence in a judicial proceeding.	193	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	194	Transportation for life, or rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*)
Ditto, if innocent person be thereby convicted and executed	194	Death, or as above. (*a*) (*b*)
Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for 7 years or upwards.	195	The same as for the offence.
Food and Drink, offences relating to—		
Adulterating food or drink intended for sale, so as to make the same noxious.	272	Imprisonment of either description for 6 months, or less, or fine of 1,000 rupees, or less, or both.
Selling any food or drink as such, knowing the same to be noxious.	273	Ditto ditto.
Forgery—		
Forgery	465	Imprisonment of either description for 2 years, or less, or fine, or both.
Ditto, if document forged purports to be a will, valuable security or acquittance.	467	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Forgery for the purpose of cheating	468	Imprisonment of either description for 7 years, and fine. (*a*) (*b*)
Fraudulently or dishonestly using as genuine a forged document which is known to be forged.	471	Punishment for forgery of such document.
Grievous hurt—		
Voluntarily causing grievous hurt (except on grave and sudden provocation).	325	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Ditto, by dangerous weapons or means	326	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)

Table of Offences and Punishments—contd.

Description of offence.	Section of Indian Penal Code.	Punishment.
Grievous hurt—*contd.*		
Voluntarily causing grievous hurt for the purpose of extorting property or constraining to an illegal act.	329	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Voluntarily causing grievous hurt for the purpose of extorting confession or compelling restoration of property.	331	Imprisonment of either description for 10 years, or less, and fine (*a*) (*b*)
Voluntarily causing grievous hurt to a public servant in discharge of his duty, or to deter him from his duty.	333	Ditto ditto. (*a*) (*b*)
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Imprisonment of either description for 4 years, or less, or fine of 2,000 rupees, or less, or both.
See also "Dangerous Acts."		
Harbouring and screeding offenders—		
Harbouring an offender, if the offence be capital . . .	212	Imprisonment of either description for 5 years, or less, and fine. (*a*)
Ditto, if the offence be punishable with transportation for life or with imprisonment for 10 years.	212	Imprisonment of either description for 3 years, or less, and fine. (*a*)
Ditto, if the offence be punishable with imprisonment for 1 year and not for 10 years.	212	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.
Taking or offering gift (or restoration of property) in consideration of screening an offender, if the offence be capital.	213, 214	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Ditto, if the offence be punishable with transportation for life or with imprisonment for 10 years.	213, 214	Imprisonment of either description for 3 years, or less, and fine. (*a*)
Ditto, if the offence be punishable with imprisonment for less than 10 years.	213, 214	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	216	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Ditto, if the offence be punishable with transportation for life, or with imprisonment for 10 years.	216	Imprisonment of either description for 3 years, or less, with or without fine.
Ditto, if the offence be punishable with imprisonment for one year and not for 10 years.	216	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.
See also "Army and Navy, offences relating to."		
House-breaking, etc.—		
House-breaking or lurking house-trespass . . .	453	Imprisonment of either description for 2 years, or less, and fine. (*a*)
Ditto, in order to the commission of an offence punishable with imprisonment.	454	Imprisonment of either description for 3 years, or less, and fine. (*a*)
If the offence is theft	454	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*) (*c*)
House-breaking or lurking house-trespass, after preparation made for hurt, assault or wrongful restraint.	455	Ditto ditto. (*a*) (*b*)
House-breaking by night, or lurking house-trespass by night .	456	Imprisonment of either description for 3 years, or less, and fine. (*a*)
Ditto, in order to the commission of an offence punishable with imprisonment.	457	Imprisonment of either description for 5 years, or less, and fine. (*a*)
If the offence is theft	457	Imprisonment of either description for 14 years, or less, and fine. (*a*) (*b*) (*c*)
House-breaking by night, or lurking house-trespass by night, after preparation made for hurt, assault, or wrongful restraint.	458	Ditto ditto. (*a*) (*b*)
Grievous hurt caused or attempted whilst committing house-breaking or lurking house-trespass.	459	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
House-trespass—		
House-trespass	448	Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both.
House-trespass, in order to the commission of an offence punishable with death.	449	Transportation for life, or rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*)

Description of offence.	Section of Indian Penal Code.	Punishment.
House-trespass—*contd.*		
House-trespass if the offence be punishable with transportation for life.	450	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Ditto, if the offence be punishable with imprisonment . .	451	Imprisonment of either description for 2 years, or less, and fine. (*a*)
If the offence is theft	451	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
House-trespass after preparation made for hurt, assault, or wrongful restraint.	452	Ditto ditto. (*a*) (*b*)
See also " Lurking house-trespass " under " house-breaking, etc."		
Hurt—		
Voluntarily causing hurt (except on grave and sudden provocation).	323	Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both.
Ditto, by dangerous weapons or means	324	Imprisonment of either description for 3 years, or less or fine, or both.
Voluntarily causing hurt for the purpose of extorting property or constraining to an illegal act	327	Imprisonment of either description for 10 years, or less, and fine (*a*) (*b*)
Voluntarily causing hurt for the purpose of extorting confession or compelling restoration of property	330	Imprisonment of either description for 7 years, or less, and fine (*a*) (*b*)
Voluntarily causing hurt to a public servant in discharge of his duty, or to deter him from his duty.	332	Imprisonment of either description for 3 years, or less, or fine, or both
Voluntarily causing hurt on grave and sudden provocation .	334	Imprisonment of either description for 1 month, or less, or fine of 500 rupees, or less, or both.
Administering poison or intoxicating drug with intent to cause hurt, or commit an offence.	328	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
See also " Grievous hurt."		

Insult—		
Insult intended to provoke a breach of the peace . . .	504	Imprisonment of either description for 2 years, or less, or fine, or both.
Intoxication—		
Misconduct by intoxicated person, in public or in any place which it is trespass to enter, so as to cause annoyance.	510	Simple imprisonment for 24 hours, or less, or fine of 10 rupees, or less, or both.
Lurking House-trespass—		
See "House-breaking etc."		
Mischief—(i.e., wrongful damage to property; see Indian Penal Code, 425, for full definition).		
Mischief	426	Imprisonment of either description for 3 months, or less, or fine, or both.
Mischief and thereby causing damage to the amount of 50 rupees or upwards.	427	Imprisonment of either description for 2 years, or less, or fine, or both.
Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	428	Ditto ditto.
Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of 50 rupees or upwards.	429	Imprisonment of either description for 5 years, or less, or fine, or both.
Mischief by fire or explosive substance, with intent to cause, or knowledge that it is likely to cause, damage to the amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	435	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Mischief by fire or explosive substance with intent to cause, or knowledge that it is likely to cause, the destruction of a building used as a place of worship, a human dwelling, or a place for the custody of property.	436	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Movable property—		
Dishonest misappropriation of movable property, or conversion of such property to one's own use.	403	Imprisonment of either description for 2 years, or less, or fine, or both.
Mutiny—		
Abetment of mutiny. See "Abetment."		

Description of offence.	Section of Indian Penal Code.	Punishment.
Murder—		
Murder	302	Death, or transportation for life, and fine. [Either death or transportation for life *must* be awarded, fine *may* be added.]
Murder by a person under sentence of transportation for life	303	Death.
Attempt to murder	307	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
If hurt is caused	307	Transportation for life, or as above. (*a*) (*b*)
By life-convict, if hurt is caused	307	Death, or as above. (*a*) (*b*)
Negligent Acts. See "Dangerous Acts."		
Official Trust, Breach of	Section of Indian Official Secrets Act, 1889.	
Communication of official information to a person to whom it should not be communicated (see Indian Official Secrets Act, 1889).	4 (2)	Imprisonment of either description for 1 year, or less, or fine, or both.
Ditto, if to a foreign State	4 (2)	Transportation for life, or any term not less than 5 years, or imprisonment of either description for 2 years, or less.
Personation—	Section of Indian Penal Code.	
Personation by cheating. See "Cheating."		
Personating a soldier. See "Army and Navy, offences relating to."		

Public Servants and Courts, offences relating to—		
Not obeying a legal order to attend in a Court of Justice	174	Simple imprisonment for 6 months, or less, or fine of 1,000 rupees, or less, or both.
Intentionally omitting to produce a document, which he is legally bound to produce to a Court of Justice	175	Ditto ditto.
Refusing oath when duly required to take oath by a public servant.	178	Ditto ditto.
Being legally bound to state truth and refusing to answer questions.	179	Ditto ditto.
Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	228	Ditto ditto.
See also "Apprehension," "Assault and Criminal Force," "False Evidence," "Grievous Hurt," and "Hurt."		
Rape	376	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*) (*c*)
Rash or Negligent Acts. See "Dangerous Acts."		
Receiving. See "Stolen property."		
Rescue. See "Apprehension."		
Restraint. See "Wrongful Restraint."		
Rioting—		
Rioting	147	Imprisonment of either description for 2 years, or less, or fine, or both.
Rioting armed with a deadly weapon	148	Imprisonment of either description for 3 years, or less, or fine, or both.
Robbery—		
Robbery	392	Rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*) (*c*)
Robbery on the highway between sunset and sunrise	392	Rigorous imprisonment for 14 years, or less, and fine. (*a*) (*b*) (*c*)
Attempt to commit robbery	393	Rigorous imprisonment for 7 years, or less, and fine. (*a*) (*b*)
Sodomy—		
See "Unnatural offences."		

Description of offence.	Section of Indian Penal Code.	Punishment.
State, Offences against the—		
Waging or attempting to wage war, or abetting the waging of war, against the King.	121	Death, or transportation for life and forfeiture of property. [Either death or transportation for life *must* be awarded. The forfeiture is obligatory.]
Conspiring to commit offences punishable under section 121 of the Indian Penal Code, or to deprive the King of the sovereignty of British India or any part thereof, or to overawe the Supreme or Local Government.	121A	Transportation for life or any shorter term, or imprisonment of either description for 10 years, or less.
Collecting men, arms or ammunition or otherwise preparing to wage war, with intent to wage, or be prepared to wage, war against the King.	122	Transportation for life, or imprisonment of either description for 10 years, or less, and forfeiture of property. [The forfeiture is obligatory.] (*b*)
Concealing the existence of a design to wage war against the King, intending thereby to facilitate the waging of such war, or knowing it to be likely that it will thereby be facilitated.	123	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Sedition (for full description of this offence see Indian Penal Code, 124A).	124A	Transportation for life or for any shorter term and fine, or imprisonment of either description for 3 years, or less, and fine, or fine.
Stolen property—		
Dishonestly receiving or retaining stolen property knowing or having reason to believe it to be stolen.	411	Imprisonment of either description for 3 years, or less, or fine, or both.
Assisting in concealment or disposal of stolen property, knowing or having reason to believe it to be stolen.	414	Ditto ditto.
Suicide—		
Abetment of suicide committed by a person under 18 years of age or insane or delirious person, or an idiot, or an intoxicated person.	305	Death, or transportation for life, or imprisonment for 10 years, or less, and fine. (*a*) (*b*)

Abetting the commission of suicide, if suicide committed	306	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Attempt to commit suicide, if act done towards such commission.	309	Simple imprisonment for one year, or less, or fine, or both.
Theft—		
Theft	379	Imprisonment of either description for 3 years, or less, or fine, or both. (*c*)
Theft in a building, tent or vessel used as a human dwelling or for the custody of property.	380	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*) (*c*)
Theft by a clerk or servant of property in the possession of his master or employer.	381	Ditto ditto. (*a*) (*b*)
Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death or of hurt, or of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it.	382	Rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*) (*c*).
Unlawful assemblies—		
Being a member of an unlawful assembly	143	Imprisonment of either description for 6 months, or less, or fine, or both.
Joining an unlawful assembly armed with a deadly weapon	144	Imprisonment of either description for 2 years, or less, or fine, or both.
Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse.	145	Ditto ditto.
Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	151	Imprisonment of either description for 6 months, or less, or fine, or both.
Unnatural offences	377	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*) (*c*)
Weights and measures, Offences relating to—		
Fraudulent use of false instrument for weighing	264	Imprisonment of either description for 1 year, or less, or fine, or both.
Fraudulent use of false weight or measure	265	Ditto ditto.
Being in possession of false instruments for weighing, weights or measures, intending them for fraudulent use.	266	Ditto ditto.
Making or selling false instruments for weighing, weights or measures, for fraudulent use.	267	Ditto ditto.

Table of Offences and Punishments—concld.

Description of offence.	Section of Indian Penal Code.	Punishment.
Women. Offences relating to—		
Enticing or taking away or detaining a married woman with intent that she may have illicit intercourse with any person.	498	Imprisonment of either description for 2 years, or less, or fine, or both.
Uttering any word, making any sound or gesture or exhibiting any object intending thereby to insult the modesty of a woman.	509	Simple imprisonment for 1 year or less, or fine, or both.
Intruding upon the privacy of a woman, intending thereby to insult her modesty.	509	Ditto ditto.
See also "Adultery" and "Rape."		
Wrongful restraint and confinement—		
Wrongfully restraining any person	341	Simple imprisonment for 1 month, or less, or fine of 500 rupees, or less, or both.
Wrongfully confining any person	342	Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both.

NOTES.—(*a*) Fine alone cannot be awarded for these offences. There must in addition be *some* award of imprisonment, or of transportation when the latter is admissible.

(*b*) The provisions of Indian Penal Code, section 59, apply to these offences.

(*c*) See "Whipping Act, 1909," (in Part III of this Manual) for circumstances and conditions under which whipping may be awarded for these offences.

CHAPTER VII.

MISCELLANEOUS.

(i) *Duties in aid of the Civil Power.*

Comparison with English law.

1. The law regarding such duties, in India, is contained in sections 127 to 132 of the Code of Criminal Procedure which have been reproduced in Army Regulations, India, Volume II, in order that their duties and rights, may be known to all ranks.[285] If Chapter XIII of the War Office Manual of Military Law is referred to, it will be seen that, in England, a soldier is, in this respect, in the same legal position as any other citizen, and that the only differences arise from the deadly character of his arms and the exciting effect which his presence has on a mob, both of which considerations necessitate exceptional care in the use of these soldier-citizens in quelling a disturbance. In India the difference between soldiers and other citizens is, to a certain extent, recognised, the civil authorities being bound, if they can, to deal with an unlawful assembly (or such other assemblies as are referred to in section 127 of the Code of Criminal Procedure) by means of the police and ordinary citizens called in to their aid, and it is only when the assembly cannot be otherwise dispersed, and the public security demands its dispersal, that they can call in the military. The latter must obey such a requisition, but the *manner* of complying with it is in the discretion of the military commander:—*i.e.*, the civil officer says "disperse this mob"—the military officer decides, as is right, the way his forces are to be disposed and employed for that purpose, and must use as little force, and do as little injury to person and property as may be consistent with dispersing the mob. Moreover, when the public security is manifestly endangered, a commissioned officer of the Army (not the volunteers) may act on his own responsibility when no magistrate can be communicated with.

Protection to military men in India.

2. The interests of the soldier and his officers are, in India, protected by section 132 of the abovementioned Code, under which no prosecution for acts purporting to be done in the performance of the duties we are now considering can be undertaken without the sanction of the Governor General in Council. The same section also absolutely excuses all acts done *in good faith* by an officer or non-commissioned officer acting in obedience to a magistrate's requisition, or by an officer acting on his own responsibility under section 131. Military inferiors are also exempted from criminal responsibility for acts done in obedience to orders which they are, under military law, bound to obey.

Meaning of "good faith."

3. Nothing is said to be done in good faith which is done without due care and attention.[286] An *obviously* unnecessary requisition by a magistrate would not, therefore, cover an officer who would not be "acting in good faith" in complying with it. Similarly, though the illegal character of an officer's orders would

[285] See also Part III of this Manual.
[286] Indian Penal Code, section 52.

Ch. VII.

need to be very clear to justify a military inferior in disregarding them, still, if such orders were so clearly illegal as not to be a "lawful military command," an inferior who took advantage of these orders to fire on an assembly which he knew should not be fired on, would not be obeying a lawful military command, and would therefore not be protected.

(ii) *Military Privileges.*

4. Under chapter XIII of the Indian Army Act persons subject to that Act enjoy certain privileges in their relations to civil courts in India and the law administered by these courts. In addition to these privileges certain others have been conferred upon these persons by various Acts of Parliament and statutes of the Indian and local legislatures. The most important of these privileges are :—

Pay protected.

(1) By section 136 of the Army Act the pay of an officer or soldier of the regular forces (including the Indian Army) is protected from any deductions other than those authorised by Act of Parliament, Royal Warrant, or Act of the Governor General in Council. As explained elsewhere, penal deductions are, in the Indian Army, legalised by the Indian Army Act, and other deductions by Royal Warrant, the exact amounts to be deducted, within the limits thus legalised, being settled by regulations.

Pension protected.

(2) All Government pensions (including military pensions) are protected from attachment in the execution of the decrees of civil courts.[287]

Civil suits.

(3) An officer or soldier, actually serving in a military capacity, who is a party to a suit and cannot obtain leave of absence may authorise any person to sue or defend in his stead. This authority must be in writing and be signed in the presence of his commanding officer.[288]

Exemption from court-fees in certain cases.

(4) A power of attorney to institute or defend a suit when executed by an officer, warrant officer, non-commissioned officer or private is exempt from fees under the Court Fees Act.[289]

Receipts for pay need not be stamped.

(5) Receipts for pay or allowances of non-commissioned officers or soldiers, when serving in such capacity, need not be stamped.[290]

Exemption from tolls when on duty.

(6) All officers and soldiers of the regular forces on duty or on the march, as well as their authorised followers, families, (including the families of such followers), horses, baggage, and transport are exempt from all tolls, except certain tolls for the transit of barges, etc., along canals.[291] This exemption ex-

---

[287] Pensions Act, 1871, section 11; Code of Civil Procedure, 1908, section 60, proviso (*g*).
[288] Code of Civil Procedure, 1908, Order XXVIII.
[289] Court Fees Act, 1870, section 19.
[290] Indian Stamp Act, 1899 Schedule I.
[291] Indian Tolls (Army) Act, 1901, section 3; also A. A., section 143.

tends to the Imperial Service Troops (see para. 9 below), their followers, horses and baggage, but not to their families or the families of their followers. It also extends to reservists on being called up for, or when returning to their homes after, training or service, and to their horses and baggage.

(7) Native officers are exempted from the restrictions placed on the possession of arms and ammunition by the Indian Arms Act, 1878, except as to cannon and certain other articles, among which excepted articles are included "rifles of ·303 or ·450 bore other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same."[292] The same exemption extends to warrant officers, non-commissioned officers and soldiers (but *not* reservists) except that a native soldier when on leave is only exempt in respect of such arms as may be covered by a pass granted by his commanding officer. Limits are however placed on the exercise of this privilege by military regulations,[293] a breach of which is punishable as a military offence though not constituting an offence under the Arms Act. Privileges under the Arms Act and Rules.

(iii) *Indian Army Reserve.*

5. In addition to the soldiers and others in permanent employment, a reserve for the Indian Army is maintained under the authority of the Indian Reserve Forces Act, 1888.[294] This act provides for two classes of Reserve, *viz.*, the Active and the Garrison, but the latter has been allowed to die out, and all reservists now belong to the Active Reserve. The only difference between them was that men of the Garrison Reserve were not available for service beyond the limits of British India. Indian Reserve Forces Act, 1888.

6. A reservist is required to appear for training or muster according to the regulations of his branch, and when called up for service; at other times he pursues his ordinary civil avocations but must keep his commanding officer informed of his address and cannot leave India without permission. In return for these obligations a reservist receives pay at a lower rate than is issued to the soldier or other enrolled person whose services are permanently utilized. The reservist is subject to military law at all times, and can therefore be tried by court-martial for any military offence committed by him; he is also subject to the jurisdiction of the ordinary criminal courts for certain military offences specified in section 6 of the Indian Reserve Forces Act. Obligations of the reservist.

7. The reserve is composed, for the most part, of men transferred to it from the colours at their own request, who serve on the conditions contained in their original enrolment documents, subject to certain modifications therein agreed to by them on their transfer to the reserve. In certain corps, however, (*e.g.*, the Supply and Transport Corps and the Military Railway Com- Composition of the reserve.

[292] *Indian Arms Rules, 1909, Schedule I.*
[293] A. R., I., Vol. II.
[294] Act IV of 1888. See Part III of this Manual.

Ch. VII.

panies) direct enrolments in the reserve are permitted, and in the Supply and Transport Corps commissions as Native Officers of the Reserve are granted to Indian gentlemen who are suited for such employment.

(iv) *Other Forces existing in India.*

Military police, Militia, and Levies.

8. In addition to the Indian Regular Army, its Reserve, and the Volunteer Force, which last (being governed by the Army Act[295] when subject to military law) is outside the scope of this work, the Indian Government maintains a number of military or semi-military bodies under various names, *e.g.*, military police, militia, and levies. The discipline of these is generally provided for by a special enactment,[296] but in some cases[297] the military code of the Indian Army has been applied to such forces by notifications under section 5 of the Indian Army Act or the corresponding article of the Indian Articles of War, now repealed.

Imperial Service Troops.

9. Lastly there are the Imperial Service Troops. These are bodies of troops maintained by the rulers of various Native States in India with a view to their active co-operation with the regular forces of the Crown in the defence of the Empire. The Imperial Government assists the States concerned with advice as to the instruction of these troops, a staff of inspecting officers being maintained for the purpose, but their command and discipline are entirely in the hands of their own rulers, and they are not subject to the military code of the Indian Army, (as such), being in fact the troops of allied States and subject only to their own codes of military law. To obviate the difficulties which this might give rise to on service, the Indian Government has concluded a series of agreements with the rulers of the States concerned, under which arrangements are made for the command and discipline of these troops when beyond the frontiers of their own States. In these agreements each ruler has consented to enact as the State law applicable to his Imperial Service Troops, when on active service, a law which embodies, *mutatis mutandis*, the provisions of the Indian Articles of War (now the Indian Army Act) for the time being in force. The State laws to which they are subject in time of peace are contained in the Rules for the punishment of crime in Imperial Service Troops to which reference is made below.

Arrangement for the discipline of the Imperial Service Troops.

10. The effect of the above arrangement[298] is as follows :—

Imperial Service Troops, when moved beyond the frontier of their own States, are under the orders and command of the officer commanding the division, brigade, contingent or force in which they are employed and are amenable—

(*a*) in peace time, to the "Rules for the punishment of crime in Imperial Service Troops,"

---

[295] Indian Volunteers' Act, 1869, section 8.

[296] *E.g.*, The Burma Military Police Act, 1887, and the North-West Border Military Police Act, 1904.

[297] *E.g.*, The Malwa and Meywar Bhill Corps.

[298] See Field Service Regulations, Part II. Indian Supplement, Chapter XII.

(*b*) when employed on active service, to a State Code which embodies the provisions (*mutatis mutandis*) of the Indian Army Act.

On active service the officer commanding the force in which they are employed is authorised to administer the provisions of the State law which embodies the Indian Army Act. He is empowered to enforce discipline by assembling courts-martial similar to those held under the Indian Army Act. British or native officers of the Indian army cannot, however, be detailed to serve on these courts-martial, which must be composed of officers of the State troops, though a British officer of the force may, if applied for, be detailed to act as superintending officer or judge-advocate.

Punishments awarded by such courts-martial must be executed under the orders of the head of the State or by some person to whom the requisite authority has been delegated by him.

PART II.

THE INDIAN ARMY ACT (ACT VIII OF 1911).

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title and commencement.

Application of Act.

2. Persons subject to Act.
3. Special provision as to rank in certain cases.
4. Commanding officer of persons subject to military law under section 2, clause (c).
5. Powers to apply Act to certain forces under the Government of India.
6. Officers to exercise powers in case of foreign service.

Definitions.

7. Definitions.

CHAPTER II

ENROLMENT AND ATTESTATION.

Enrolment.

8. Procedure before enrolling officer.
9. Enrolment.
10. Presumption of enrolment in certain cases.

Attestation.

11. Persons to be attested.
12. Mode of attestation.

CHAPTER III.

Dismissal and Discharge.

Sections.
13. Dismissal by Governor General in Council and Commander-in-Chief in India.
14. Dismissal by officer commanding army, division, brigade, etc.
15. Dismissal of convicts.
16. Discharge.
17. Certificate to person dismissed or discharged.
18. Discharge, etc., out of India.

CHAPTER IV.

Summary Reduction and Punishments otherwise than by order of Court-martial.

19. Reduction of non-commissioned officers.
20. Minor punishments.
21. Collective fines.
22. Punishment of certain Native followers.

Provost-Marshals.

23. Appointment.
24. Duties and powers.

CHAPTER V.

Offences.

Offences in respect of Military Service.

25. Offences punishable with death.
26. Offences not punishable with death.

Mutiny and Insubordination.

27. Offences punishable with death.
28. Offences not punishable with death.

Desertion, Fraudulent Enrolment and Absence without Leave.

29. Desertion.
30. Harbouring deserter, absence without leave, etc.

Disgraceful Conduct.

SECTIONS.

31. Disgraceful conduct.

Intoxication.

32. Intoxication.

Offences in relation to Persons in Custody.

33. Offences punishable with death.
34. Offences not punishable with death.

Offences in relation to Property.

35. Offences in relation to property.

Offences in relation to False Documents and Statements.

36. False accusations and offences in relation to documents.
37. False answers on enrolment.

Offences in relation to Courts-martial.

38. Offences in relation to courts-martial.

Miscellaneous Military Offences.

39. Miscellaneous military offences.

Abetment.

40. Abetment.

Civil Offences.

41. Civil offences committed outside British India or on active service in British India.
42. Certain civil offences triable by military law.

CHAPTER VI.

PUNISHMENTS.

43. Punishments.
44. Lower punishments.
45. Corporal punishment.
46. Position of corporal punishment in scale.
47. Combination of punishments.
48. Solitary confinement.
49. Reduction of non-commissioned officers to ranks.

CHAPTER VII.

Penal Deductions.

Sections.
50. Deductions from pay and allowances.
51. Deductions from public money other than pay.
52. Remission of deductions.

CHAPTER VIII.

Courts-martial.

Constitution and Dissolution of Courts-martial.

53. Courts-martial and the kinds thereof.
54. Power to convene general courts-martial.
55. Power to convene district courts-martial.
56. Contents of warrant issued under section 54 or section 55.
57. Composition of general courts-martial.
58. Composition of district courts-martial.
59. Convening order to state if larger number of officers is not available.
60. Composition of general or district courts-martial.
61. Claim to trial by British officers.
62. Convening of summary general courts-martial.
63. Composition of summary general courts-martial.
64. Summary courts-martial.
65. Dissolution of courts.

Jurisdiction of Courts-martial.

66. Prohibition of second trial.
67. Limitation of trial.
68. Place of trial.

Adjustment of the jurisdiction of Courts-martial and Criminal Courts.

69. Order in case of concurrent jurisdiction.
70. Power of criminal court to require delivery of offender.
71. Trial by court-martial no bar to subsequent trial by criminal court.

Powers of Courts-martial.

SECTIONS.

72. Powers of general and summary general courts-martial.
73. Powers of district court-martial.
74. Offences triable by summary court-martial.
75. Persons triable by summary court-martial.
76. Sentences awardable by summary court-martial.

Procedure at Trials by Court-martial.

77. President.
78. Judge advocate.
79. Superintending officer.
80. Challenges.
81. Voting of members.
82. Oaths of president and members.
83. Oaths of witnesses.
84. Summoning witnesses and production of documents.
85. Commissions.
86. Conviction of one offence permissible on charge of another.
87. Majority requisite to sentence of death.

Evidence before Courts-martial.

88. General rule as to evidence.
89. Judicial notice.
90. Presumption as to signatures.
91. Enrolment paper.
92. Reference by accused to Government officer.
93. Evidence of previous convictions and general character.

Confirmation and Revision of Findings and Sentences.

94. Finding and sentence invalid without confirmation.
95. Power to confirm finding and sentence of general court-martial.
96. Power to confirm finding and sentence of district court-martial.
97. Contents of warrant issued under section 95 or section 96.
98. Confirmation of finding and sentence.
99. Power of confirming officer to mitigate, remit or commute sentences.
100. Revision of finding or sentence.
101. Finding and sentence of a summary court-martial.
102. Transmission of proceedings of summary courts-martial.
103. Substitution of valid for invalid sentence.

CHAPTER IX.

EXECUTION OF SENTENCES.

SECTIONS.
104. Form of sentence of death.
105. Imprisonment to be in military custody.
106. Commencement of sentence of transportation or imprisonment.
107. Execution of sentence of transportation or imprisonment.
108. Execution of sentence of imprisonment in special cases.
109. Communication of certain orders to civil prison officers.
110. Limit of solitary confinement.
111. Instrument of corporal punishment.

CHAPTER X.

PARDONS AND REMISSIONS.

112. Pardons and remissions.

CHAPTER XI.

RULES.

113. Power to make rules.

CHAPTER XII.

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS.

114. Property of deceased persons and deserters.
Meaning of desertion.
115. Disposal of certain property without production of probate, etc.
116. Application of section 114 to lunatics.

CHAPTER XIII.

MISCELLANEOUS.

Military Privileges.

117. Complaints against officers.
118. Privileges of persons attending courts-martial.

SECTIONS.

119. Exemption from arrest for debt.
120. Property exempted from attachment.
121. Application of the last two foregoing sections to reservists.
122. Priority of hearing by courts of cases in which Native officers and soldiers are concerned.

Deserters and Military Offenders.

123. Capture of deserters.
124. Arrest by military authorities.
125. Arrest by civil authorities.
126. Inquiry on absence of person subject to Act.

Repeal.

127. Repeal.

THE SCHEDULE.

REPEAL OF ENACTMENTS.

ACT VIII OF 1911.

An Act to consolidate and amend the law relating to the government of His Majesty's Native Indian Forces.

WHEREAS it is expedient to consolidate and amend the law relating to the government of the Native officers, soldiers and other persons in His Majesty's Indian Forces; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the Indian Army Act, 1911.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct in this behalf.

NOTE.

(*2*) For notification issued under this sub-section, see Part IV.

Application of Act.

Persons subject to Act.

2. (*1*) The following persons shall be subject to this Act, namely :—

(*a*) Native officers and warrant officers;

(*b*) persons enrolled under this Act;

(*c*) persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces :

Provided that if any person claims to belong to a class to which the Army Act is, and this Act is not, applicable, the burden of proving that he belongs to that class shall lie upon him.

44 & 45 Vict., c. 58.

(*2*) Every person subject to this Act under sub-section (*1*), clause (*a*) or (*b*), shall remain so subject until duly discharged or dismissed.

NOTE.

(*1*) *Native officers and warrant officers.*—See section 7 (*2*), (*3*).

Persons enrolled.—See sections 8 and 9. All persons subject to this Act under clause (*a*) or (*b*) of this sub-section are so subject at all times and wherever serving. See Part I, Chapter I, paragraph 8. As to persons subject under clause (*c*), see paragraph 9 *ibid.*

(2) *Duly discharged or dismissed.*—See Chapter III of the Act and also, for dismissal as a court-martial sentence, see section 43. A person who has once become subject to Indian military law under clause (*a*) or (*b*) above only ceases to be subject to it when he dies or is formally discharged or dismissed. The difference between dismissal and discharge is that the former does, while the latter does not, imply culpability. The regulations therefore provide that a person who is dismissed forfeits all claim to pension or gratuity, while one who is discharged receives whatever pension or gratuity he may be entitled to under the regulations applicable to his case.

Special provision as to rank in certain cases.

3. (*1*) The Governor General in Council may, by notification, direct that any persons or class of persons subject to this Act under section 2, sub-section (*1*), clause (*c*), shall be so subject as Native officers, warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction.

(*2*) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (*1*) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

NOTE.

(*1*) The status conferred under this provision is a *personal* one, and does not entitle its holder to any military command See Part I. Chapter II, paragraph 2.

Commanding officer of persons subject to military law under section 2 clause (*c*).

4. Every person subject to this Act under section 2, sub-section (*1*), clause (*c*), shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force :

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

Powers to apply Act to certain forces under the Government of India.

5. (*1*) The Governor General in Council may, by notification, apply all or any of the provisions of this Act to any force raised and maintained in India under the authority of the Governor General in Council.

(*2*) While any of the provisions of this Act apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force.

6. (*1*) Whenever persons subject to this Act are serving out of India under an officer not subject to the authority of the Governor General in Council, the Governor General in Council may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, divisions and brigades, shall, as regards such persons, be exercised. Officers to exercise powers in case of foreign service.

(*2*) The Governor General in Council may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as he may think fit.

NOTE.

Rule 160 is framed under this section and confers (subject to certain limitations as to dismissal and discharge) the powers of a divisional commander upon each of the following officers:—

The officer commanding in North China.
The officer commanding in South China.
The officer commanding in Ceylon.
The officer commanding in the Straits Settlements.
The officer commanding in Egypt.

For what these powers are, see sections 14, 19, 21, 23, 102, 103, 108 and 112 of the Act, and Rules 13, 156, 157 and 163.

Definitions.

7. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(*1*) "British officer" means a person holding a commission in His Majesty's land forces:

(*2*) "Native officer" means a person commissioned, gazetted or in pay as an officer holding a Native rank in His Majesty's Indian Forces:

(*3*) "warrant officer" means a person appointed, gazetted or in pay as a Native warrant officer in His Majesty's Indian Forces:

(*4*) "non-commissioned officer" means a person attested under this Act holding a Native non-commissioned rank in His Majesty's Indian Forces, and includes an acting non-commissioned officer:

(*5*) "officer" means a British officer or Native officer, but does not include a warrant officer or non-commissioned officer:

(*6*) "commanding officer," when used in any provision of this Act with reference to any separate portion of His Majesty's forces or to any department, means the British officer whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision:

(*7*) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer; and, as regards persons placed under his orders, a warrant officer or non-commissioned officer subject to the Army Act:

(8) "army," "division" and "brigade" mean respectively an army, division or brigade which is under the command of an officer subject to the authority of the Governor General in Council:

(9) "corps" means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act:

(10) "independent brigade" means a brigade which does not form part of a division:

(11) "department" includes any division or branch of a department:

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act:

(13) "active service," as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country:

(14) "military custody" means the arrest or confinement of a person according to the usages of the service:

(15) "military reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward:

(16) "court-martial" means a court-martial held under this Act:

(17) "criminal court" means a court of ordinary criminal justice in British India, or established elsewhere by the authority of the Governor General in Council:

(18) "civil offence" means an offence which, if committed in British India, would be triable by a criminal court:

(19) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined:

(20) "notification" means a notification published in the Gazette of India:

(21) "prescribed" means prescribed by rules made under this Act: and

(22) all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code. XLV of 1860.

NOTE.

(4) *Attested.*—See sections 11 and 12 of this Act and Rules 8 and 9. Only "attested" persons are eligible for non-commissioned rank.

(9) *Prescribed.*—See Rule 161.

(13) The terms of this definition are apparently wider than the corresponding one in the (British) Army Act in that it covers the period when a person is *on the line of march* to a country or place wholly or partly occupied by an enemy. It has, however, been ruled that "even

before embarkation troops under orders to proceed to the seat of war are attached to, or form part of, a force which is engaged in operations against the enemy" and are therefore on active service for the purposes of the Army Act. (Note to section 189 of the Army Act in the War Office M. M. L.) The position is therefore practically the same under both Acts.

A person is "on the line of march" from the time he parades for the original march until he arrives at his ultimate destination.

(22) Extracts from the Indian Penal Code giving definitions likely to be useful to persons administering this Act will be found in Part III of this Manual.

CHAPTER II.

Enrolment and Attestation.

Enrolment.

Procedure before enrolling officer.

8. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

Note.

Enrolling officer.—See Rule 7 (A).

The conditions of service are, in the forms of enrolment at present prescribed, embodied in the questions which are put to the person to be enrolled, and his acceptance of these conditions is duly recorded therein. For list of classes to be enrolled, see A. R. I., Vol II

Enrolment.

9. If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign the enrolment paper, and the person shall then be deemed to be enrolled.

Note.

The person enrolled also signs the paper, as indicating his acceptance of the conditions of his service. When the formalities of enrolment have been completed in accordance with this section, the enrolling officer is required to send the enrolment paper to the custodian of the long roll of the corps or department for which the person has been enrolled, or if more than one long roll is maintained in such corps or department, to the custodian of one of such rolls. Rule 7 (B).

Presumption of enrolment in certain cases.

10. Every person who has for the space of six months been in the receipt of military pay and been borne on the rolls of any corps or department (of which the last pay statement, if produced, shall be evidence) shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enrolment.

Attestation.

Persons to be attested.

11. The following persons shall be attested, namely:—

(*a*) all persons enrolled as combatants;

(*b*) all other enrolled persons prescribed by the Governor General in Council.

NOTE.

Attestation involves no further liabilities beyond those assumed at enrolment, but confers upon the attested person certain privileges. It is reserved for combatants and such higher classes of non combatants as Government considers deserving of being treated in a similar manner to combatants. See Rule 8. The discharge of an attested person can, as a rule, only be authorized by the higher military authorities, while that of an enrolled person who has not been attested (*e.g.*, recruits and followers) can be authorized by his commanding officer. See Rule 13. Only attested persons are eligible for non-commissioned rank.

Mode of attestation.

12. (*1*) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person.

(*2*) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve in His Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(*3*) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

NOTE.

The proper authority to attest a person subject to this Act is generally his immediate commanding officer who should do so in the ceremonial manner here indicated. For list of other "attesting officers" see Rule 9 (B). The oath or affirmation to be administered on attestation is set forth in Rule 9 (A), the notes to which contain its translation into certain vernacular languages.

CHAPTER III.

DISMISSAL AND DISCHARGE.

Dismissal by Governor General in Council and Commander-in-Chief in India.

13. The Governor General in Council or the Commander-in-Chief in India may dismiss from the service any person subject to this Act.

14. An officer commanding an army, division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than a Native officer. Dismissal by officer commanding army, division, brigade, etc.

NOTE.

Native officers receive their commissions from the Governor General in Council and only the higher authorities are therefore empowered to dismiss them. Similar restrictions are, by Rule 13, placed on their discharge otherwise than at their own request or when invalided.

15. Every person sentenced by any court-martial or by any criminal court to transportation or to rigorous imprisonment for any term exceeding three months, shall be dismissed from the service by his commanding officer: Dismissal of convicts.

Provided that on active service any such person may be retained to serve in the ranks, and his service therein shall be reckoned as part of his term of transportation or imprisonment.

NOTE.

Rule 12 shows how and when the immediate commanding officer of the convict is to perform the duty imposed upon him by this section.

Sentenced.—In the case of a court-martial sentence which requires confirmation, this refers to the sentence in its final form after disposal by the confirming officer. In the case of a summary court-martial, it refers to the sentence as promulgated, *i.e.*, in ordinary cases the sentence passed by the court, and in cases falling under the proviso to section 101 the sentence as approved by the superior authority therein specified.

The subsequent reduction of a court-martial sentence by an officer acting under section 102 or 112 does not, of itself, operate to re-admit the convict to the service, and a separate order under section 112 (4) is necessary to effect this. If, however, a trial where the sentence exceeds three months' rigorous imprisonment is set aside, or if a similar sentence is annulled for illegality, any action taken in consequence of such trial or sentence, and whose legality depends thereon, becomes null and void. In such cases no order of re-admission is necessary as the original order of dismissal has fallen to the ground. The correct course in such a case is, however, for the commanding officer to formally cancel his order of dismissal.

Paragraphs (B) and (C) of Rule 12 show how the case of a person sentenced by a criminal court should be dealt with, and are necessitated by the system of criminal appeal which exists in India. They are intended to prevent the injustice which might be caused by the summary dismissal of a person whose sentence, in its final form, did not warrant such a consequence. The sentence as finally dealt with by the appellate, or other superior, *court* takes the place of the original sentence and the extent of such final sentence is consequently the test as to whether dismissal shall follow or not. If therefore, in a case falling under Rule 12 (C), the commanding officer has not waited for the decision of the superior court and the final sentence is one of less than three months' rigorous imprisonment, his order of dismissal falls to the ground and should—as in the case already discussed—be formally cancelled. On the other hand, the reduction of a sentence, as an act of clemency, by the Government of India or a Local Government does not, any more than similar action by the military authorities under section 102 or 112, operate to reinstate the convict, and a separate order under section 112 (4) is necessary should his re-admission be considered desirable.

Imprisonment for non-payment of a fine is not considered as part of the term to which a person is "sentenced" by a criminal court, *e.g.*, a sentence of three months' rigorous imprisonment and a fine of Rs. 100, or in default a further one month's rigorous imprisonment, does not involve dismissal under this section, even if the whole four months are undergone.

Before retaining a person for service in the ranks under the proviso to this section, the commanding officer should, in the case of a sentenc

confirmed by a superior officer, refer to such officer for his approval whenever such reference can be made without undue delay or detriment to the public service.

Discharge.

16. The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

NOTE.

For authorities competent to authorize discharge see Rule 13 and table annexed thereto. The discharge of a person who is, under the conditions of his enrolment, entitled to be discharged must be authorized and completed with all convenient speed (Rule 10) by the proper authorities (Rules 11 (A) and 13). Until it has been so completed the person remains subject to military law. Any unnecessary delay in completing his discharge would, however, give him good ground for complaint. The words "with all convenient speed" have been held to mean "without unreasonable delay under the circumstances," and will thus admit of a *short* delay when such is absolutely necessary.

Certificate to person dismissed or discharged.

17. Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

(*a*) the authority dismissing or discharging him;
(*b*) the cause of his dismissal or discharge;
(*c*) the full period of his service in the army.

Discharge, etc out of India.

18. (*1*) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(*2*) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(*3*) If any such person has been sentenced by court-martial to any punishment, such punishment may be inflicted before he is sent to India.

NOTE.

All convenient speed.—For meaning of this phrase see note to section 16.

CHAPTER IV.

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT-MARTIAL.

Reduction of non-commissioned officers.

19. (*1*) The Commander-in-Chief in India, an officer commanding an army, division or brigade, or any prescribed officer, may reduce to a lower grade or to the ranks any non-commissioned officer under his command.

(*2*) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer or, if he has no permanent grade above the ranks, to the ranks.

NOTE.

(*1*) *Any prescribed officer.*—See Rule 162.
(*2*) *Commanding officer.*—See section 7 (*6*) and A. R. I., Vol. II.

20. (*1*) The Commander-in-Chief in India may, subject to the control of the Governor General in Council, specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded. Minor punishments.

(*2*) Imprisonment in military custody may be specified as such a minor punishment, provided that—

(*a*) the term of such imprisonment shall not exceed twenty-eight days; and

(*b*) it shall not be awarded to any person of or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of or above such rank.

NOTE.

The minor punishments which have been specified under this section will be found in A. R. I., Vol. II. These punishments should only be awarded after investigation—see Rules 14 to 17. The same principle is applicable to the award of minor punishments by officers other than commanding officers.

21. Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the Native officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft. Collective fines.

NOTE.

This section permits of collective responsibility for losses or thefts of arms being enforced. The amount and incidence of the fine to be imposed is regulated by Rule 157. See also section 113 (2) (*b*). At present rules have only been framed as to losses or thefts of rifles, carbines and bolts, and fines cannot therefore be imposed in respect of any other weapons or parts of weapons.

22. (*1*) For any offence, in breach of good order, the commanding officer of any corps or detachment on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf at which troops are stationed, may punish any Native follower of such corps or detachment who is subject to this Act under section 2, sub-section (*1*), clause (*c*)— Punishment of certain Native followers.

(*a*) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees :

(*b*) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan.

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law.

NOTE.

Corporal punishment under this section is only awardable on active service.

Warrant under the hand, etc.—Form B in the fourth appendix to the rules, with necessary modifications, may be used in the preparation of such a warrant.

Provost-Marshals.

Appointment.

23. For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost marshals may be appointed by the Commander-in-Chief in India or an officer commanding an army, division or independent brigade or an officer commanding the forces in the field; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

Duties and powers.

24. (1) The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the army.

(2) The provost-marshal may punish, corporally, then and there, any person subject to this Act below the rank of non-commissioned officer who, on active service and in his view or in the view of any of his assistants, commits any breach of good order and military discipline:

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the provost-marshal may from time to time receive from the officer commanding the troops, and shall be inflicted with the regulation cat:

Provided also that the orders of the said commanding officer shall in no case authorise such corporal punishment in excess of that awardable by sentence of a court-martial.

(3) If the offender is not on active service or if the actual commission of the offence is not witnessed by the provost-marshal or any of his assistants, but sufficient proof can be obtained of the offender's guilt, he shall report the case to the officer commanding the troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

NOTE.

(2) Corporal punishment under this clause is only awardable on active service. The punishment must be inflicted with the regulation cat and must not exceed that awardable by a court-martial, *i.e.*, must not exceed 30 lashes.

CHAPTER V.

OFFENCES.

Offences in respect of Military Service.

25. Any person subject to this Act who commits any of the following offences, that is to say,— Offences punishable with death.

(*a*) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend; or

(*b*) in presence of an enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice; or

(*c*) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer; or

(*d*) treacherously makes known the watchword to any person not entitled to receive it; or

(*e*) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State; or

(*f*) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

(*g*) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave; or

(*h*) in time of action, leaves his commanding officer or his post or party to go in search of plunder; or

(*i*) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave; or

(*j*) in time of war or during any militray operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to the camp or quarters of any of His Majesty's forces, or forces a safeguard, or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

NOTE.

(*a*) *Shamefully abandons, etc.*—This offence can only be committed by the person in charge of the garrison, post, etc., and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place, with its garrison, their arms and magazines, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore a crime under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold: and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in clauses (*g*) and (*h*), where it has reference to an individual.

A charge under this clause must detail some circumstances which make the abandonment in a military sense shameful.

(*b*) *Enemy.*—See section 7 (*12*). The term includes any person in arms against whom it is the duty of a person subject to military law to act. A soldier, therefore, who, when a comrade "runs amok," shows cowardice by refraining from acting against him, is liable to trial under this clause.

Shamefully casts away.—The charge must show the circumstances which make the act in a military sense shameful. The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

Intentionally.—The court may infer intention from the circumstances proved in evidence. A court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of events and human conduct. See Part I, Chapter V, paragraph 84.

Person subject to military law.—This includes a person subject to the Army Act.

(*c*) *Directly or indirectly.*—Correspondence with, or communication of intelligence to, the enemy is therefore an offence even when the correspondence or communication is indirect. The terms of the clause thus include any unauthorized communication of intelligence by indirect methods, such as sending letters to friends or to the press.

(*d*) *Watchword* includes parole, countersign and pass-word.

The charge must show the circumstances which indicate treachery. See note to clause (*b*) as to the inference which courts are entitled to draw from facts proved in evidence.

(*e*) *Knowingly.*—Evidence should, if possible, be given that the accused knew the person harboured or protected to be an enemy or a person in arms against the State; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances. See note to clause (*b*) above.

(*g*) The same offence when committed by a sentry in circumstances which do not fall under this clause, is triable under clause (*d*) of section 26. A sentry's "post" means the spot where he is left to the observance of his duties by the officer or non-commissioned officer posting him, or any limits specially pointed out as his walk. It is, however, not necessary that he should be regularly posted, and he will be liable if, being one of a guard or body furnishing the sentry for the post, he has undertaken the duty of sentry.

(*h*) *Post*, when used with respect to an individual, as in this clause and clause (*g*) above, means the position or place in which it may be the duty of a person to be, especially when under arms. In determining what, in any particular case, is a post, the court will use their military knowledge (section 89). The place in which the person was posted is material and should be stated in the charge.

(*i*) The words "without being regularly relieved or without leave" are of the nature of an exception, and the principle laid down in section 105 of the Indian Evidence Act (see Chapter V, paragraph 83) applies. Therefore, though the charge must aver the absence of regular relief or leave, this need not be proved, and the fact of the accused person having quitted his guard, etc., being established, it will be for him to show that he was regularly relieved or had leave to do so; nevertheless, any evidence bearing on this point which is known to the prosecutor should be adduced.

(*j*) For definitions of criminal force and assault see Part III and note to section 27 (*d*) below.

Safeguard.—A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house, cellar or other property under his especial care as to force the whole party.

Offences not punishable with death.

26. Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) strikes, or forces or attempts to force, any sentry; or

(*b*) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment; or

(*c*) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard; or

(*d*) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(*b*) *Intentionally.*—See note to clause (*b*) of section 25 above.

(*d*) *Post.*—See notes to clauses (*g*) and (*h*) of section 25 above.

Mutiny and Insubordination.

Offences punishable with death.

27. Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) begins, excites, causes or joins in any mutiny; or

(*b*) being present at any mutiny, does not use his utmost endeavours to suppress the same; or

(*c*) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the state, does not, without

delay, give information thereof to his commanding or other superior officer; or

(*d*) uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such; or

(*e*) disobeys the lawful command of his superior officer;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

NOTE.

(*a*)—(*c*) The term "mutiny" implies collective insubordination or a combination of two or more persons to resist or to induce others to resist, lawful military authority. In framing a charge of mutiny, the specific act or acts which are alleged to have constituted the offence should be stated. In clause (*c*) it will be noticed that the person who comes to know of an existing or intended mutiny will have performed his duty under this section if he gives information without delay either to his commanding officer or to any other superior officer. Such information would naturally be given to the immediate superior of the person who would, in his turn, be bound to transmit it to higher authority.

(*d*) For definitions of "criminal force" and "assault" see Part III. The difference between the offences mentioned in this clause will be clear from the following examples:—

(i) A throws a stone at B. If the stone hits B, A has used criminal force; if it misses him, A has attempted to use criminal force.

(ii) A, during an altercation with B, picks up a stone in a threatening manner. If A intends, or knows it to be likely, that this will cause B to believe that A is about to throw the stone at him, A commits an assault on B.

Superior officer.—See section 7, clause (7). A superior officer in plain clothes may be the subject of an offence under this clause, and it will depend on all the circumstances, judged from a military standpoint, whether a court-martial should, or should not, hold that the offender knew or had reason to believe him to be his superior officer when he committed the offence.

(*c*) *Lawful command.*—The command must be a specific command to an individual and justified by military, as well as by civil, law and usage. It must relate to military duty, that is to say, disobedience to it must tend to impede, delay, or prevent a military proceeding; and it must be capable of execution by the person to whom it is addressed. A man who on being ordered to do a certain thing at some future time, uses words expressing an intention not to obey, and is immediately confined, does not commit an offence under this section. He should be charged under section 28 (*a*) or 39 (*i*) according to the circumstances of the case. A neglect to carry out an order, due to misapprehension or forgetfulness, does not constitute an offence under this section, though non-compliance with an order through forgetfulness or negligence would be chargeable under section 39 (*i*).

Disobedience to an order of a general nature, as for instance to a regimental order or a paragraph in regulations, is not chargeable under this section, but under section 39, clause (*h*) or (*i*), as the case may be.

A "superior officer" whose command has been restricted, either by the terms of his commission or by regulations, cannot give a "lawful command" to a person who is, by the terms of such restriction, placed outside his control.

28. Any person subject to this Act who commits any of the following offences, that is to say,— Offences not punishable with death.

(*a*) is grossly insubordinate or insolent to his superior officer in the execution of his office; or

(*b*) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field; or

(*c*) impedes a provost-marshal or an assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(*a*) *Superior officer.*—See section 7 (7). The court will use their military knowledge (section 89) in deciding whether the superior officer was, or was not, in the execution of his office.

The charge should specify the conduct or language alleged to be insubordinate.

As to insubordinate language used by an intoxicated man as a result of being confined, see note to section 32.

(*c*) *Provost-marshal.*—See sections 23 and 24.

The court may exercise their military knowledge as to whether a person was a provost-marshal, assistant provost-marshal or a person legally exercising authority under, or on behalf of, the provost-marshal; but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost-marshal or assistant provost-marshal, or was not legally exercising the above-mentioned authority.

Desertion, Fraudulent Enrolment and Absence without Leave.

29. Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court martial, be punished with death, or with such less punishment as is in this Act mentioned. Desertion.

NOTE.

Desertion must be distinguished from absence without leave, as to which see section 30 (*d*).

The difference lies in the *intention* of the offender; in the latter case he intends to return, in the former he ordinarily intends never to return. He may, however, be guilty of desertion even when he intends to return if, by absenting himself, he intended to avoid some important military service. A man may be a deserter although he re-enrols himself, and although, in the first instance, his absence was authorised. The intention of the offender must be inferred from the surrounding

facts and the circumstances of the case. See note to clause (*b*) of section 25 above.

As to forfeiture of service for pension or gratuity, which follows upon desertion, and regulations as to restoration of service so forfeited, see A. R. I., Vol. I. The period between desertion and apprehension does not, under the prescribed conditions of enrolment (see first appendix to the rules), reckon as service towards discharge. Service rendered *previous to desertion*, though forfeited for purposes of pension or gratuity, reckons as service towards discharge.

As to a man who absents himself from his corps or department and enlists again, see section 30 (*c*) and notes thereto.

See also, as to deserters, sections 114, 123 and 126.

Harbouring deserter, absence without leave, etc.

30. Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) knowingly harbours any deserter, or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended; or

(*b*) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person; or

(*c*) without having first obtained a regular discharge from the corps or department to which he belongs, enrols himself in the same or any other corps or department; or

(*d*) absents himself without leave, or without sufficient cause overstays leave granted to him; or

(*e*) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or

(*f*) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

(*g*) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march; or

(*h*) in time of peace, quits his guard, picquet or patrol without being regularly relieved or without leave; or

(*i*) without proper authority is found two miles or upwards from camp; or

(*j*) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(*a*) *Knowingly.*—See note to clause (*e*) of section 25.

(*c*) A person who leaves one corps or department and enrols himself in another does not, *primâ facie*, commit the offence of deserting the service, though he irregularly and improperly exchanges one branch of that service for another. If, however, at the time of leaving his first corps or department, he had no intention of re-enrolling himself and only did so as an afterthought, or if he absented himself to avoid a particular service, *e.g.*, service abroad, his offence is desertion, though a conviction on a charge framed under this section would also be legal In deciding under which section a charge should be framed, the time which elapsed between the two acts will be an important element for consideration. In doubtful cases the charge should be framed under section 30 (*c*).

If the offender is charged with desertion he should be tried in his original corps or department If he is charged with the offence specified in this clause he may be tried either in his original corps or department, or in that into which he has fraudulently enrolled himself, and if not dismissed by the court which tries him or as a result of its sentence, may be held to serve in either corps or department. As a rule he should be tried in that in which it is intended to retain him.

It will be noticed that the offence under this clause can be committed by a person who belongs to a corps or department and enrols himself again in the *same* corps or department.

This provision is inserted to meet the case of the larger corps and departments (*e.g.*, the supply and transport corps) where a man might otherwise leave one portion of the corps or department and enrol himself in another with impunity.

As to forfeiture of service towards pension or gratuity on conviction for this offence, see A. R. I., Vol. I, where the conditions under which service so forfeited may be restored are also laid down.

(*d*) If it is proved that a person subject to military law has overstayed his leave, it will be for him to show that he had sufficient cause (*e.g.*, sickness or the unexpected interruption of the ordinary means of transit) for doing so. If, however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

(*e*), (*f*), (*g*) *Sufficient cause.*—See note to clause (*d*) above.

(*f*) A man who is late for parade commits an offence under this clause, equally with one who is altogether absent.

(*h*) See notes to section 25 (*i*).

(*i*)—(*j*) *Without proper authority.*—These words are of the nature of an exception, and on it being proved that the accused was found beyond fixed limits or absent after fixed hours, it will rest on him to show that he had the proper authority,—see note to clause (*i*) of section 25 above.

Disgraceful Conduct.

31. Any person subject to this Act who commits any of the following offences, that is to say,— Disgraceful conduct.

(*a*) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of Government, entrusted to him; or

(*b*) dishonestly receives or retains any property in respect of which an offence under clause (*a*) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted; or

(*c*) wilfully destroys or injures any property of Government entrusted to him; or

(*d*) commits theft in respect of any property of Government, or of any military mess, band or institution, or of any person subject to military law, or serving with, or attached to, the army; or

(*e*) dishonestly receives or retains any such property as is specified in clause (*d*) knowing or having reason to believe it to be stolen; or

(*f*) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person; or

(*g*) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(*h*) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or

(*i*) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(*a*)—(*e*) All these offences are also punishable under the ordinary law of British India. When committed against the property of persons or institutions other than those here provided for, the offenders must be dealt with by the civil power except in the case of offences committed on active service or outside of British India. See note to Rule 15.

It will be noticed that the dishonest misappropriation or conversion of the property of a military mess, band or institution, or of any of the *individuals* mentioned in clause (*d*), does not fall within the terms of clause (*a*), which alone deals with dishonest misappropriation or conversion. The dishonest misappropriation or conversion of such property, as distinct from its theft, must therefore be dealt with either as a civil offence, or under section 31 (*f*) or 39 (*i*).

For definitions of the terms used in these clauses, see Part III of this Manual.

See section 86 (?) and notes thereto as to special findings admissible on charges under this section.

(*a*) If no evidence is forthcoming as to the particular mode of misappropriation, the court may, in the absence of explanation from the accused, infer that the property was misappropriated from the fact of its not having been properly utilised or accounted for.

Each instance of misappropriation should be in a separate charge.

A mere error or irregularity in accounts, or a mistaken misapplication of money or goods, does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for

the benefit of himself or somebody else; and this must be particularly recollected in the case (for example) of a non-commissioned officer's accounts getting into confusion, through the neglect or carelessness of superiors.

(*d*) Theft from a person subject to the (British) Army Act falls under this clause.

For power to award corporal punishment for offences falling under this clause see section 45 (*b*).

(*f*) *Intent to defraud.*—These words imply (1) deceit or an intention to deceive or in some cases mere secrecy, and (2) either actual or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object is in nearly every case his own advantage. The "injurious deception" is usually intended only as a means to an end, though this does not prevent its being intentional. Both the first and second ingredients mentioned above must be present to constitute an "intent to defraud."

Wrongful loss or wrongful gain.—See section 23 of the Indian Penal Code in Part III of this Manual.

(*g*) The charge should show in what way the accused has malingered or delayed his cure or what disease he has produced or aggravated. The involuntary production of *delirium tremens* by intemperate habits or venereal disease by immoral conduct does not fall within the terms of this clause.

Feigning.—This term means not merely that a person reported himself sick when he was not sick, but that he reported himself sick when he *knew* that he was not sick and that he feigned or pretended certain symptoms which the medical officer was satisfied did not exist.

Malingering is a feigning of disease, but of a more serious nature; implying some deceit such as the previous application of a ligature, or the taking of some drug, or some other act which, though it did not actually produce disease or retard a cure, yet produced the appearance of the disease said to exist.

(*h*) In a charge under this clause "intent" is of the essence of the offence, but if the act is shown to have been done wilfully and not accidentally the intent may often be inferred from its nature and the surrounding circumstances. For the definition of the term "voluntarily causes hurt" see Indian Penal Code, sections 319 and 321, in Part III of this Manual.

Intoxication.

Intoxication.

32. Any person subject to this Act who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

Intoxication may be induced by opium or any similar drug, as well as by liquor. This section creates only one single offence, *viz.*, intoxication, and in all cases, whether the act was committed on duty or not on duty, the charge should be "intoxication." If the offence was committed on duty, or after the accused had been warned for duty, the fact that the offence was so committed and the nature of the duty should be specified in the statement of the particulars, as the character of the offence, from a military point of view, and therefore its proper punishment is materially affected by the circumstance.

Nothing can justify a person subject to military law who uses or attempts to use criminal force to his superior, and great care must therefore be taken to avoid bringing intoxicated persons in contact with their superiors.

Mere abusive and violent language used by an intoxicated man, as the result of being taken into custody, should not be used as the ground for framing a charge under section 28 (*a*). If a court-martial is considered necessary, the charge should be framed for intoxication, the language being treated as in the nature of riotous conduct only, and to that extent aggravating the offence.

Offences in relation to Persons in Custody.

Offences punishable with death.

33. Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Without proper authority.—See note to section 30, clauses (*i*), (*j*). The court will use their military knowledge (section 89) with respect to whether any authority alleged by accused to exist was or was not sufficient.

Negligently.—Negligence has been defined by high judicial authorities[1] as "the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do," and as "doing some act which a person of ordinary care and skill would not do under the circumstances."

As to other prisoners and persons in custody, see section 34 (*b*).

Offence not punishable with death.

34. Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge; or

(*b*) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape; or

(*c*) being in military custody, leaves such custody before he is set at liberty by proper authority;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(*b*) See notes to section 33.

(*c*) *Military custody.*—See section 7 (*14*).

Offences in relation to Property.

Offences in relation to property.

35. Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) commits extortion, or without proper authority exacts from any person carriage, porterage or provisions; or

[1] Per Baron Alderson *Blyth* v. *Birmingham Waterworks* (1856). The second quotation is from the report of *Bridges* v. *North London Railway* (1874), L. R., 7 H. L., p. 108.

(*b*) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property; or

(*c*) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse or any animal used in the public service; or

(*d*) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessaries; or

(*e*) loses by neglect anything mentioned in clause (*d*); or

(*f*) wilfully injures anything mentioned in clause (*d*) or any property belonging to Government, or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to, the army; or

(*g*) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(*a*) *Extortion.*—See Indian Penal Code, section 383, in Part III.

Without proper authority.—See first note to section 33.

(*b*) *House-breaking.*—See Indian Penal Code, section 445 in Part III.

Other property.—This must be *ejusdem generis*, *i.e.*, of the same kind, as a field or garden. As to plundering in time of war, see section 25 (*j*).

(*d*) *Making away with* is distinct from theft, as it applies only to goods in a man's own possession and which, therefore, he cannot in law steal. Unless there is some positive act, such as pawning, selling or destruction, a charge for "making away with" should not be preferred, one for "losing" under clause (*e*) being substituted.

(*e*) This is not intended to punish a man for deficiency in his kit occasioned by accident or mere carelessness rather than by culpable neglect. On the other hand, the fact that a man has not got his arms, etc., at a time when it was his duty to have them, is *primâ facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part. The prosecutor should invariably call evidence to show that the articles said to be lost were in the possession of accused on a date previous to that mentioned in the charge.

(*f*) In charges under this clause the prosecutor must adduce evidence which will prove, or enable the court to infer, that the injury was not accidental. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and *intended* to injure the arms, etc., or was mere carelessness. In the latter case no offence under this clause will have been committed.

Offences in relation to False Documents and Statements.

False accusations and offences in relation to documents.

36. Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) makes a false accusation against any person subject to military law, knowing such accusation to be false;

(*b*) in making any complaint under section 117, knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact; or

(*c*) obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement; or

(*d*) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to Government, or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(*a*) A mere false statement, not involving an accusation, is not within this clause.

False answers on enrolment.

37. Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

For use of the enrolment document as evidence of answers made on enrolment, see section 91 and notes thereto.

Offences in relation to Courts-martial.

Offences in relation to courts-martial.

38. Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up; or

(*b*) intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting; or

(*c*) having been duly sworn or affirmed before any court-martial or other military court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

There is in this Act no restriction, similar to that in the (British) Army Act, debarring a court-martial from trying any of the offences specified in this section when committed in respect of itself. In *all* cases reported by courts-martial under Rule 136, and in many other cases, the members are, however, *individually* disqualified, under Rule 29, from sitting at the second trial, so that the result is practically the same. A commanding officer cannot, except with the sanction of superior authority or in a grave emergency, try by summary court-martial an offence under this section committed against his own authority when sitting at another trial. See section 74, proviso (*b*). If a person subject to the Indian Army Act is tried for any of the offences specified in clauses (*a*) and (*b*) of this section when committed in respect of a court-martial under the (British) Army Act the charge should be framed under section 39 (*a*), as such a court is not a "court-martial" for the purposes of this Act. See section 7 (*16*). The terms of clause (*c*) are, however, wide enough to cover the giving of false evidence before an Army Act court, or before a court of inquiry sitting under either Act if such court has been empowered to administer an oath or affirmation.

See Rule 136 and notes thereto, for manner of dealing with similar offences when committed by civilians or by persons subject to the Army Act.

Miscellaneous Military Offences.

Miscellaneous military offences.

39. Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) being an officer or warrant officer, behaves in a manner unbecoming his position and character; or

(*b*) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position; or

(*c*) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(*d*) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(*e*) attempts to commit suicide and does any act towards the commission of such offence; or

(*f*) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bázár, carrying a sword, bludgeon or other offensive weapon; or

(*g*) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(*h*) neglects to obey any general or garrison or other orders; or

(*i*) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(*a*) This clause should not be resorted to where the offence is one specifically provided for elsewhere. In charges under this clause and clause (*i*) the court will use their military knowledge (section 89) as to whether the act charged is unbecoming the position and character of an officer or warrant officer, or prejudicial to good order and military discipline. The mere description of an act or omission by one of these terms does not make it either "unbecoming" or "prejudicial," and a court-martial ought not to convict unless convinced that the conduct charged (1) was committed by the accused and (2) was, having regard to the conduct itself and the circumstances in which it took place, unbecoming to the position and character of the person charged, or prejudicial to good order and military discipline, as the case may be.

(*d*) *Intentionally.*—Intention may be inferred from the circumstances and a person is presumed to intend the natural consequence of his action.

(*f*) *Without proper authority.*—See notes to section 30 (*i*), (*j*).

(*g*) *Gratification.*—This term is not restricted to a pecuniary gratification or a gratification estimable in money. The offence is complete if the gratification is given with the intention indicated, and it is not necessary that the enrolment or other object should be actually procured. An attempt to obtain a gratification (*e.g.*, by asking for it) is punishable equally with the actual receipt of one. An attempt to give a gratification (*e.g.*, an offer of a bribe) is an abetment of the offence by way of instigation and is punishable under section 40.

(*i*) To sustain a charge under this clause, it is, except as mentioned below in the case of a summary court-martial, absolutely necessary that the charge should recite the words of the Act. That is to say, there must be charged an "act" or "omission," as the case may be, "prejudicial to good order and military discipline." Since, however, the proceedings of a summary court-martial are, if the merits of the case are not affected, not to be set aside on merely technical grounds (see section 102), an officer reviewing the proceedings of such a court may

subject to the following conditions, pass a trial, although the charge is technically bad owing to its failure to recite the words of the Act. The merits of the case will not, as a rule, be affected by such a charge if the following conditions are present:—

(1) The charge, either by marginal note or by wording, must show that the officer holding the trial did not totally disregard or lose sight of the law, but intended to lay the charge (however badly worded) under section 39 (*i*).

(2) The particulars of the charge must specify an act or omission which is beyond argument prejudicial to good order and military discipline as known to accused and to every military man.

(3) The accused must not have been prejudiced by the faulty charge.

For additional remarks on this clause see notes to clause (*a*) of this section.

Attempts to commit most of the purely military offences under the Act are triable under this clause, except where such attempts are (*e.g.*, an attempt to desert) specifically provided for.

Abetment.

Abetment. **40.** Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence.

NOTE.

For definition of "abetment" see Indian Penal Code, Section 107, in Part III.

Civil Offences.

Civil offences committed outside British India or on active service in British India. **41.** Every person subject to this Act who at any place beyond British India, or when on active service in British India, commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged therewith under this section, shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say:—

(*a*) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment assigned for the offence by the law of British India; and

(*b*) in other cases, he shall be liable to suffer any punishment assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline.

NOTE.

This section provides for the trial by court-martial of all civil offences when committed outside of British India or on active service in British India.

Civil offences committed in British India are only triable, as such, by court-martial—

(i) when committed on active service (as above); or

(ii) if they fall within the terms of section 42.

All other civil offences committed in British India should be disposed of as directed in the note to Rule 15.

The term "British India," when used in any Act of the Indian Legislature passed after 11th March 1897, means—

"All territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India." (*General Clauses Act, 1897, section 3.*)

The following table, which is not exhaustive, will be a useful guide in determining whether any place is within or beyond British India. It is based on a series of decisions given in particular cases :—

Places in British India.		Places out of British India.
Chaman.	Loralai.	Chitral.
Kohima.	Tochi.	Bolarum.
Haka.	Fort Sandeman.	Aurangabad.
Fort Stedman.	Mhow.	Sikkim.
Keng Tung	Neemuch	Kashmir.
Nasirabad.	Baroda.	Sehore.
Ahmedabad.	Sutna.	
Satara.	Secunderabad.	
Pishin.	Quetta.	
Thal Chotiali.	Bangalore.	
Fort Lockhart.	Bori.	
Hazara.	Murgha.	
Burma.	Kurram.	
Aden.	Administered areas of the	
British Baluchistan.*	Baluchistan Agency.*	

* It has been ruled that British Baluchistan falls within the definition of British India, but that the administered areas of the Agency territories and the tribal country, though falling within the wider definition of "India," are not included within the definition of British India as given in the General Clauses Act, 1897.

A tabular statement of civil offences with the penalties assigned to them will be found in Part I.

For offences falling under clause (a) of this section, a court-martial is restricted to punishments awardable under the ordinary law of British India. The only exception to this rule is that, if the offender is under the rank of warrant officer, and the offence is committed on active service or is one punishable with whipping under the law of British India, corporal punishment to the extent specified in section 45 of this Act can, under the special provisions of that section, be awarded. See section 45 and notes thereto.

For offences falling under clause (b) courts-martial may award—

(i) the punishment assigned to the offence by the ordinary law of British India ; or

(ii) imprisonment or such less punishment as is in this Act mentioned (section 39 (i)) ; or

(iii) if the offender is under the rank of warrant officer and the offence was either committed on active service or is punishable with whipping under the ordinary law, corporal punishment to the extent specified in section 45.

Fines are awardable (as penalties authorised by the ordinary law) under both clauses of this section. As to whipping see notes to section 45.

Certain civil offences triable by military law.

42. Every person subject to this Act who commits or attempts to commit or abets the commission of an offence punishable under Chapter VI of the Indian Penal Code, or any of the following offences against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 323 to 335 (both inclusive), or section 506 of the said Code, shall be deemed to be guilty of an offence against military law, and, if charged under this section with any such offence, shall, subject to the provisions of this Act, be liable to be tried by court-martial, and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code.

XLV of 1860.

NOTE.

For offences under this section a court-martial is restricted to the punishments awardable under the Indian Penal Code. The only exception to this rule is that, if the offender is under the rank of warrant officer and the offence is committed on active service, corporal punishment to the extent specified in section 45 can be awarded. As to offences triable under this section see Part I, Chapter VI, and extracts from the Indian Penal Code in Part III.

CHAPTER VI.

PUNISHMENTS.

Punishments.

43. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say :—

(*a*) death;

(*b*) transportation for life or for any period not less than seven years;

(*c*) imprisonment (with or without solitary confinement) for any term not exceeding fourteen years;

(*d*) dismissal from the service;

(*e*) in the case of officers and warrant officers, suspension from rank, pay and allowances for any stated period;

(*f*) reduction, in the case of a warrant officer, to a lower grade or class (if any) of warrant officer, or in the case of a non-commissioned officer, to a lower grade or to the ranks;

(*g*) in the case of officers, warrant officers and non-commissioned officers, forfeiture of seniority of rank;

(*h*) forfeitures and stoppages as follows, namely :—

(i) forfeiture of service for the purpose of promotion, increased pay, pension or any other prescribed purpose;

(ii) forfeiture of any military decoration or military reward;

(iii) forfeiture, in the case of a person sentenced to dismissal from the service or whose sentence involves such dismissal, of all arrears of pay and allowances and other public money due to him at the time of such dismissal;

(iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

NOTE.

(*a*) See section 104. The words of the latter section should be strictly adhered to by courts-martial when passing sentence of death.

(*c*) By section 3 of the General Clauses Act, 1897, the word "imprisonment," when used in any Act passed since that date, means imprisonment of either description as defined in the Indian Penal Code. These two descriptions are: (1) rigorous, that is, with hard labour; and (2) simple. These terms "rigorous" and "simple" should invariably be used in sentences passed under this Act and not the terms used in the (British) Army Act, *viz.*, "with" or "without hard labour." Sentences passed under the Indian Army Act are generally undergone in civil prisons, where the terms used in the British Act may not be understood. If a court inadvertently passes a sentence of "imprisonment," without specifying whether it is rigorous or simple, the sentence is treated as one of "simple imprisonment."

(*d*) For date on which a sentence of dismissal takes effect see Rule 154.

(*g*) The effect of a sentence of forfeiture of seniority of rank is that the seniority of the person in his rank is alone affected, not the period of his service in the rank. Thus, if a subadar who was promoted to that rank on the 19th April 1907 were sentenced by court-martial to take rank and precedence as if his appointment to that rank bore date the 21st June 1909, he would, on the latter date while having only one day's service to count for seniority, still count continuous service for all other purposes in the rank of subadar from the 19th April 1907.

(*h*) (ii) This covers the forfeiture of a good conduct (or good service) badge and the pay attached thereto.

(iii)—(iv) The law as to "stoppages" and "forfeitures" has been changed from that contained in the Indian Articles of War. An award to compensate for loss or damage is now termed "stoppages" both when the offender remains in the army and when he is dismissed or his sentence involves dismissal. Forfeiture of pay and allowances, etc., awardable under (iii) when an offender is dismissed or his sentence involves dismissal, is a substantive punishment and does not compensate the party injured by his offence. If, in such a case, a court wishes to award compensation to the injured party as well as to cause the offender to lose all arrears of pay and allowances, etc., it should sentence him to stoppages under (iv) and to forfeiture of all arrears of pay and allowances, etc., under (iii). The stoppages will first be satisfied from any pay and allowances or other public money due to him, and the remainder (if any) will be forfeited to the State under the sentence.

A court-martial acting under (iv) will simply sentence the offender to stoppages to a certain extent. The officer enforcing the sentence will be guided by the proviso to section 50 and by section 51, *i.e.*, he will (unless the offender is sentenced to dismissal, or his sentence involves dismissal) stop half his pay and allowances and the whole of any prize money, gratuity, or similar sum (not pay and allowances) due to him, until the compensation awarded in the sentence is complete. No portion of the pay and allowances of a person sentenced to dismissal, or whose sentence involves dismissal, is protected, and the whole of such a person's pay and allowances can, if necessary, be withheld. See also notes to Rule 53 (A).

Lower punishments.

44. Where in respect of any offence under this Act there is specified a particular punishment or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments and regard being had to the nature and degree of the offence) any one

punishment lower in the above scale than the particular punishment.

Note.

Subject to the other provisions, etc.—See section 47 for cases in which more than one punishment can be awarded.

Corporal punishment.

45. Where any person subject to this Act and under the rank of warrant officer—

(*a*) on active service is guilty of any offence; or

(*b*) at any time is guilty of the offence specified in clause (*d*) of section 31; or

(*c*) at any time is guilty of a civil offence which would be punishable with whipping under the law of British India, and is triable by court-martial under this Act,

it shall be lawful for a court-martial to award for that offence corporal punishment not exceeding thirty lashes.

Note.

Any offence.—This includes a civil offence, whether punishable with whipping or not under the ordinary law [see section 7 (*19*)]. The execution of short sentences of imprisonment is excessively inconvenient on active service, while long sentences involve the transfer of the offender to India, when his services in the field are perhaps most required. Corporal punishment has therefore been retained for *all* offences committed on active service by persons under the rank of warrant officer.

(*b*) Theft is, in civil life, punishable with whipping (see below). Corporal punishment has therefore been retained for the military offences of theft from Government, a comrade, etc., defined in the above section.

(*c*) The offences punishable with whipping under the law of British India are specified in sections 3 and 4 of the Whipping Act, 1909. They are as follows :—

Section 3—

(1) theft other than theft by a clerk or servant of property in possession of his master ;
(2) theft in a building, tent or vessel ;
(3) theft after preparation for causing death or hurt ;
(4) lurking house-trespass or house-breaking in order to the committing of any offence punishable with whipping under this section ;
(5) lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with whipping under this section.

Section 4—

(1) abetting, committing or attempting to commit, rape ;
(2) compelling or inducing any person, by fear of bodily injury, to submit to an unnatural offence ;
(3) voluntarily causing hurt in committing or attempting to commit robbery ;
(4) committing dacoity.

For these offences when committed outside of British India, or on active service in British India, by persons under the rank of warrant officer, a court-martial may legally award *either* "corporal punishment" to the extent specified in this section or "whipping" to the extent authorised by the ordinary law. The former can *never* be combined with imprisonment, but the latter may in some cases be so combined. The effect of

the provisions of the "Whipping Act" and the Indian Army Act dealing with this matter is as follows:—

For the offences specified in section 3 of the Whipping Act a court-martial may *legally* award—

(i) corporal punishment (to persons below the rank of warrant officer), or

(ii) whipping, or

(iii) imprisonment; but cannot combine any of the above.

For the offences specified in section 4 of the Whipping Act it may legally award any of the above, or may—

(iv) combine whipping (but *not* corporal punishment) with imprisonment, or transportation in cases when the latter is awardable.

The full text of the Whipping Act, and also of certain provisions of the Criminal Procedure Code which deal with the same subject, will be found in Part III of this Manual.

Corporal punishment differs from the civil punishment of whipping, both in the manner of its infliction and the instrument of punishment. Compare section 111 and Rule 155 with extracts from Criminal Procedure Code in Part III. The manner of inflicting the civil punishment of whipping renders it unsuitable for soldiers, and courts should, therefore, substitute corporal punishment under this section for such whipping when they think a punishment of this nature desirable.

Position of corporal punishment in scale.

46. Corporal punishment shall, for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal.

NOTE.

Corporal punishment can, therefore, be commuted to reduction or to any punishment lower than reduction in the scale contained in section 43. Only sentences of death, transportation, imprisonment or dismissal can be commuted to corporal punishment, and then only if the offender is under the rank of warrant officer and the offence is one for which corporal punishment is, under section 45, awardable.

Combination of punishments.

47. A sentence of a court-martial may award, in addition to or without any one other punishment, any one or more of the punishments specified in clauses (*d*), (*f*) and (*h*) of section 43.

For example a sentence in which imprisonment is combined with dismissal, reduction, forfeitures and stoppages is legal, as is also one of reduction combined with forfeitures and stoppages. Corporal punishment (section 45) can be combined with all or any of the punishments specified in this section, but with no other punishments. A sentence of imprisonment combined with corporal punishment is therefore illegal.

Solitary confinement.

48. Whenever any person is sentenced to rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say,—

(*a*) a time not exceeding one month if the term of imprisonment does not exceed six months;

(*b*) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year;

(*c*) a time not exceeding three months if the term of imprisonment exceeds one year.

NOTE.

See section 110 for rules as to the execution of sentences of solitary confinement. Such sentences are, as a rule, undesirable unless the rigorous imprisonment is to be undergone in a civil jail.

Reduction of non-commissioned officers to ranks.

49. A non-commissioned officer sentenced by court-martial to transportation, imprisonment, corporal punishment or dismissal from the service, shall be deemed to be reduced to the ranks.

NOTE.

Nevertheless a court should, by its sentence, reduce a non-commissioned officer to the ranks when passing upon him any of the sentences here referred to. If, however, they omit to do so, this section will automatically effect his reduction.

CHAPTER VII.

PENAL DEDUCTIONS.

Deductions from pay and allowances.

50. The following penal deductions may be made from the pay and allowances of a person subject to this Act, that is to say,—

(*a*) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a criminal court, a court-martial, or an officer exercising authority under section 20;

(*b*) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment by an officer exercising authority under section 20;

(*c*) all pay and allowances for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him;

(*d*) all pay and allowances ordered by a court-martial to be suspended or forfeited under section 43;

(*e*) any sum ordered by a court-martial to be stopped under section 43;

(*f*) any sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer;

(*g*) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 41 or section 42, or an officer exercising authority under section 20 or section 21:

Provided that the total deductions from the pay and allowances of a person subject to this Act made under clauses (*e*) to (*g*), both inclusive, shall not (except in the case of a person sentenced to dismissal or whose sentence involves dismissal), exceed in any one month one-half of his pay and allowances for that month.

Explanation.—For the purposes of clauses (*a*) and (*b*)—

(i) absence or custody for six consecutive hours or upwards, whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day;

(ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody; and

(iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

NOTE.

This section shows what penal deductions *may* be made from the pay and allowances of a person subject to this Act; as to what deductions are actually made, within these limits, Army Regulations, India, Volume I, should be consulted. In addition to the deductions here legalised, and made in accordance with these regulations, certain other deductions may be made from the pay and allowances of reservists under the authority of rules framed by the Governor General in Council in pursuance of section 4 of the Indian Reserve Forces Act. The principle underlying these latter deductions is that a reservist's pay is of the nature of a retaining fee and that a reservist who fails to appear for training, etc., or takes his discharge between trainings, may legitimately be deprived of any arrears due to him.

For other deductions, see Royal Warrant, dated 22nd February 1902 which is prefixed to A. R. I, Vol. I.

(*a*) See note to section 52.

(*b*) Persons in military custody are subsisted under regulations which will be found in A. R. I., Vol. I

(*e*) See note to section 43 (*h*) regarding these stoppages. See also note to Rule 53 (A).

(*g*) The fines awardable as "minor punishments" under section 20 are specified in A. R. I., Vol. II.

The following examples may help the reader to a clear understanding of what is meant by a "day of absence" in the explanation to this section.

If a person is absent from 9 P.M. on Monday until 4 A.M. on Tuesday, his absence counts as a day's absence, but no more, although the absence was partly on one day and partly on another. If, however, he had returned at 1 A.M., his absence could not count as a day's absence, unless

meanwhile he was bound to go on guard or perform some other military duty, and in consequence of his absence some other person had to go on guard, or perform that duty.

If a person is absent from 6 P.M. on Monday until 6-5 A.M. on Tuesday, his absence is to be reckoned as two days' absence, and it is also to be reckoned if he returns at 4 A.M. on Tuesday, and at 2 A.M. some other person had to go on guard instead of him.

Deductions from public money other than pay.

51. Any sum authorized by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

Remission of deductions.

52. Any deduction from pay and allowances authorized by this Act may be remitted in such manner and by such authority as may from time to time be prescribed.

NOTE.

Prescribed.—See Rule 163. The commonest case is that of a man absent without leave for a period not exceeding five days. In such a case, unless the man is convicted by a court-martial, his commanding officer may remit the forfeiture of pay and allowances which his absence entails. See section 50 (*a*).

CHAPTER VIII.

COURTS-MARTIAL.

Constitution and Dissolution of Courts-martial.

Courts-martial and the kinds thereof.

53. For the purposes of this Act there shall be four kinds of courts-martial, that is to say:—

(1) general courts-martial;
(2) district courts-martial;
(3) summary general courts-martial; and
(4) summary courts-martial.

Power to convene general courts-martial.

54. A general court-martial may be convened by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

NOTE.

For form of warrant, and list of officers to whom it is issued, see Part IV.

Power to convene district courts-martial.

55. A district court-martial may be convened by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

NOTE.

Forms for the preparation of such warrants will be found in Part IV.

Contents of warrant issued under section 54 or section 55.

56. A warrant issued under section 54 or section 55 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

Composition of general courts-martial.

57. A general court-martial shall consist of not less than seven officers unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than five officers.

Composition of district courts-martial.

58. A district court-martial shall consist of not less than three officers.

Convening order to state if larger number of officers is not available.

59. Whenever a general court-martial is ordered to be composed of the smaller number of officers specified in section 57, the order convening the court shall state that the larger number of officers is not, due regard being had to the public service, available, and such statement shall be conclusive evidence of the fact so stated.

NOTE.

Shall state.—If no such statement appears in the convening order the trial will be invalid. No subsequent certificate will cure the defect.

Composition of general or district courts-martial.

60. The officers composing a general or district court-martial shall, at the discretion of the convening officer, but subject to the provisions of section 61, either be British or Native officers, but shall not be partly British and partly Native officers.

NOTE.

A convening order detailing, either by name or ranks, officers who are, as a matter of fact, British or Native officers is sufficient evidence of the manner in which the convening officer has exercised this discretion, even if no specific declaration that the court shall be constituted in a particular manner be inserted in that order.

Claim to trial by British officers.

61. (*1*) Any person subject to this Act who is under orders for trial by general or district court-martial may claim to be tried by British officers.

(*2*) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly.

NOTE.

(*2*) See note to Rule 16 (B).

Convening of summary general courts-martial.

62. The following authorities shall have power to convene a summary general court-martial, namely:—

(*a*) an officer empowered in this behalf by an order of the Governor General in Council or of the Commander-in-Chief in India;

(*b*) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;

(*c*) an officer commanding any detached portion of His Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

Composition of summary general courts-martial.

63. A summary general court-martial shall consist of not less than three officers.

NOTE.

These may be either British or Native officers, or partly British and partly Native officers. See definition of the term "officer" in section 7 (*5*). A summary general court-martial consisting entirely of Native officers must be attended (section 79) by a "superintending officer." See however note to Rule 141 (B).

Summary courts-martial.

64. (*1*) A summary court-martial may be held—

(*a*) by the commanding officer of any corps or department of His Majesty's Indian forces, or of any detachment of those forces;

(*b*) by the commanding officer of any British corps or detachment to which details subject to this Act are attached.

(*2*) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers who shall not, as such, be sworn or affirmed.

NOTE.

(*1*) For the history of this court, which is peculiar to the Indian Army, see Part I, Chapter II, paragraph 15, and for its powers and procedure, see Chapter IV, paragraph 1 *et seq.* See also note to section 76.

(*2*) These officers (see section 7 (*5*)) may be either British or Native officers. In practice they are generally Native officers. If the commanding officer does not understand the language of accused it will be convenient to appoint one of them as interpreter if qualified. He can legally combine this duty with attendance at the court under this section.

Dissolution of courts.

65. (*1*) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved:

Provided that a general court-martial shall not be dissolved under the provisions of this sub-section unless it is reduced below five officers.

(*2*) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(*3*) Where a court-martial is dissolved under this section, the accused may be tried again.

NOTE.

The result of the proviso to (*1*) is that if a general court-martial, regarding which no order under section 59 has been issued, has actually commenced to try the accused and is subsequently reduced to six or five officers, it can go on with the trial. The trial is, for the purposes of this section, held to have commenced when the accused is arraigned and required to plead to the charge. Rule 38.

Jurisdiction of Courts-martial.

Prohibition of second trial.

66. When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 20 or section 22, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

Limitation of trial.

67. No person subject to this Act shall be tried or punished by a court-martial for any offence after the expiration of three years from the date of such offence, unless the offender, by reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period; in which case he shall be liable to be tried at any time not exceeding two years after such impediment has ceased.

NOTE.

The other manifest impediment must be in some way analogous to, or of the nature of, absence. The mere non-discovery of a crime until after a period of three years from its commission is not such a manifest impediment, and the soldier, under such circumstances, would not be triable by court-martial.

Place of trial.

68. Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

Adjustment of the jurisdiction of Courts-martial and Criminal Courts.

Order in case of concurrent jurisdiction.

69. When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

NOTE.

Prescribed military authority.—This is, except in cases under section 41 or 42 where death has resulted, the officer commanding the army, division, brigade or station in which the accused person is serving; in these excepted cases, it is the officer commanding the army, division or independent brigade in which he is serving. See Rule 164, also A. R. I., Vol. II, Appendix IX.

Power of criminal court to require delivery of offender.

70. (*1*) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the prescribed military authority at its option either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Governor General in Council.

(*2*) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the

Governor General in Council, whose order upon such reference shall be final.

NOTE.

Prescribed military authority.—See note to section 69.

Trial by court-martial no bar to subsequent trial by criminal court.

71. (*1*) Notwithstanding anything contained in section 26 of the General Clauses Act, 1897, or in section 403 of the Code of Criminal Procedure, 1898, a person convicted or acquitted by a court-martial may be afterwards tried by a criminal court for the same offence or on the same facts.

X of 1897. V of 1898.

(*2*) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal court for the same offence or on the same facts, that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

NOTE.

This section in effect declares that a person subject to military law is not to be exempted from the ordinary criminal law by reason of his military status, so that a person acquitted or convicted of an offence by a court-martial may still be tried by a criminal court on the same facts, if they constitute an offence under the criminal law of India. The effect of the two enactments quoted is—speaking generally—to make trial by a "court of competent jurisdiction" a bar to subsequent trial on the same facts. A court-martial is such a court and their operation has, therefore, been specifically excluded. Sub-section (2), however, provides in favour of the person tried that a criminal court in awarding punishment for an offence shall have regard to any military punishment he may have undergone; while section 66 further declares that when he has been acquitted or convicted by a criminal court he shall not be tried by military law for the same offence. For definition of "criminal court" see section 7 (*17*).

Powers of courts-martial.

Powers of general and summary general courts-martial.

72. A general or summary general court-martial shall have power to try any person subject to this Act for any offence made punishable therein, and to pass any sentence authorized by this Act.

Powers of district court-martial.

73. A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, or transportation, or imprisonment for a term exceeding two years.

Offences triable by summary court-martial.

74. A summary court-martial may try any offence punishable under any of the provisions of this Act:

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any of the following offences, namely:—

(*a*) any offence punishable under sections 25, 27, clauses (*a*), (*b*) or (*c*), 33, 41 or 42, or

(*b*) any offence against the officer holding the court.

NOTE.

Though a summary court-martial may, subject to the proviso to this section, try *any* offence punishable under the Act, it is obvious that its

powers of punishment are insufficient for many of the graver offences known to military law. Commanding officers should, therefore, notwithstanding the increased powers of summary trial now vested in them, submit to higher authority any cases which appear to require more exemplary punishment than a summary court-martial can award. It should, however, be remembered that even a comparatively slight punishment *promptly* inflicted is often more deterrent than a heavier one which follows long after the offence, and that this is especially so with Indian troops.

The commanding officer is the best and sole judge, *at the time*, of the necessity which justifies him in trying, without reference, cases which should ordinarily be tried only after reference and sanction. If it should subsequently appear to superior authority that his action was not justified, this should merely be viewed as a grave irregularity for which the commanding officer may be held responsible, but it does not affect the legality of the finding or sentence, nor, in ordinary circumstances, furnish reason for setting aside the trial, in whole or in part. Where, however, the officer holding the trial loses sight of the law, and tries without considering whether an emergency exists or not, the trial is illegal. See Rule 116 for certificate to be signed by the officer holding the trial when he tries, without reference, a case which would ordinarily be referred to the officer empowered to convene a district court-martial for the trial of the alleged offender.

Offence against the officer holding the trial.—It is difficult to lay down a definite rule in this matter, but, speaking generally, a consideration of personal interest which would suffice to render an officer ineligible to sit as a member of a general or district court-martial debars him from holding a summary court-martial (save in case of emergency) without previous reference. Insubordination to a commanding officer or disobedience to his personal orders, as well as offences under section 27 (*d*) when committed towards himself, fall within the terms of the proviso, and should not, except in case of emergency, be tried by summary court-martial without previous reference to the officer empowered to convene a district court-martial for the trial of the alleged offender. Theft or misappropriation of property of which a commanding officer is either part-owner or trustee (*e.g.*, mess or regimental property) should not, except as aforesaid, be tried by summary court-martial without such reference.

It is most undesirable that an offence against an individual should be tried by that individual, and the reason for immediate action would require to be unusually weighty to justify the provision as to reference to higher authority being disregarded when the offence is one against the officer holding the trial.

Persons triable by summary court-martial

75. A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer or warrant officer.

Sentences awardable by summary court-martial.

76. (*1*) A summary court-martial held by the commanding officer of a corps or department may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

(*2*) A summary court-martial held by any other officer may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding six months.

NOTE.

Corps or department.—A list of the bodies which are "corps" for the

for these purposes, regarded as a division or branch of the Indian Ordnance Department, and its commanding officer, therefore, when sitting as a summary court-martial, exercises powers under the first clause of this section.

Every separate body of persons subject to this Act or the Army Act which is not a corps or department is a "detachment of His Majesty's Indian Forces" or a "British detachment," as the case may be, and its commanding officer, when sitting as a summary court-martial, can only exercise the powers conferred by the second clause of this section. The following are examples of such detachments :—

(*a*) Any enrolled establishment of the Supply and Transport Corps other than a Transport Corps or Cadre (see Rule 161 (*c*) (xi).

(*b*) The enrolled establishment of a station hospital.

(*c*) The enrolled establishment of an Ordnance Depôt.

(*d*) A detached, or unattached, battery of British artillery.

It must be remembered that a Commissary, Deputy Commissary, or Assistant Commissary, even when placed in charge of an enrolled establishment of the Supply and Transport Corps or Ordnance Department, is not a "Commanding Officer" as defined in section 7 (*6*). He cannot, therefore, hold a summary court-martial.

Procedure at Trials by Court-martial.

President.

77. At every general, district or summary general court-martial the senior member shall sit as president.

Judge advocate.

78. Every general court-martial shall, and every district court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in India, or, if no such officer is available, a person appointed by the convening officer.

NOTE.

Judge advocate.—See Rules 89 to 91.

Superintending officer.

79. A British officer of not less than four years' service, hereinafter called the superintending officer, shall be appointed to superintend the proceedings of every court-martial composed of Native officers which is not attended by a judge advocate.

NOTE.

Superintending officer.—See Rules 64, 65 and 141 (B) and notes thereto, also note to section 63.

Challenges.

80. (*1*) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(*2*) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(*3*) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy

may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

NOTE.

As to challenges, see also Rule 34 and notes thereto.

Voting of members.

81. (1) Every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the accused.

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

NOTE.

For manner of voting see Rule 73, and notes thereto.

Oaths of president and members.

82. An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the judge advocate or superintending officer before the commencement of the trial.

NOTE.

Prescribed form.—See Rules 35, 36 and 95.

Oaths of witnesses.

83. Every person giving evidence at a court-martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form.

NOTE.

Prescribed form.—See Rule 126.

Summoning witness and production of documents.

84. (1) The convening officer, the president of the court, the judge advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance before the court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

(*5*) Nothing in this section shall be deemed to affect the I of 1872. Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(*6*) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(*7*) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court.

(*1*)—(*4*) See Rule 123 and notes thereto. If a military witness, who has been duly summoned, fails to attend, he can be dealt with under section 38 of the Act. If such a witness has not been formally summoned but merely ordered to attend by some military authority as a matter of discipline (see note to Rule 123) he cannot be dealt with under section 38 for failure to attend the court. Unless, however, he has some adequate excuse, his omission to attend will fall within the terms of section 27 (*e*) or section 39 (*i*), as the case may be

(5) Sections 123 and 124 of the Indian Evidence Act deal with "affairs of State" and "official communications". See Part I, Chapter V, paragraphs 94 and 95, as to how such matters are protected from disclosure in courts of law, including courts-martial, except under adequate guarantees for public interests being safeguarded. "Affairs of State" include all matters of a public nature with which the Government is concerned.

(6) This clause indicates the only way in which letters, postcards, telegrams and similar documents in the custody of the postal or telegraph authorities can be made available as evidence. If none of the authorities mentioned in this clause are available, and it is considered necessary that the document should be detained until such authority is communicated with, application should be made to one of the authorities mentioned in clause (7) one of whom is certain to be present in or near any military station in India, however small.

(7) See note to clause (*6*) above.

Commissions.

85. (*1*) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(*2*) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(*3*) When the witness resides in the territories of any prince or chief in India in which there is an officer representing the

British Indian Government, the commission may be issued to such officer.

(4) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure, 1898. V of

(5) Where the commission is issued to such officer as is mentioned in sub-section (3), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British consular officer, British magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories.

(8) The prosecutor and the accused person may appear before such magistrate or officer by pleader or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person: and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation.—In this section, the expression "Judge Advocate General" means the Judge Advocate General in India, and includes a Deputy Judge Advocate General.

NOTE.

This section provides for the examination of witnesses "on commission," that is, by means of a series of written questions decided upon by the court trying the case, which questions are sent to another court at

a distance and put by it to the witness, whose answers are then recorded. It will be noticed that the procedure here laid down can only be set in motion by a court-martial assembled for the trial of the accused, and then only in the circumstances specified in clause (*1*) above, while the actual issue of the commission can only be effected by the Judge Advocate General in India or the Deputy Judge Advocate General of the Army.

When a court-martial considers that the evidence of a witness should be taken on commission it should forward to the Deputy Judge Advocate General of the Army (or to the Judge Advocate General in India if the trial is not held in an Army) a list of the questions to be put to the witness, along with an explanation of the circumstances which appear to render his examination on commission necessary. Any questions which the prosecutor or the accused desire to have put to the witness, and which the court considers relevant, should be added.

The taking of evidence by commission in criminal trials should be most sparingly resorted to, and ought not to be adopted save in extreme cases of delay, expense or inconvenience. The following considerations should guide courts-martial in this important matter:—

(i) A complainant, or a witness who practically fills the role of complainant, should never be examined on a commission; the risk of injustice to the accused is too great.

(ii) A material prosecution witness the value of whose evidence can only be made apparent under full examination and cross-examination in court, should very seldom be so examined.

(iii) A merely "formal" or corroborative witness for either side, or a material witness for the defence (if the accused is fully satisfied by this action), might generally be examined on a commission. By "formal" is here meant a witness who has to prove a document, entry, or similar fact, which must be legally proved, but which when so proved cannot rationally be disputed by the accused, or by the prosecution.

It will be noticed (clause (*10*)) that evidence taken on commission at the instance of a court-martial which has been dissolved is admissible before another court-martial assembled for the trial of the accused (of course only on the same or substantially the same charges). If great delay in the return of a commission is anticipated, advantage may be taken of this provision and the original court dissolved. In such a case, however, each of the witnesses who gave evidence at the first trial must repeat his evidence on oath or affirmation at the second trial unless—

(*a*) he is dead or cannot be found; or

(*b*) he is incapable of giving evidence; or

(*c*) he is kept out of the way by the adverse party; or

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

In any of these cases the evidence given at the first trial can, under section 33 of the Indian Evidence Act, be read and considered at the second.

Conviction of one offence permissible on charge of another.

86. (*1*) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(*2*) A person charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(*3*) A person charged before a court-martial with any of the following offences specified in section 81, that is to say, theft, dishonest misappropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining

property in respect of which any of the aforesaid offences has been committed knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, may be found guilty of any other of these offences with which he might have been charged.

(4) A person charged before a court-martial with an offence punishable under section 41 or section 42 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, were applicable. V of 1898.

(5) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

NOTE.

This section will often prevent a miscarriage of justice by permitting a person charged with one of the offences mentioned in it to be found guilty of a cognate offence. It must, however, be remembered that this section creates no new offences and that a person cannot, under it, be convicted of an offence with which he could not have been originally charged, had the officer ordering his trial so decided. For instance, clause (3) above does not admit of a person accused of the theft of mess property being found guilty of dishonestly misappropriating the same property, as, though clause (d) of section 31 makes the theft of mess property punishable, clause (a), which alone deals with dishonest misappropriation, is restricted to *Government* property; see notes to section 31. On the other hand, a person charged, under clause (d) of section 31, with the theft of *Government* property can be convicted of dishonestly receiving or retaining it under clause (e), or, if it was entrusted to him, of dishonestly misappropriating it under clause (a). For the special findings referred to in clause (4), see sections 237 and 238 of the Criminal Procedure Code in Part III.

In practice it will usually be expedient to prefer alternative charges rather than to rely on this section.

Majority requisite to sentence of death.

87. No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court.

Evidence before Courts-martial

General rule as to evidence.

88. The Indian Evidence Act, 1872, shall, subject to the provisions of this Act, apply to all proceedings before a court-martial. I of 1872.

NOTE.

Indian Evidence Act.—See Part III of this Manual, also Part I, Chapter V.

Judicial notice.

89. A court-martial may take judicial notice of any matter within the general military knowledge of the members.

NOTE.

"Judicial notice" means that the court will recognise a matter without formal evidence. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obliga-

tions of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know.

For other matters of which a court may (under the Indian Evidence Act) take judicial notice, see Part I, Chapter V, paragraph 66.

Presumption as to signatures.

90. In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

Enrolment paper.

91. Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given, and of the enrolment of such person.

NOTE.

On the trial of a person subject to the Indian Army Act for making a false answer on enrolment or for fraudulent enrolment, the answer made or the fact of enrolment can, therefore, be proved by the production of his enrolment paper. This paper must be produced by a witness on oath or affirmation and the accused identified as being the person referred to.

Reference by accused to Government officer.

92. (*1*) If at any trial for desertion, absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the civil or military service of Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn until his reply is received.

(*2*) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court.

(*3*) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

NOTE.

For presumption as to civil officer's signature, see section 90.

Evidence of previous convictions and general character.

93. (*1*) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of, any previous convictions of such person, either by a court-martial or by a criminal court, and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

(*2*) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to prove the signature to such certified extracts, nor shall

it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

NOTE.

Rules 53 and 109 which prescribe "the other matters which may be proved under this section, should be read with it.

Confirmation and Revision of Findings and Sentences.

Finding and sentence invalid without confirmation

94. No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act.

Power to confirm finding and sentence of general court-martial.

95. The findings and sentences of general courts-martial may be confirmed by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

Power to confirm finding and sentence of district court-martial.

96. The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

Contents of warrant issued under section 95 or section 96

97. A warrant issued under section 95 or section 96 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

NOTE.

For warrants issued under sections 95 to 97 see Part IV.

Confirmation of finding and sentence.

98. (1) The finding and sentence of a summary general court-martial shall require to be confirmed by the convening officer—

(a) in the case of the trial of an officer,

(b) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and

(c) in any other case if so ordered by the said officer.

(2) Save as provided in sub-section (1), a sentence passed by a summary general court-martial shall not require to be confirmed, but may be carried out forthwith.

Power of confirming officer to mitigate, remit or commute sentences.

99. Subject to such restrictions as may be contained in any warrant issued under section 95 or section 96, a confirming officer may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial:

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

NOTE.

As to diminution of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see Rule 59. The powers conferred by this section can only be exercised by the confirming authority *as such*, i.e., when confirming the sentence. After promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the sentence can only be reduced or remitted by one of the authorities mentioned in section 112.

Revision of finding or sentence.

100. (*1*) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming officer; and on such revision, the court, if so directed by him, may take additional evidence.

(*2*) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(*3*) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers.

NOTE.

See Rule 57 and notes thereto for procedure on revision.

Which requires confirmation.—The finding or sentence of a summary court-martial can, therefore, never be revised. Neither can that of a summary general court-martial be revised if it does not under section 98 require to be confirmed.

Finding and sentence of a summary court-martial.

101. The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith:

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a corps.

Transmission of proceedings of summary courts martial.

102. The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the Commander-in-Chief in India, or the officer commanding the army in which the trial was held, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

NOTE.

As to how this officer should deal with an *illegal* sentence, see Part I, Chapter IV, paragraph 7.

Substitution of valid for invalid sentence.

103. Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, is found for any reason to be invalid, the authority who would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence:

Provided that the punishment awarded by the sentence so passed shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the invalid sentence.

NOTE.

This enables any of the authorities mentioned in section 112 to substitute a valid sentence for an invalid one which has been inadvertently confirmed and which is thus not open to revision in the ordinary way. It also gives these authorities similar powers in regard to a sentence not requiring confirmation, *i.e.*, any sentence by summary court-martial, or one by a summary general court-martial which does not, under section 98 require confirmation.

CHAPTER IX.

EXECUTION OF SENTENCES.

Form of sentence of death.

104. In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

Imprisonment to be in military custody.

105. Whenever any person is sentenced under this Act to simple imprisonment, such sentence shall be carried out by confinement in military custody.

NOTE.

Unless therefore, a special order under section 108 is passed by competent authority, *all* sentences of simple imprisonment must be undergone in military custody.

Commencement of sentence of transportation or imprisonment

106. Whenever any person is sentenced under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president or, in the case of a summary court-martial, by the court.

NOTE.

Under this section a term of transportation or imprisonment cannot be made to commence at the expiration of a previous term, but must commence on the day on which the sentence is signed. If, therefore, the court desires to award (say) six months' imprisonment to a person who is already undergoing a sentence of three months of which one month is unexpired, a sentence of seven months' imprisonment must be passed.

Execution of sentence of transportation or imprisonment.

107. Whenever any sentence of transportation or rigorous imprisonment is passed under this Act, or whenever any sentence so passed is commuted to transportation or to rigorous imprisonment, the commanding officer of the person under

sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant:

Provided that, in the case of a sentence of rigorous imprisonment for a period not exceeding three months, the confirming officer, or, in the case of a sentence which does not require confirmation, the court, may direct that the sentence shall be carried out by confinement in military custody.

NOTE.

Passed.—A sentence requiring confirmation is inoperative until confirmed, and is, as a matter of fact, not divulged until confirmation has taken place. Even if such a sentence should, improperly, become known to the commanding officer, he cannot, therefore, take action under this section before confirmation has been effected

Civil prison.—That is a prison maintained under the Prisons Act (IX of 1894).

For forms of warrant see Forms A and B in the fourth appendix to the Rules. When a death sentence is commuted *by the confirming officer* to one of transportation or imprisonment, Form A, or B, with the necessary variations, will be used. See Rule 4 (A).

The proviso to this section admits of the imprisonment awarded to a person, whose sentence does not involve dismissal, being undergone in military custody. The return to the service of a person who has been an inmate of a civil prison is, as a rule, undesirable, and a vantage should therefore be taken of this proviso to ensure that short sentences of imprisonment, unaccompanied by dismissal, are undergone in military custody.

When the power of directing imprisonment to be undergone in military custody vests in the confirming officer, the direction should be part of the confirmation minute, but when, as in the case of a summary court-martial, it vests in the court, it should form part of the sentence.

108. Whenever, in the opinion of an officer commanding an army, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of section 105 or section 107, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place. Execution of sentence of imprisonment in special cases.

NOTE.

The power conferred in this section might be of use in an emergency, such as an epidemic. It will also admit of local arrangements being made for the execution of a sentence of rigorous imprisonment passed in a colonial garrison when it is, for any reason, inconvenient or undesirable that an offender should be sent to India to undergo his sentence.

109. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined. Communication of certain orders to civil prison officers.

NOTE.

For forms of warrant under this section see Forms C to F in the fourth appendix to the Rules. The heading of each of these shows clearly the cases in which it is to be used. It will be noticed that Form

C is applicable to cases in which the person concerned is to be released, Forms D and E to those in which he remains in civil custody but with a reduced sentence, and Form F to those in which he is to be transferred to military custody, *i.e.*, to cases in which his sentence, in its new form, admits of, or requires, such custody. It is obviously undesirable that a person in military custody should not be subject to military law. If, therefore, his original sentence has involved the discharge of the offender, an order of re-admission to the service, under section 112 (*4*), should accompany a warrant in Form F When a death sentence is commuted *subsequent to confirmation* to one of transportation or imprisonment, Form D or E, with the necessary variations, will be used. See Rule 4 (A).

Limit of solitary confinement.

110. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Instrument of corporal punishment

111. Whenever any person is sentenced under this Act by a court-martial to corporal punishment, such punishment shall be inflicted on the bare back with the regulation cat.

NOTE.

Regulation cat —See Rule 175

CHAPTER X.

PARDONS AND REMISSIONS.

Pardons and remissions.

112. When any person subject to this Act has been convicted by a court-martial of any offence,—

(*a*) the Governor General in Council, or

(*b*) when the person has been convicted of any offence other than an offence punishable under section 41, the Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, division or independent brigade in which such person, at the time of his conviction, was serving,

may—

(*1*) pardon the person;

(*2*) mitigate or remit the punishment awarded, or commute such punishment for any less punishment or punishments to which he might have been sentenced by the court-martial;

(*3*) order the restoration to him of any service or other advantage forfeited under his sentence; or

(*4*) re-admit him to the service when he has been dismissed therefrom :

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

NOTE.

(*4*) See note to section 15.

CHAPTER XI

RULES.

113. (*1*) The Governor General in Council may make rules for the purpose of carrying into effect the provisions of this Act. Power to make rules.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the discharge from the service of persons subject to this Act;

(*b*) the amount and incidence of fines to be imposed under section 21;

(*c*) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such courts;

(*d*) the convening and constituting of courts-martial;

(*e*) the adjournment, dissolution and sittings of courts-martial;

(*f*) the procedure to be observed in trials by courts-martial;

(*g*) the confirmation and revision of the findings and sentences of courts-martial;

(*h*) the carrying into effect sentences of courts-martial;

(*i*) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation or imprisonment; and

(*j*) any matter in this Act directed to be prescribed.

(*3*) All rules made under this Act shall be published in the Gazette of India, and, on such publication, shall have effect as if enacted in this Act.

NOTE.

Rules have been framed under this section and are included in this Manual. The "notification" bringing them into force will be found in Part IV, while the Rules, with notes, are contained in Part II.

(*j*) *Prescribed*—See section 7 (*21*).

CHAPTER XII.

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS.

Property of deceased persons and deserters.

114. The following rules are enacted respecting the disposal of the property of every person subject to this Act who dies or deserts :—

(*1*) The commanding officer shall secure all the moveable property that is on the spot, and cause an inventory thereof to be made, and draw any pay and allowances due to the deceased or deserter.

(*2*) In the case of a deceased person who has left in a Government savings bank (including any post office savings bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper officer of the bank to pay the deposit to him forthwith notwithstanding anything in any departmental rules; and, after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(*3*) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental debts (if any) of the deceased, the commanding officer shall deliver over the property and the amount of the deposit (if any) received under clause (*2*) to that representative.

(*4*) In the case of a deceased person whose estate is not dealt with under clause (*3*), and in the case of any deserter, the commanding officer shall cause the property to be sold by public auction, and shall pay the regimental debts and other debts in camp or quarters (if any), and in the case of a deceased person the expenses of his funeral ceremonies, from the proceeds of the sale and the amount of the deposit (if any) received under clause (*2*).

(*5*) The surplus, if any, shall in the case of a deceased person be paid to his representative (if any), or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person.

(*6*) In the case of the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be forthwith remitted to the prescribed person.

Meaning of desertion.

Explanation.—A person shall be deemed to be a deserter within the meaning of this section who has been convicted of desertion, or who has without authority been absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended.

NOTE.

(*5*)—(*6*) *Prescribed person*—See Rule 165.

Disposal of certain property without production of probate, etc.

115. Property deliverable and money payable to the representative of a deceased person under section 114 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or

paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

NOTE.

Prescribed person.—See Rule 165.

Application of section 114 to lunatics.

116. The provisions of section 114 shall, so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane.

CHAPTER XIII.

MISCELLANEOUS.

Military Privileges.

Complaints against officers.

117. (*1*) Any person subject to this Act who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(*2*) When the officer complained against is the officer to whom any complaint should, under sub-section (*1*), be preferred, the aggrieved person may complain to such officer's next superior officer.

(*3*) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

(*4*) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

NOTE.

(*4*) *Channels . . . . specified by proper authority.*—See A. R. I., Vol. II.

Privileges of persons attending courts-martial.

118. (*1*) No president or member of a court-martial, no judge advocate or superintending officer, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from a court-martial, be liable to arrest under civil or revenue process.

(*2*) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

Exemption from arrest for debt.

119. (*1*) No person subject to this Act shall, so long as he belongs to His Majesty's Indian forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer.

(2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the court by the complainant.

Property exempted from attachment.

120. Neither the arms, clothes, equipment, accoutrements or necessaries of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

Application of the last two foregoing sections to reservists.

121. Every person belonging to the Indian Reserve Forces shall, when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act.

Priority of hearing by courts of cases in which Native officers and soldiers are concerned.

122. (1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer commanding a corps, whose decision shall be final.

NOTE.

For orders as to the speedy disposal of suits by or against officers or soldiers, see A. R. I., Vol. II.

The following is an extract from a circular regarding civil proceedings against soldiers serving in China :—

"Civil courts have received instructions to fix the hearing of suits to which soldiers of the Indian Army serving at stations in China are parties

for a date not less than four months in advance of the date of posting the summons or notice.

Immediately on receipt of a summons or notice a soldier should act as follows :—

(i) Authorise a person to defend the suit in his stead. The authority must be in writing, must be signed by the soldier in the presence of his commanding officer, and must be countersigned by the latter. (First Schedule, Order XXVIII, Code of Civil Procedure, 1908.) The person so authorised may defend the suit *in person* in the same manner as the soldier could do if present, or he may appoint a pleader to defend the suit on behalf of the absent soldier ; or

(ii) Appoint a pleader or recognised agent to act on his behalf. (Order III, *ibid.*) In both these cases, the person authorised under (i) or the pleader or agent appointed under (ii) *should be fully instructed* so as to be competent to defend the suit ; and the soldier must be content that the case should be decided on the merits of the defence put in on his behalf by such person or pleader ; or

(iii) If the soldier is not content to entrust the defence of his suit to such person or pleader, but considers it essential that he himself should be present, or that a longer time should be given him to collect materials for defence of his suit, he should forward a letter to a pleader, to be produced in court, instructing him to apply for an adjournment *and giving fully the special reasons for such request.* In this case the soldier should give the pleader *no other instructions*, nor authorise him to do anything but apply for an adjournment. If the court then declines to adjourn the case the decree would be passed '*ex parte*,' and the soldier on returning to India would be entitled to apply for the setting aside of the decree under First Schedule, Order IX, rule 13, *ibid* ; or

(iv) The soldier can instruct a person or pleader *to defend the suit and also to apply for an adjournment*, but this course is dangerous, as, if the adjournment is refused, the case is decided '*not ex parte*,' but on such defence as is put in, and the soldier thus loses his chance of subsequently taking action under Order IX, rule 13, above.

(*A. G.'s circular No. 53 F of 25th February 1910*)

With the exception of the special delay of four months, the above rules are equally applicable to suits against officers and soldiers serving in India or elsewhere, who cannot obtain leave of absence to appear personally. Instead, however, of applying for an adjournment as suggested in paragraph (iii), it will, when the officer or soldier is in India, be often sufficient if his agent or pleader applies to have the evidence of his principal taken on commission.

Arrangements similar to those already introduced in regard to China (*i.e.*, the four months' delay referred to above) have been made applicable to soldiers serving in Burma, in the East and Central Africa Protectorates, the Persian Gulf, Aden and other distant places. The periods prescribed vary from two to five months. See Adjutant General's circular No. 873—1 (A. G. 5), dated 27th March 1911.

Deserters and Military Offenders.

Capture of deserters.

123. (*1*) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose

apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, to military custody.

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

NOTE.

Civil authorities.—This includes political and police authorities.

Arrest by military authorities.

124. (1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

NOTE.

(3) The investigation herein provided for is necessary as a preliminary either to summary disposal of the case or the trial of the accused by court-martial.

Arrest by civil authorities.

125. Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police-officer, such magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

Inquiry on absence of person subject to Act.

126. (1) When any person subject to this Act has been absent without due authority from his duty for a period of sixty days, a court of inquiry shall, as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessaries; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

(3) If the person declared absent surrenders or is apprehended, the record or a copy thereof, purporting to bear the signature of the officer having the custody of the court-martial book, shall, on the trial of the person for desertion, be presumptive evidence of the facts therein recorded.

NOTE.

See Rule 159 for procedure of courts of inquiry held under this section.

Repeal.

127. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof: Repeal.

Provided that all warrants issued and persons enrolled or attested under the provisions of any of the said enactments shall be deemed to have been respectively issued, enrolled or attested under this Act.

THE SCHEDULE.

REPEAL OF ENACTMENTS.

(*See section 127.*)

Year.	No.	Short title.	Extent of repeal.
1869	V	The Indian Articles of War.	The whole.
1875	V	The Unattested Sepoys Act, 1875.	Ditto.
1891	XII	The Amending Act, 1891.	So much of section 2, sub-section (2) and the Second Schedule as relates to the Indian Articles of War.
1894	XII	The Indian Articles of War Amendment Act, 1894.	The whole.
1897	XIV	The Indian Short Titles Act, 1897.	So much of section 2 and the Schedule as relates to Act V of 1875.
1900		The Indian Articles of War Amendment Act, 1900.	The whole.
1901	IX	The Indian Articles of War Amendment Act, 1901.	Ditto.
1904	XIII	The Indian Articles of War Amendment Act, 1904.	Ditto.
1905		The Indian Articles of War Amendment Act, 1905.	Ditto.

THE INDIAN ARMY ACT RULES.

CONTENTS.

CHAPTER I.

PRELIMINARY.

RULES.

1. Short title.
2. Definitions.
3. Reports and Applications.
4. Forms in Appendices.
5. Exercise of power vested in holder of military office.
6. Cases unprovided for.

CHAPTER II.

ENROLMENT AND ATTESTATION.

7. Enrolling officers.
8. Persons to be attested.
9. Oath or affirmation to be taken on attestation.

CHAPTER III.

DISMISSAL AND DISCHARGE.

10. Discharge not to be delayed.
11. Discharge certificates.
12. Dismissal of convict.
13. Authorities empowered to authorize discharge.

CHAPTER IV.

INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL.

SECTION 1.—INVESTIGATION OF CHARGES AND REMAND FOR TRIAL.

Power of Commanding Officer.

14. Duty of commanding officer as to investigation of charge for offence.

RULES.

15. Disposal of the charge or adjournment for taking down the summary of evidence.
16. Remand of accused.
17. Summary award of punishment by commanding officer.

Framing Charges.

18. Charge-sheet and charge.
19. Commencement of charge-sheet.
20. Contents of charge.
21. Validity of charge-sheet.

Preparation for defence by accused person.

22. Opportunity for accused to prepare defence.
23. Warning of accused for trial.
24. Joint trial of several accused persons.

Exception from Rules.

25. Suspension of rules on the ground of military exigencies or the necessities of discipline.

Alternative Procedure.

26. Alternative Procedure.

SECTION 2.—GENERAL AND DISTRICT COURTS-MARTIAL.

Convening the Court.

27. Convening of general and district courts-martial.
28. Adjournment for insufficient number of officers.
29. Ineligibility and disqualification of officers for court-martial.
30. Composition of court-martial.

Procedure at Trial.—Constitution of Court.

31. Inquiry by court as to legal constitution.
32. Inquiry by court as to amenability of accused and validity of charge.

Procedure at Trial.—Challenge and Swearing.

33. Appearance of prosecutor and accused.
34. Proceedings for challenges of members of court.
35. Swearing or affirming of members.
36. Swearing or affirming of judge-advocate and other officers.
37. Persons to administer oaths and affirmations.

Prosecution, Defence and Summing-up.

RULES.

38. Arraignment of accused.
39. Objection by accused to charge.
40. Amendment of charge.
41. Special plea to the jurisdiction.
42. General plea "Guilty" or "Not guilty."
43. Plea in bar.
44. Procedure after plea of "Guilty."
45. Withdrawal of plea of "Not guilty."
46. Plea "Not guilty" and case for the prosecution.
47. Close of case for the prosecution and procedure for defence where accused does not call witnesses.
48. Defence where accused calls witnesses.
49. Summing-up by judge-advocate.

Finding and Sentence.

50. Consideration of finding.
51. Form and record of finding.
52. Procedure on acquittal.
53. Procedure on conviction.
54. Sentence.
55. Recommendation to mercy.
56. Signing and transmission of proceedings.

Confirmation and Revision.

57. Revision.
58. Promulgation.
59. Mitigation of sentence on partial confirmation.
60. Confirmation of finding on alternative charges.
61. Confirmation notwithstanding informality in, or excess of, punishment.
62. Member or prosecutor not to confirm proceedings.

Proceedings of General and District Courts-Martial.

63. Seating of members.
64. Conduct of proceedings.
65. Responsibility of officer conducting the proceedings.
66. Power of court over address of prosecutor and accused.
67. Procedure on trial of accused persons together.
68. Separate charge-sheets.
69. Sitting in closed court.
70. Continuity of trial and adjournment of court.
71. Proceedings on death or illness of accused.

RULES.

72. Death, retirement or absence of president.
73. Taking of opinions of members of court.
74. Procedure on incidental question.
75. Swearing of court to try several accused persons.
76. Swearing of interpreter and shorthand writer.
77. Evidence, when to be translated.
78. Record in proceedings of transactions of court-martial.
79. Custody and inspection of proceedings.
80. Transmission of proceedings after finding.

Friend of Accused and Counsel.

81. Accused may have a person to assist him on trial.
82. Counsel allowed in certain general and district courts-martial.
83. Requirements for appearance of counsel.
84. Counsel for prosecution.
85. Counsel for accused.
86. General rules as to counsel.
87. Qualifications of counsel.
88. Statement by accused defended by counsel or officer.

Judge-Advocate.

89. Disqualification of judge-advocate.
90. Substitute on death, illness or absence of judge-advocate
91. Powers and duties of judge-advocate.

SECTION 3.—SUMMARY COURTS-MARTIAL.

92. Proceedings.
93. Evidence, when to be translated.
94. Assembly.
95. Swearing or affirming of court and interpreter.
96. Swearing of court to try several accused persons.
97. Arraignment of accused.
98. Objection by accused to charge.
99. Amendment of charge.
100. Special pleas.
101. General plea of " Guilty " or " Not guilty."
102. Procedure after plea of " Guilty."
103. Withdrawal of plea of " Not guilty."
104. Procedure after plea of " Not guilty."
105. Witnesses in reply to defence.
106. Verdict.

RULES.

107. Finding.
108. Procedure on acquittal.
109. Procedure on finding of guilty.
110. Sentence.
111. Signing of proceedings.
112. Charges in different charge-sheets.
113. Clearing the court.
114. Adjournment.
115. Friend of accused.
116. Memorandum to be attached to proceedings.
117. Promulgation.
118. Promulgation to be deferred in certain circumstances.
119. Review of proceedings.

SECTION 4.—GENERAL PROVISIONS.

Witnesses and evidence.

120. Calling of all prosecutor's witnesses.
121. Calling of witness whose evidence is not contained in summary.
122. List of witnesses of accused.
123. Procuring attendance of witnesses.
124. Procedure when essential witness is absent.
125. Withdrawal of witnesses from court.
126. Oath or affirmation to be administered to witnesses.
127. Mode of questioning witness.
128. Questions to witnesses by court or judge-advocate.
129. Re-calling of witnesses and calling of witnesses in reply.

Addresses.

130. Addresses may be in writing.

Insanity.

131. Provision as to finding of insanity, and custody of insane person.

Preservation of Proceedings.

132. Preservation of proceedings.
133. Right of person tried to copies of proceedings.
134. Loss of proceedings.

Irregular Procedure when no injustice is done.

135. Validity of irregular procedure in certain cases.

Offences of Witnesses and others.

RULES.

136. Offences of witnesses and others.

SECTION 5.—SUMMARY GENERAL COURTS-MARTIAL.

137. Convening the court and record of proceedings.
138. Charge.
139. Trial of several accused persons.
140. Challenges.
141. Swearing or affirming the court.
142. Arraignment.
143. Plea to jurisdiction.
144. Evidence.
145. Defence.
146. Evidence need not be recorded.
147. Finding and sentence.
148. Proceedings after sentence or finding.
149. Adjournment.
150. Application of rules.
151. Evidence of opinion of convening officer.

SECTION 6.—EXECUTION OF SENTENCES.

152. Committal warrants.
153. Warrants under section 109 of the Act.
154. Sentence of dismissal or suspension.
155. "Regulation cat."

CHAPTER V.

COURTS OF INQUIRY.

Losses or thefts of arms.

156. Court of inquiry when rifles, etc., are lost or stolen.
157. Collective fine may be imposed.

Regulations for courts of inquiry other than courts of inquiry held under section 126 of the Act.

158. Courts of inquiry.

Regulations for courts of inquiry under section 126 of the Act for the purpose of determining the illegal absence of persons subject to that Act.

159. Courts of inquiry as to illegal absence under section 126 of the Act.

CHAPTER VI.

PRESCRIBED OFFICERS, AUTHORITIES AND OTHER MATTERS.

RULES.

160. Prescribed officers under section 6 of the Act.
161. " Corps " prescribed under section 7 (9) of the Act.
162. Prescribed officer under section 19 of the Act.
163. Prescribed authorities under section 52 of the Act.
164. Prescribed authorities under sections 69 and 70 of the Act.
165. Prescribed persons under sections 114 and 115 of the Act.

FIRST APPENDIX.

Forms of Enrolment.

SECOND APPENDIX.

Forms of Charges.

THIRD APPENDIX.

Forms as to Courts-Martial.

FOURTH APPENDIX.

Warrants under sections 107 and 109 of the Act.

INDIAN ARMY ACT RULES.

CHAPTER I.

PRELIMINARY.

1. These rules may be cited as the "Indian Army Act Rules." Short title.

2. In these rules, unless there is anything repugnant in the subject or context,— Definitions.

(A) "Proper military authority," when used in relation to any power, duty, act or matter, means such military authority as, in pursuance of the Regulations of the Army or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) "The Act" means the Indian Army Act, 1911.

3. Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise, dispenses with the writing. Reports and Applications.

4. (A) The forms set forth in the appendices to these rules, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient, but a deviation from such forms will not, by reason only of such deviation, render any charge, warrant, order, proceedings or other document invalid. Forms in Appendices.

(B) An omission of any such form will not, by reason only of such omission, render any act or thing invalid.

(C) The notes to, and instructions in, the forms will be considered as instructions which it is expedient to follow in all cases to which such notes and instructions apply but shall not have the force of rules.

5. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service. Exercise of power vested in holder of military office.

6. In any case not provided for by these rules such course will be adopted as appears best calculated to do justice. Cases unprovided for.

CHAPTER II.

ENROLMENT AND ATTESTATION.

Enrolling officers.

7. (A) The following officers shall be "enrolling officers" for the purposes of section 8 of the Act:—

(i) All recruiting officers (ii) All assistant recruiting officers. (iii) The officer commanding a station.	As regards all persons.
(iv) The officer commanding a corps. (v) The officer commanding the depôt of a corps	As regards persons enrolled in that corps.
(vi) The officer commanding a battery. (vii) The officer commanding a company of artillery. (viii) The officer commanding an artillery ammunition column. (ix) The officer commanding an artillery depôt	As regards persons enrolled in an artillery corps.
(x) The officer commanding a reserve centre.	As regards persons enrolled in the reserve.
(xi) The officer commanding a transport corps or cadre. (xii) The officer in charge supplies or transport of a station. (xiii) The officer commanding a combatant unit to which transport is permanently attached.	As regards persons enrolled in the Supply and Transport Corps.
(xiv) The principal medical officer of a division or brigade. (xv) The senior medical officer of a station.	As regards persons enrolled in the Army Hospital or Army Bearer Corps.
(xvi) The staff officer, medical mobilisation stores, of a division.	As regards persons enrolled in the reserve of the Army Bearer Corps.
(xvii) The officer (other than a departmental officer with honorary rank) in charge of any ordnance establishment.	As regards persons enrolled in the Ordnance Department.
(xviii) The officer in charge of any division or branch of any other department.	As regards persons enrolled in that department.
(xix) The adjutant of a railway volunteer corps.	As regards persons enrolled in the reserve of a military railway company.
(xx) The officer in charge of a fort armament establishment.	As regards persons enrolled in an artillery corps as fort armament lascars.
(xxi) The officer in charge of a coast-defence establishment.	As regards persons enrolled in the Indian Coast Artillery.
(xxii) The officer commanding a British cavalry or infantry unit.	As regards persons enrolled in the corps of followers, British cavalry or infantry.

(B) On a person being enrolled the enrolling officer shall forward his enrolment paper to the officer having the custody

of the Long Roll of the corps or department for which he has been enrolled, or, if more than one Long Roll is maintained in such corps or department, to the officer having the custody of one of such Long Rolls, and that officer shall, on receiving such paper, cause his name to be entered in the Long Roll.

(A) (*a*) *and* (*xvi*).—Direct enrolments into the reserve of a corps can be effected *either* by the officers here indicated or by the ordinary enrolling officers of the corps of which the reserve forms part.

(B) *Enrolment paper.*—See First Appendix.

Corps.—See Indian Army Act, section 7, and Rule 161 (A). Every person enrolled under the Act must belong to some corps or department from which he can only be transferred in accordance with the conditions of his enrolment (if they provide for such transfers) or with his own consent. He can be transferred, with or without his consent, from one portion of his corps or department to another.

If the enrolling officer is the custodian of the Long Roll, he will, of course, make the entry himself.

Persons to be attested.

8. All combatants, and the following enrolled persons other than combatants, shall, when reported fit for duty, be attested as provided in section 12 of the Act:—

(i) Reservists of Military Railway Companies (Traffic and Locomotive Section).

(ii) Mule, Bullock and Camel Drivers serving in the standing transport of the Supply and Transport Corps, and persons of the same classes serving in units of that corps raised on mobilisation who may be selected for non-commissioned rank.

(iii) Transport Veterinary Dafadars.

(iv) Lascars of the Ordnance Department employed in Arsenals and Depôts.

(v) Men of the Army Bearer Corps.

Provided that a lascar of the Ordnance Department employed in an Arsenal or Depôt shall not be attested until he has completed a period of probation of six months.

Oath or affirmation to be taken on attestation.

9. (A) The oath or affirmation to be taken on attestation will be in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience.

Form of oath.

I————do swear that I will be faithful and bear true allegiance to His Majesty the King-Emperor, His heirs and successors, and that I will, as in duty bound, honestly and faithfully serve in His Majesty's Indian Forces and go wherever I may be ordered by land or sea, and that I will observe and obey all commands of any officer set over me even to the peril of my life. So help me God.

The second person may, when necessary, be substituted for the first in this form of oath, and the words "So help me God" omitted or varied.

Form of affirmation.

-solemnly affirm in the presence of Almighty God that I will be faithful and bear true allegiance to His Majesty the King-Emperor, His heirs and successors, and that I will, as in duty bound, honestly and faithfully serve in His Majesty's Indian Forces and go wherever I may be ordered by land or sea, and that I will observe and obey all commands of any officer set over me even to the peril of my life.

(B) The oath or affirmation prescribed in this rule shall, whenever practicable, be administered by the commanding officer of the person to be attested (or in the presence of the said officer by a person empowered by him to administer it) in the manner described in section 12 of the Act. If it is not so administered, it may be administered by a magistrate or such officer as is hereinafter indicated; that is to say,—

A recruiting officer or assistant recruiting officer;

The officer commanding a station;

The adjutant of a railway volunteer corps (as regards reservists of military railway companies only).

(A) Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it, the latter on the Granth. Hindus and Muhammadans are generally affirmed.

The above affirmation—for Muhammadans and Hindus—is (in Hindustani) as follows:—

"Main Hakk Taálá Khudá ko házir aur názir ján ke (Parmeshwar Bhagwán ko ján mán ke) ímán (dharm), se ikrár (bachan) kartá húṇ ki maiṇ Sháh Álam-panáh aur uske wárison aur já-nishínoṇ ká wafádár aur sachchá farmáṇbardár rahúngá aur jaisá ki merá farz hai, maiṇ ímándári aur wafádárí se Sháh Álam-panáh ki Hindústání fauj meṇ naukarí karúṇgá, aur jahán mujhe hukm hogá, tarí yá khushkí ke ráste jaúngá, aur har ek afsar jo ki mere úpar mukarrar hogá us ke tamám hukmoṇ ká khiyál rakhúṇgá, aur mánúṇgá kháh ján ká bhí dar ho."

The Pushtu version is:—

"Zah Pák Khudáí Ta'álá ta házir au názir pohegim au la ímán sara ikrár kawam chi zah ba da Bádsháh Álam-panáh au da hagha ca wárisáno au jánishíno pa makh kkhi, pa wafádári sara au pa khpul sidk sara, khádmat kawam; au laka chi má bándi ferz dai, zah ba pa sidk sara au pa ímán sara da Bádsháh Álam-panáh pa Hindústání fauj kkhi naukari kawam, au har cherta chi má ta hukm wu shí da daryáb ya ca khushkhi pa lári ba dzum, au har afsar chi pa ma bándí mukarrar wi, da hagha tol hukmúnota ba khiyál kawam au ba kabúl e laram agarchi pa kkhi da ján khatar ham wí."

The oath for Sikhs begins—

"Maiṇ Srí Gurú Granth Sáhib J. k. Sugaṇd khátá húṇ ki maiṇ "

and goes on as in the Hindustani affirmation. It is repeated after the person administering it.

(B) *In the manner, etc.*, *i.e.*, in front of his corps or such portion thereof or such members of his department as may be present.

If not so administered, etc.—This "prescribes" the other officers who can, under section 12 of the Act, attest enrolled persons.

CHAPTER III.

Dismissal and Discharge.

Discharge not to be delayed.

10. Every person enrolled under the Act shall, when entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed.

11. (A) Every native officer or warrant officer who is dismissed or discharged shall be furnished by his commanding officer with a certificate setting forth, in respect of such native officer or warrant officer, the same matters as are required to be set forth in a certificate furnished under section 17 of the Act to a person enrolled thereunder who is dismissed or discharged. A certificate furnished under the provisions of this rule or of section 17 of the Act, as the same may be, is hereinafter called a "discharge certificate." Discharge certificates.

(B) The dismissal of a person subject to the Act, whose dismissal otherwise than by sentence of a court-martial is duly authorized, or the discharge of a person so subject whose discharge is duly authorized, shall be carried out by the commanding officer of such person with all convenient speed, but subject to the provisions of Rule 12; and shall take effect from the date on which a discharge certificate is furnished to such person, or from such subsequent date as may be specified in that certificate.

(C) A discharge certificate may be furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed or discharged or by its transmission by post to such person. If so transmitted, such certificate shall, for the purposes of this rule, be deemed to have been furnished on the date on which, having been properly addressed and prepaid, it was posted by registered post.

(B) *All convenient speed.*—See note to section 16 of the Act. This will allow of such a short delay as will admit of the person's pay and allowances being conveniently adjusted, and his being relieved from the charge of any cash or stores which may have been entrusted to him. If the person to be dismissed or discharged is performing military duties, or is in military custody, the delivery of the certificate must be delayed so as to admit of his relief from these duties or release from that custody either before, or simultaneously with, effect being given to his dismissal or discharge by the delivery of the certificate.

Such subsequent date.—This will admit of a man whose discharge is due on a Sunday or holiday receiving his discharge certificate on the last working day of his service. In such a case the subsequent date on which the discharge is to take effect should be entered in the certificate and the man be paid up to and for that day. These words will also cover the case of a man discharged in his absence—*e.g.*, a native officer on furlough pending retirement. In such a case [see (C) above] the certificate is deemed to be furnished when duly posted. The discharge can take effect either from that date or from some subsequent date specified in the certificate.

The commanding officer should, as a rule, publish the date of dismissal or discharge in his orders.

12. The commanding officer of a person sentenced to transportation or to rigorous imprisonment for a term exceeding three months shall, in accordance with section 15 of the Act, authorize his dismissal as follows:— Dismissal of convict.

(A) In the case of a court-martial sentence he shall authorize the dismissal as soon as possible after the sentence is promulgated.

(B) In the case of a sentence by a criminal court against which no appeal has been preferred, he shall authorize the dismissal as soon as possible after the expiry of the period within which the person under

sentence could have preferred an appeal against his sentence. If such an appeal has been preferred, and has not resulted either in the acquittal of such person or in his sentence being reduced to three months' rigorous imprisonment or less, he shall authorize the dismissal as soon as possible after the disposal of such appeal.

(c) If proceedings which may legally result in the reduction of the sentence of a criminal court (otherwise than on appeal) are pending in any other court, the commanding officer of the person under sentence may postpone his dismissal until the result of such proceedings is known, and shall then authorize the dismissal as soon as possible.

Provided that—

If a charge for an offence under the Act is pending against a person who is liable to dismissal under this rule, the commanding officer of such person may postpone his dismissal for such period, not exceeding three months, as will admit of his trial by court-martial on such charge, or of its being otherwise disposed of by the proper military authority, and shall, on the expiry of such period, authorize the dismissal as soon as possible, unless such person has been already dismissed by sentence of a court-martial which has tried him on the aforesaid charge.

(A) *As soon as possible*—The commanding officer should, as a rule, authorize and carry out (see Rule 11) the convict's dismissal on the day on which the sentence is promulgated, and the convict should be immediately despatched to a civil prison. Indian Army Act, section 107. If, however, he is necessarily retained for a *short* period in military custody, matters should be so arranged that his dismissal takes effect simultaneously with his despatch to prison, as it is obviously inexpedient that a man in military custody should not be amenable to military discipline.

(B) See notes to Indian Army Act, section 15. The commanding officer should communicate with the officer in charge of the prison in which the convict is confined and, on ascertaining that the period within which he could have appealed has expired and that no appeal has been preferred, should forthwith proceed with the dismissal. Similarly, if the convict appeals and his sentence, as finally dealt with by the appellate court, involves dismissal, the commanding officer should, on ascertaining the result of the appeal, forthwith proceed with the dismissal. The result of the appeal should be ascertained from the appellate court or from the officer in charge of the prison. The period within which an appeal against a sentence of transportation or rigorous imprisonment must be preferred is sixty days from the date of sentence if the appeal is to the High Court, and thirty days if it is to any other court (Indian Limitation Act, 1908, First Schedule, Nos. 154 and 155).

(C) The sentences of criminal courts may in certain circumstances be reduced, otherwise than on appeal, by the higher criminal courts. If the commanding officer ascertains that proceedings which may result in such a reduction are pending, he may, in his discretion, postpone dismissal until the result of the proceedings is known.

Proviso.—When a convict's dismissal is postponed under the proviso to this rule, the commanding officer should lose no time in bringing him to trial or in referring the case for the orders of superior authority, as the trial, if held, must be concluded before the convict is dismissed.

Authorities empowered to authorize discharge.

13. Instructions as to the authorities empowered to authorize the discharge of persons subject to the Act, and the procedure to be observed in each case, are contained in the following table.

In this table " Commanding Officer " means the officer commanding the corps or department to which the person to be discharged belongs. It also includes, as regards persons under their command, the officers specified in items (iii), (v) to (xiv), (xvii), (xviii), and (xx) to (xxii) of Rule 7 (A). Any power conferred by this rule on any authority may be exercised by any higher authority.

To which the person to be discharged belongs.—That is, the corps or department in which he was enrolled or to which he has been transferred. See Rules 7 (B) and 161 (A), and notes to the former rule. The case of the larger corps and departments, which have either no definite commanding officer, or the commanding officer of which is at a distance, is provided for in the latter part of this rule, which gives the powers as to discharge of a commanding officer to certain officers on the spot.

TABLE.

Class.	Cause of discharg	Competent authority to authorize discharge.	Special instructions.
Native officers (other than native officers of the Indian Subordinate Medical Department).	(i) At his own request, on transfer to the pension establishment.	Commanding officer.	Discharge should be carried out within two months of application unless war is imminent or existing.
	(ii) On resignation of his commission	Governor General in Council.	
	(iii) Having been found medically unfit for further service.	Commanding officer.	To be carried out only on the recommendation of an Invaliding Board
	(iv) On transfer to the pension establishment, otherwise than at his own request, or under item (iii).	Governor General in Council.	
	(v) With gratuity, otherwise than at his own request, or under item (iii).	Ditto.	
	(vi) His services being no longer required.	Ditto.	
Indian Subordinate Medical Department.	(vii) At his own request, on transfer to the pension establishment.	Director-General of the Indian Medical Service.	
	(viii) On resignation of his commission or warrant.	Native officers—As in (ii). Warrant officers—Director-General of the Indian Medical Service.	

Class.	Cause of discharge.	Competent authority to authorize discharge	Special instructions.
Indian Subordinate Medical Department—*contd.*	(ix) Having been found medically unfit for further service.	Director-General of the Indian Medical Service.	To be carried out only on the recommendation of an Invaliding Board.
	(x) On transfer to the pension establishment, otherwise than at his own request, or under item (ix).	Native officers—As in (iv). Warrant officers—Director-General of the Indian Medical Service	
	(xi) His services being no longer required.	Native officers—As in (vi). Warrant officers—Brigade Commander.	The Brigade Commander, or higher authority, will, save in exceptional circumstances, exercise this power only in consultation with the Director-General of the Indian Medical Service
	(xii) At his own request, on transfer to the pension establishment.	Commanding officer.	To be carried out in accordance with the conditions of his enrolment and with section 18 of the Act and Rule 10.
	(xiii) At his own request, on fulfilling the conditions of his enrolment.	Ditto	To be carried out in accordance with the conditions of his enrolment and with section 18 of the Act and Rule 10.
der Act wl	(xiv) Having been found medically unfit for further service	Ditto	To be carried out only on the recommendation of an Invaliding Board.
	(xv) Having re-entered the service after being dismissed or discharged, without, at the time of such re-entry, stating the fact of his previous dismissal or discharge, or showing his certificate of dismissal or discharge.	Ditto.	

Class.	Cause of discharge.	Competent authority to authorize discharge.	Special instructions.
Persons enrolled under the Act who have been attested —*contd.*	(xvi) Not being a good rider.	Commanding officer.	Only applicable to persons enrolled as combatants in a mounted corps and whose duties require them to be mounted. Liability to discharge under this item ceases on completion of three years' service from date of enrolment.
	(xvii) On transfer to the pension establishment, or with gratuity, otherwise than at his own request, or under item (xiv).	Brigade Commander.	
	(xviii) His services being no longer required.	Ditto.	
Persons enrolled under the Act, but not attested.	(xix) All classes of discharge.	Commanding officer.	Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

CHAPTER IV.

Investigation of Charges and Trial by Court-Martial.

Section 1.—Investigation of Charges and Remand for Trial.

Power of Commanding Officer.

Duty of commanding officer as to investigation of charge for offence.

14. Every commanding officer shall take care that a person under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

Provided that Sunday, Good Friday and Christmas day shall be excluded in reckoning the periods of forty-eight hours specified in this rule.

Commanding officer.—See Indian Army Act, section 7 (6).

This rule applies to officers as well as soldiers.

Investigated.—This means that the investigation must be commenced, though it may be impossible to complete it within the time here specified.

Shall be reported.—The report should be made by letter and should refer specifically to the case and state the reasons justifying the detention and preventing the investigation. The absence of an important witness would justify a remand; or the accused might be ordered to return to his duty, with a distinct intimation that his case will be investigated so soon as the absent witness can be obtained.

Disposal of the charge or adjournment for taking down the summary of evidence.

15. (A) Every charge against a person subject to the Act shall be heard in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence.

(B) The commanding officer shall dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Act has been committed, and may do so if, in his discretion, he thinks the charge ought not to be proceeded with.

(C) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either—

(1) dispose of the case summarily; or

(2) refer the case to the proper superior military authority; or

(3) adjourn the case for the purpose of having the evidence reduced to writing; or

(4) if the accused is under the rank of warrant officer, order his trial by summary court-martial.

Provided that the commanding officer shall not order trial by summary court-martial without reference to the officer empowered to convene a district court-martial for the trial of the alleged offender unless either—

(i) the offence is one which he can try by summary court-martial without reference to that officer; or

(ii) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(D) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(E) The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(F) The evidence of each witness when taken down, as provided in (D) and (E), shall be read over to him, and shall be signed by him, or, if he cannot write his name, shall be attested by his mark and witnessed. Any statement of the accused material to his defence shall be added in writing and read over to him.

(G) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand English, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(A) Every offence for which a person subject to the Indian Army Act can be punished under that Act is either a military offence, or a civil offence punishable under section 41 or 42 of the Act. If it is a military offence, it is either particularly specified in the Act or is an act of omission prejudicial to good order and military discipline punishable under section 39 (i). Where the act or omission is not a civil offence punishable under section 41 or 42 and is not specified in the Act, the commanding officer must consider whether it is or is not prejudicial to good order and military discipline as, if not, it is not punishable under military law. He must also consider whether, having regard to the limitations of time prescribed by the Act (section 67), the accused is liable to be proceeded against.

Persons who commit serious offences against the ordinary law, which are not also crimes under military law, should be made over to the Civil Power. As to procedure in the case of offences which are punishable under both laws, see Indian Army Act, sections 69 and 70, the notes thereto, and Rule of Procedure 164; see also Army Regulations, India, Volume II, Appendix IX.

(B) *Ought not to be proceeded with.*—If the commanding officer is of this opinion, on account either of the evidence being doubtful, or of the triviality of the case, or of the good character of the accused, or of a doubt whether the act or omission is prejudicial to good order and military discipline, or as a matter of discretion, for any reason, he must dismiss the case. To make an entry against the man without punishment is not dismissal of the case. The case must also be dismissed if the man has been previously acquitted or convicted of the offence by any court, military or civil, or has been summarily dealt with under section 20 or 22—Indian Army Act, section 66.

No particular time is fixed within which a commanding officer must dispose of a case, so that he can always carefully consider a difficult case; but as a rule he should decide immediately, and should never delay for more than a day, unless further evidence is required.

(C) There is no offence which a commanding officer is *compelled* by the Act or the Rules to send before a court-martial and each case should be considered on its merits.

A summary of evidence is to be made in every case where it is intended to remand the accused for trial by a general, district or summary court-martial, except only where it is intended to try him forthwith by summary court-martial without reference to superior authority, either because the charge admits of this, or because of such grave necessity as is referred to in proviso (ii) to paragraph (C) of this rule The offences which a commanding officer must (except in cases of grave necessity falling under the above proviso) refer to superior authority before ordering trial by summary court-martial are detailed in section 74 of the Indian Army Act. All other offences can be tried by summary court-martial without such reference.

The summary of evidence, or a true copy thereof, should accompany the application for a general or district court-martial or for sanction to hold a summary court-martial when such sanction is necessary.

Without unnecessary delay.—The adjourned hearing for reducing the evidence to writing should, if possible, be held the same day as the investigation.

Dispose of the case summarily, i.e., by awarding one of the punishments specified under section 20 of the Indian Army Act, and which he can award (see Army Regulations, India, Volume II). A term of imprisonment awarded by a commanding officer should be awarded in days and will commence to run from the day of award In law (in the absence of any special provision) there is no division of a day, and therefore, however late in the day a prisoner is committed, his term of imprisonment is considered to have commenced at the first minute of that day, that is, the first minute after midnight. The sentence, therefore, will begin on the first minute of the day of award.

Proper superior military authority.—See Rules 2 and 3.

(D)—(G) The commanding officer, on adjourning the case for the purpose of having the evidence reduced to writing, may direct another officer to take down the evidence. The officer should be one of some experience and with a good knowledge of the vernacular. The adjutant, or the accused person's squadron or double-company commander, should generally be detailed. See also note to Rule 33. An officer who has given material evidence at the investigation must not be detailed for this purpose. At the adjourned hearing the accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between the evidence taken down and that given before the commanding officer, such, *e.g.*, as would arise if the witness's answers in cross-examination before the commanding officer were omitted. In taking the evidence immaterial statements may be omitted.

If the accused has made a statement, the material parts of his statement are to be added, but it will be advisable usually to take down fully any statement he makes; he cannot be required to sign it. The statement of an accused person can only be given in evidence at the trial if it is voluntary. Before, therefore, an accused person makes any statement, he should be warned that he is not bound to say anything, and that any statement he makes may be used as evidence against him; and, if he is asked for his defence, a similar warning should be given to him; but if the statement was made voluntarily the mere fact that the warning was not given will not prevent the statement being used as evidence. In no case must he be authoritatively called on to account for his proceedings, or required to make any statement.

For the power to dispense with the provisions of paragraphs (D), (E), (F), (G) of this rule, see Rule 25.

Remand of accused.

16. (A) The evidence and statement (if any) taken down in writing in pursuance of Rule 15 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer, who thereupon shall either—

(1) remand the accused for trial by court-martial; or

(2) refer the case to the proper superior military authority; or

(3) if he thinks it desirable, rehear the case and dispose of it summarily.

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case requires.

(C) The summary of evidence, or a true copy thereof, shall be laid before the court-martial before which the accused is tried on the assembly of the court.

(A) The commanding officer is to consider the evidence after it has been reduced to writing, and should be careful to note whether or not the evidence taken down in the summary corresponds to that given before

him at the investigation. On the evidence being reduced to writing a different aspect may be given to the case; if so, the commanding officer may rehear the case and, if he thinks fit, dispose of it summarily, or try it by summary court-martial if the law permits him to do so. See Indian Army Act, section 74, and notes to preceding rule.

If the commanding officer determines to remand the accused for trial by court-martial he will have to consider by what class of court-martial he should be tried. As a general rule this will be a summary court-martial.

Where precise information as to the locality of the offence is likely to be of use in understanding a case, a plan drawn to scale should accompany any summary of evidence submitted to superior authority. If it is considered necessary that matters of evidence should be shown on this plan (*e.g.*, place where the body was found, in a murder case, or position of accused or a witness) the plan should be in duplicate, and these matters should only appear on one copy. If the plan is subsequently produced at the trial, the *unmarked* copy will be used, being put in and sworn to by the person who made it. These matters of evidence will then (if necessary) be marked on it, in accordance with the evidence given at the trial, and a note to that effect made in the proceedings.

Vernacular documents attached to a summary of evidence should be accompanied by a translation.

(B) Before applying for a general or district court-martial the commanding officer should comply with section 61 (2) of the Indian Army Act, as—unless the convening officer happens to order trial by British officers—the necessity for giving the accused the opportunity of claiming trial by such officers will otherwise cause unnecessary delay.

Unnecessary delay.—This delay should not ordinarily exceed thirty-six hours, in calculating which Sunday, and the other days mentioned in the proviso to Rule 14, should be excluded.

(C) Where the accused is charged with several offences the evidence in relation to each offence should be kept, so far as possible, distinct.

The convening officer in the case of a general or district court-martial should always order a copy of the summary of evidence to be given to the accused person if the case is complicated.

17. When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase the punishment for that offence. Summary award of punishment by commanding officer.

Awarded punishment.—See Rule 15 (C) (1) and notes.

The award is considered final when the accused has been removed from the presence of the commanding officer. The commanding officer can at any time before its completion diminish the punishment, though he cannot add to it.

A person amenable to the Indian Army Act has no right to claim a trial by court-martial instead of submitting to the summary award of his commanding officer, but the commanding officer may, if he thinks proper, vindicate the justice of his award finding such person guilty, by remanding him for trial by court martial instead of punishing him summarily, but he must do so before the accused leaves his presence after the award is made.

Framing Charges.

18. (A) A charge-sheet shall contain the whole issue or issues to be tried by a court-martial at one time. Charge-sheet and charge.

(B) A charge means an accusation contained in a charge-sheet, that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.

Commencement of charge-sheet.

19. Every charge-sheet shall begin with the name and description of the person charged, and state, in the case of an officer, his rank, name, and corps or department (if any), and in the case of a warrant officer, non-commissioned officer, soldier or other enrolled person, his number, rank, name and corps or department (if any). When the accused person does not belong to the regular forces the charge-sheet shall show by the description of him, or directly by an express averment, that he is amenable to Indian military law in respect of the offence charged.

The name or description of a person charged is immaterial so long as his identity is established. In military courts it is also necessary to establish that he is subject to military law. If he is a civilian, or if his name and position are unknown, as may happen in the case of active service, the charge should expressly aver that he was subject to military law, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must in such a case be given showing that the person falls under the liability clause of the Act (Indian Army Act, section 2).

When a soldier holding an appointment is brought to trial by court-martial, he is to be arraigned in his army rank with his appointment also designated, thus—

No. – Sepoy (Lance Naick) – –
Regiment

Contents of charge.

20. (A) Each charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.

(B) Each charge shall be divided into two parts—

(1) The statement of the *offence;* and

(2) the statement of the *particulars* of the act, neglect, or omission constituting the offence.

(C) The offence shall be stated, if not a civil offence, in the words of the Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(D) The *particulars* shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as constituting the offence.

(E) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first mentioned charge as well as of the other charge.

(F) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts, and the sum of the loss or damage it is intended to charge.

(A) to (C) See Second Appendix, Forms of Charges, and note as to use of Forms of Charges.

A single transaction, although technically disclosing more than one offence, should not as a rule be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubor-

dinate language, the violence alone should be charged, the language being admissible in evidence as to the intent.

When offences against civil law are tried by court-martial under sections 41 and 42 of the Indian Army Act, although technical terms need not be used in the charge, the essence of the civil offence must be expressed.

(D) If of the acts or omissions indicated in the particulars sufficient are not proved to constitute the offence charged, but nevertheless other acts and omissions not so indicated sufficient to constitute the offence are proved, the accused is entitled to be acquitted of the charge, but may be detained in custody and be tried anew in respect of the last mentioned acts or omissions. For instance, if the accused is charged with having been absent without leave, in that he was absent from his regiment without leave on the 10th, 11th and 12th days of August, and he proves that on those three days he was in the lines on duty, but it appears from the evidence that he was absent without leave on the 21st of the same month, the date is so material as to amount to a new charge, and the accused must be acquitted, though he may be tried on a new charge of being absent without leave on the 21st of August. In such a case a special finding is of no avail, as it cannot introduce new material particulars not mentioned in the charge. See note to Rule 51 (c).

If, however, he was charged with being absent from the 10th of August until he was apprehended on the 21st, and it is proved that he was absent during that time, but that his absence began on the 1st of August and he was apprehended on the 23rd, he may be convicted, as the material part of the charge, absence from the 10th to 21st of August, is proved.

When there is such a divergence between the head of charge and the statement of the particulars that each in substance discloses a different offence, the charge is bad, and a conviction, even on a plea of guilty, could not be upheld. But the incidental mention of a separate offence in the particulars would not of itself invalidate the charge, as, for instance, the mention in the particulars of a charge for assaulting a superior officer [section 27 (*d*)], of grossly insubordinate language [section 28 (*a*)], which accompanied a menacing gesture and showed its purport, or a charge of desertion (in which the duration of the absence was an element) where the particulars stated that the accused absented himself without leave for the time stated. Where the head of charge discloses no offence, but the statement of particulars does, and with sufficient precision to inform the accused of his offence, a conviction of the offence disclosed in the particulars was, notwithstanding the irregularity, held good. Where the head of charge states an offence, but the statement of particulars discloses no offence, the charge is not invalid, if, taken as a whole, it informs the accused of the allegations he is called upon to meet, and the offence for which he is arraigned.

(E) If in such cases the accused were to be acquitted of the first charge and convicted of the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

(F) If these facts are stated in the charge, evidence must be given by the prosecution to show the amount which ought to be deducted from the pay and allowances of the accused.

(A) to (F) Commanding officers should seek the advice of the deputy judge-advocate general of the army in any case where doubt exists as to the manner in which a charge should be framed for submission to a court-martial.

Validity of charge-sheet.

21. (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included, though not expressed therein.

(A) Although the trial of an offender is not invalid on account of a mistake in a name, such mistakes are dangerous, in so far as they may

lead to mistakes of substance. For instance, the accused might thus be mistaken for a man named in a certificate of previous conviction or in the defaulters' book, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has been enrolled and is commonly known under an assumed name he may be described by that name. The court has power to amend the charge by correcting under Rule 40 or Rule 99 any mistake in the name or description of accused.

(B) The object of this paragraph is purely legal, and does not touch the duties of an officer. If the proceedings were questioned in a court of law it would require that court to presume matters which, though not stated in the charge, were necessary to support its validity.

Preparation for defence by accused person.

Opportunity for accused to prepare defence.

22. An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend or legal adviser whom he may wish to consult.

The freest communication which is consistent with good order and military discipline and with the safe custody of the accused should be allowed. A failure to give the accused full opportunity of preparing his defence, and free private communication with others for the purpose, may invalidate the proceedings.

The accused is not bound to call as witnesses every one with whom he communicates with reference to giving evidence

As to friend of accused in court see Rules 81 and 115; and as counsel at general and district courts-martial Rules 82 to 88.

As to the right of accused to consult the judge-advocate on questions of law, see Rule 91.

For power to dispense with this rule see Rule 25.

Warning of accused for trial.

23. (A) The accused before he is arraigned shall be informed by an officer of every charge on which he is to be tried; and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed of the charges against him and his arraignment must be such as to allow him to have his witnesses present, and to consider his defence.

(B) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and a vernacular translation of the same, and shall, if necessary, read and explain to him the charges brought against him.

(C) If he desires it, a list of the names, rank and corps (if any) of the officers who are to form the court, and where officers in waiting are named, also of these officers, will, in courts-martial other than summary courts-martial, be given to the accused.

(D) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.

(A) Arraignment consist in the charge being read to the accused after the opening of the court, and in his being asked if he is guilty or not guilty. In courts-martial other than summary courts-martial commanding

officers will take care that any request of the accused for witnesses shall be transmitted to the convening officer, or after the court has been convened to the president of the court. The commanding officer will himself take steps to ensure the attendance of witnesses asked for by a person under orders for trial by summary court-martial.

The request of the accused should only be refused if it is quite clear that the evidence of the witness will be immaterial, or if it is impossible to secure the attendance of a witness within a reasonable time. Any refusal of his request will be communicated to the court with the reasons for the refusal, and the court will deal with it under paragraph (D).

In the case of an essential witness the court should always adjourn for the purpose of enabling him to attend, or of being examined on commission, as the omission to do so may cause the proceedings to be invalid.

If a copy of the summary of evidence has not been given to the accused, notice as to the witnesses to be called by the prosecution should be given to him when he is warned for trial. See Rule 121 and note. If the accused has received a summary of evidence, and witnesses whose evidence is not contained therein are to be called, similar notice should be given to him.

(B) A copy and translation of the charge-sheet must always be offered to the accused unless the provisions of this rule are dispensed with under Rule 25. Even where it is suspended the full charge must be clearly explained to him as otherwise he has not proper opportunity to make his defence. If the accused objects to the charge he will have an opportunity of making his objection when he is called on to plead.

(C) In the case of a general court-martial this list should invariably be delivered, although a request is not made. In the case of a district court-martial the list should be given, though not asked for, if there is any reason to suppose that the accused may reasonably object to any member of the court.

The commanding officer in the case of summary, and the prosecutor in the case of other courts-martial, is the officer on whom the duty of complying with the provision of this rule will usually fall, and he should, before the trial, satisfy himself that it has been complied with. Compliance with this rule may be dispensed with on the ground of military exigencies or the necessities of discipline, by virtue of Rule 25, but in every case the accused must have information of the charge and opportunities of calling his witnesses.

(D) See note above on (A).

Joint trial of several accused persons.

24. Any number of accused persons may be tried together for an offence charged to have been committed by them collectively, but in such case notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charge, and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence; the convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge admits of it, shall allow the claim, and such accused person shall be tried separately.

If the nature of the charge.—In the case of conspiring to cause a mutiny or joining in a mutiny, the essence of the charge is combination between the accused. In such a case, the nature of the charge may not admit of their being tried separately. In cases of doubt, the accused should be tried separately.

Certain offences cannot from their nature be committed jointly. Such are intoxication, sentry sleeping upon his post, malingering, giving false

evidence, cowardice, etc., and, speaking generally, all offences where a person's individual state of body or mind is of the essence of the offence. For instance, a guard ran away and hid themselves when a soldier "ran amok." It was held that separate charges under section 25 (*b*) were necessary.

Exception from Rules.

Suspension of rules on the ground of military exigencies or the necessities of discipline.

25. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the Rules 15 (D), (E), (F), (G), 16, 22 and 23, he may, by order under his hand, make a declaration to that effect, specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in such declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial.

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

The nature, and not merely the existence, of military exigencies, or the necessities of discipline, must be stated in the order.

The power conferred by this rule should hardly ever be exercised, except when on active service, and then only if absolutely necessary. It may, however, occasionally be necessary to resort to it on the eve of embarkation, or on the line of march, or possibly in an extreme case, where the necessities of discipline require a very speedy trial and punishment.

In exercising the power under the rule, the officer must consider whether it is necessary to dispense with all the rules mentioned. For example, the observance of Rule 15 (D), (E), (F), (G) may be practicable, although that of Rule 23 is not so. If Rule 15 (D), (E), (F), (G) is suspended by the order, some means must be taken to inform the accused of the charge, and of the names of the witnesses, and of the nature of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension.

The power of dispensing with Rule 22 is only intended to be exercised in case it is necessary to try an accused person before he can communicate with any witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend on the spot.

Full opportunity of making his defence.—The accused will not have this opportunity unless he receives, in reasonable time, the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

Rule 23 (C) and (D) must always be complied with, and Rule 23 (B), if not complied with at the time there mentioned, should be complied with as long as possible before the assembly of the court.

Alternative Procedure.

Alternative procedure.

26. When an accused person is remanded for trial by general or district court-martial the procedure before and during trial shall be that ordered in section 2 of this Chapter, and when an accused person is remanded for trial by summary court-martial that ordered in section 3 of this Chapter. Section 4 is equally applicable to all trials by general, district and summary courts-martial.

SECTION 2.—GENERAL AND DISTRICT COURTS-MARTIAL.

Convening the Court.

Convening of general and district courts-martial.

27. (A) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(B) He shall also satisfy himself that the case is a proper one to be tried by the description of court-martial he proposes to convene.

(C) The officer convening a court-martial shall appoint or detail the officers to form the court, and may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(D) The officer convening a court-martial shall send to the senior member of a court composed of British officers and to the judge-advocate or superintending officer of any other court, the original charge-sheet on which the accused is to be tried, the summary of evidence, and the order for the assembly of the court-martial.

(C) A court-martial which after the commencement of the trial is reduced below the legal minimum, is, subject to the proviso to Indian Army Act, section 65 (*1*), dissolved. It is desirable, therefore, when the trial is likely to be prolonged, to form a general court-martial of more than the legal minimum, in order that the court may not be dissolved if some members fail through illness or otherwise. In the case of a district court-martial it will seldom be necessary to appoint more than the legal minimum, as it is unusual for such a trial to last more than two days, and little inconvenience will usually arise from the dissolution of the court, as if the proceedings have not been concluded, the accused can be tried by another court.

It will usually be desirable, in the case of a general court-martial, when the trial is likely to be prolonged, to add two or more waiting officers, in order to fill the place of officers retiring on a challenge, and the same course will not unfrequently be expedient in convening a district court-martial.

Interpreter.—In almost every case an interpreter in the language of the accused person will be necessary and should be detailed. See Rule 77 and notes.

(D) *Senior member.*—This is the officer who will, unless successfully objected to, sit as president at the trial. Indian Army Act, section 77. The object of this paragraph is to enable the original charge-sheet and convening order to be annexed to the proceedings, and also to enable these officers to examine, before the court meets, the charge-sheets and summary

of evidence in the different cases, so that they may have a general knowledge of the cases which are to come before the court. If any amendment in the charges appears to be required, the convening officer should be communicated with before the trial begins. See Rule 16 (c).

Where the accused pleads guilty the summary of evidence may be used for determining the sentence. Rule 44 (B). Otherwise the summary of evidence may be used at the trial for the purpose of showing that the witness has contradicted himself or has made a particular statement; and during the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence and if there is any material variance should question the witness respecting the variance.

The summary of evidence cannot otherwise be used as evidence, and if the witness is absent, must not be read or referred to by the court so far as it relates to that witness. Great care must be taken by the members of the court not to be biassed in any way by the statements in the summary of evidence, except so far as they affect the credibility of the witness by showing that he has contradicted himself; indeed, it may usually be expedient that no one but the president, or superintending officer, should refer to the summary.

Any statement of the accused contained in the summary of evidence, if not taken contrary to the directions in note to Rule 15 (D)—(G), may, and usually should, be read to the court as evidence, whether it is in favour of or against the accused.

Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings [see Appendix III, Form of Proceedings, paragraph (4)]. If the accused pleads not guilty, the summary may be destroyed, but it will usually be convenient to enclose it with the proceedings when sent to the confirming officer; it need not, however, be annexed to the proceedings unless there is a material variance between the statement of any witness in the summary and his evidence at the trial.

Adjournment for insufficient number of officers.

28. (A) If, before the accused is arraigned, the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge or otherwise, the court shall ordinarily adjourn for the purpose of fresh members being appointed; but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

(B) If the court adjourns for the purpose of the appointment of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

(A) Under this paragraph a court, for which, say, nine members have been detailed, will not ordinarily begin the trial with less than nine although they may proceed, unless reduced below the legal minimum. The court should always adjourn, unless there are strong reasons against it.

Notwithstanding the proviso to Indian Army Act, section 65 (*1*), a general court-martial, regarding which no order under section 59 has been made and which is reduced to six or five officers, cannot proceed under this paragraph. This is because the trial has not yet commenced.

Fresh members.—The court will adjourn under the circumstances mentioned in paragraph (A) of this rule. After the trial has once begun fresh members cannot be appointed in any circumstances.

Ineligibility and disqualification of officers for court-martial.

29. (A) An officer is not eligible for serving on a court-martial if he is not subject to military law.

(B) An officer is disqualified for serving on a general or district court-martial if he—

(i) is the officer who convened the court; or
(ii) is the prosecutor or a witness for the prosecution; or
(iii) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron or double-company commander who made preliminary inquiry into the case; or
(iv) is the commanding officer of the accused, or of the corps to which the accused belongs; or
(v) has a personal interest in the case.

(A) *Eligible* is used with reference to an officer being subject to military law. It refers, in point of fact, to the status of the officer and involves no personal considerations. Under the Indian Army Act there is no minimum length of service as a qualification for membership of any court-martial, but care should, nevertheless, be taken not to appoint officers unless they have the necessary experience.

(B) *Disqualified*, on the other hand, is used with reference to personal disqualification on the part of an officer.

Except as provided by Rule 30, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial.

(iii) *Investigated the charges.*—The officer who investigated is usually the commanding officer of the accused; when he is not, he is equally excluded by these words. He has been defined as meaning the officer who, in a judicial capacity, sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer through whose hands the charges passed merely formally or ministerially.

(v) *Personal interest.*—This will extend to even a remote or very small interest; for example, in a charge relating to the misapplication of a sum, however small, belonging to the regimental mess, every officer of that mess has a personal interest and is therefore disqualified. A remote or even a merely technical interest has been held to disqualify a person in a judicial position. For example, a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

Composition of court-martial.

30. A general court-martial shall be composed, as far as possible, of officers of different corps or departments, and in no case exclusively of officers of the corps or department to which the accused belongs.

There is no similar restriction as to the composition of district courts-martial which may therefore, when necessary be composed wholly of officers of the corps or department to which the accused belongs—but where possible they should not be so composed.

Procedure at Trial.—Constitution of Court.

Inquiry by court as to legal constitution.

31. (A) On the court assembling, the order convening the court shall be read, and also the names, rank, and corps of the officers appointed to serve on the court; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted (that is to say)—

(i) that, so far as the court can ascertain, the court has been convened in accordance with the Act, and these rules;

(ii) that the court consists of a number of officers not less than the legal minimum, and, save as mentioned in Rule 28, not less than the number detailed;

(iii) that each of the officers so assembled is eligible and not disqualified for serving on that court-martial;

(iv) that a superintending officer has, when necessary, been appointed.

(B) The court shall, further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.

(C) The court, if not satisfied on the above matters, shall report their opinion to the convening authority, and may adjourn for that purpose.

It is of great importance for the court, as far as lies in their power, to ascertain that they have jurisdiction.

(A) See Appendix III, Form of Proceedings, paragraph (1).

(i) The court, in considering whether they are convened in accordance with the Indian Army Act and Rules, can only look at the order convening the court, and cannot inquire whether the officer issuing the order has or has not a warrant which justifies the issue of the order.

(ii) *Legal minimum.*—See Indian Army Act, sections 57, 58 and 59. In counting the number of officers the president is included.

(iii) As to eligibility and non-disqualification, see Rule 29 and note.

(B) See Indian Army Act, section 78, and Rule 89.

Inquiry by court as to amenability of accused and validity of charge.

32. (A) The court, when satisfied on the above matters, shall satisfy themselves in respect of each charge about to be brought before them—

(i) that it appears to be laid against a person amenable to military law, and to the jurisdiction of the court; and

(ii) that each charge discloses an offence under the Act, and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(B) The court, if not satisfied on the above matters, shall report their opinion to the convening authority and may adjourn for that purpose.

(A) *Satisfy themselves.*—See Appendix III, Form of Proceedings, paragraph (1).

The inquiry by the court under this and the preceding rule is not required to be, but may be, in closed court.

Procedure at Trial.—Challenge and Swearing.

Appearance of prosecutor and accused.

33. When the court have satisfied themselves as to the above facts, the prosecutor, who must be a person subject to military law, shall take his place, and the court shall cause the accused to be brought before the court.

The duty of appointing the prosecutor devolves on the convening officer, who ordinarily selects the adjutant of the accused person's regiment. But the convening officer should not appoint himself to be prosecutor

and the prosecutor cannot confirm the finding and sentence of the court. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duties, so that he may be enabled fully to master the case. In ordinary cases one of the officers mentioned in Rule 29 (B) (iii) may suitably be detailed to act as prosecutor.

As to counsel, see Rules 82 to 88.

Proceedings for challenges of members of court.

34. The names of the president and members of the court shall then be read over to the accused and he shall be asked, as required by section 80 of the Act, whether he objects to be tried by any officer sitting on the court. Any such objections shall be disposed of in accordance with the provisions of section 80 of the Act; provided that—

(i) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(ii) The accused may call any person to give evidence in support of his objection.

(iii) If more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection to the lowest in rank shall be disposed of first; and on an objection to an officer, all the other officers present shall vote on the disposal of such objection, notwithstanding that objections have been made to any of those officers.

(iv) When an objection to an officer is allowed that officer shall forthwith retire, and take no further part in the proceedings.

(v) When an officer objected to retires, and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed to serve in lieu of the retiring officer. If there is no officer in waiting available, the court shall proceed as directed by Rule 28.

(vi) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

This rule must be read in connection with section 80 of the Indian Army Act. For form see Appendix III, Form of Proceedings, paragraph (2).

(i) The accused cannot object to the court collectively, but must make each objection separately. If the accused persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and should deal with such objections in the usual way. The court may be closed to consider each objection. The objections together with the statements of any witnesses examined are to be entered in the proceedings. The accused has no right to object to the prosecutor, judge-advocate or superintending officer, as they do not form part of the court.

An officer objected to on the score of personal enmity, prejudice, or malice, or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request, and be permitted, to withdraw.

Objections to individual members under this rule are quite distinct from a plea to the jurisdiction of the court, as to which see Rule 41.

(ii) The witnesses cannot be examined on oath as the court is not yet sworn, but Rule 127 and notes thereto will substantially apply.

(iii) The object of the latter part of the paragraph is to secure a sufficient number of officers to determine the objections.

Other officers.—This excludes an officer from voting on his own case.

Present, i.e., who have not retired on the objection being allowed.

(iv) Objections are to be decided as directed in section 80 (*3*) of the Act.

(v) *Directed to serve.*—This "prescribes" the manner of filling a vacancy. It is the duty of the president to appoint one of the officers in waiting to fill a vacancy. If the president is himself successfully objected to, the senior remaining member will take his place (Indian Army Act, section 77), and will then proceed to fill the vacancy in the court in the manner indicated above.

Proceed as directed by Rule 29.—That is, the court, if reduced in number below the legal minimum, must adjourn for the purpose of the appointment of fresh members: and though not so reduced should ordinarily adjourn unless of opinion that, in the interests of justice and for the good of the service, it is inexpedient to adjourn.

(vi) Inasmuch as this paragraph directs that the eligibility and absence of disqualification of an officer filling a vacancy are to be ascertained by the court as in the case of other members, the court will ascertain that he is eligible and not disqualified under Rule 29 before the accused is asked whether he objects to him, but as this does not form part of the recorded proceedings it may be done by the court in the case of officers in waiting at the same time as the inquiry under Rule 31, before the accused is brought before them. The accused will be asked whether he objects to the new officer, and if he does, the objection will be dealt with, if he is junior to any other officer objected to, immediately; if not, after the objections to any other officers who are junior to him have been disposed of. He will, though objected to, have to vote on the objection to any other officer who is junior to him. The court should always, in a doubtful case, allow an objection, as it is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

Swearing or affirming of members.

35. As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to every member in one of the following forms or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of oath.

"You do swear that you will duly administer justice, according to the Indian Army Act, without partiality, favour or affection; and if any doubt shall arise, then, according to your conscience, the best of your understanding, and the custom of war in the like cases; and that you will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that you will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law. So help you God."

The first person may, when necessary, be substituted for the second in this form of oath and the words "So help you God" omitted or varied.

Form of affirmation.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian

Army Act, without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases: and that I will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it, and the latter on the Granth. Hindus and Muhammadans are generally affirmed.

As to the person to administer the oath or affirmation, see Rule 37 and notes thereto.

The oath is usually administered to Christians as follows:—

The person to be sworn will take the book in his right hand ungloved. The person administering the oath will repeat the oath, and on the repetition being ended the person to be sworn will say the words "So help me God," and kiss the book. The words of the oath should be said with distinctness and solemnity by the person administering it.

The oath may be administered to each member separately or to two or more together.

Affirmations are repeated by the person making affirmation after the person administering it. The Hindustani translation of the form of affirmation given above is as follows:—

"Main Hakk Taálá Khudá ko házir aur názir ján ke (Parmeshwar Bhagwán ko ján mán ke) ímán (dharm) se ikrár (bachan) karta hún ki main tarafdárí, riáyat, aur mail ko chhor ke, Hind kí faují áin ke mutábik, jaisá cháhiye, insáf karúngá; aur agar koí shubha dikhái de, to main ímán (dharm) ke rú se, aur apní samajh ke mutábik aur jis tarah aise mukaddamon men fauj ká dastúr hai, jaisá cháhiye, insáf karúngá; aur Kort-márshal ke hukm ko main kabhí záhir na karúngá jab tak hákim kí taraf se barmalá záhir na ho le, aur bhí main hargiz Kort-márshal ke kisi ek sardár kí ráe yá bichár bachan ká bhed na batláúngá; siwáe us hálat ke jab kisi adálat yá Kort-márshal se, kánún ke bamújib, mujh ko is muámale men gawáhí deno ká hukm ho."

Its translation into Pushtu is as follows:—

"Zah Pák Khudái Taálá ta házir au názir pohegam au la ímán sara ikrár kawam chi zah ba mrasta au tarafdárí au khátirdári pregdam, au da Hindústán da faují áin muwáfik, laka chi khái, insáf ba wu karam, au ki tsa shakk shubha rá ta málúma shi, no zah pa ímándárí sara au pa poya khpula sara chi pohegam, au har tarah chi dási mukaddamo kkhi da fauj dastúr dai, tsaranga chi khhái, insáf wu karam; au da de kort-márshal hukm hargiz záhir na kam tar hagha purí chi da hákim la tarafa na záhir na shawai wi; au nor zah ba hargiz da de kort-márshal da yo sardár khabara ya khiyál ta na wáyam, pa ghair da hagha hála chi da kuma adálata na ya kort-márshal na da káida muwáfik da gawáhí da pára talab ki."

Sikhs are sworn as follows:—

The "Granthi" or other person administering the oath holds a copy of the Sikh scriptures (the Granth), in his hands and the person to be sworn also places his hands upon it. The latter then repeats after the former the words of the oath. This begins:—

"Main Srí Gurú Granth Sáhib jí kí sugand khátá hún ki main tarafdári" and proceeds as in the Hindustani translation of the form of affirmation.

Every member.—This includes the president.

Such other form to the same purport.—This, in addition to providing for the case of persons who are neither Christians, Sikhs, Hindus nor Muhammadans, will permit of the Scots form of oath being administered

to any Christian who prefers it to the form given in the rule. A person desiring to be sworn in the Scots form will swear standing and holding up his right hand, and the oath will be in these terms: "I swear by Almighty God, as I shall answer to God at the Great Day of Judgment, that . . . ." No Bible is held in the hand, or kissed.

In due course of law.—The oath or affirmation taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath or affirmation, "unless required to give evidence thereof, etc.," only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice or a court-martial it would, or might, be necessary to make disclosures regarding individual votes to the court trying members so charged.

Swearing or affirming of judge-advocate and other officers.

36. After the members of the court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the court-martial, in such of the following forms as shall be appropriate, or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed:—

(A) *Judge-advocate or superintending officer.*

Form of oath.

"You do swear that you will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law; and that you will not, unless it be necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it shall be published by authority. So help you God."

The first person may, when necessary, be substituted for the second in this form of oath, and in all other forms prescribed in this rule, and the words "So help you God" omitted or varied.

Form of affirmation.

"I solemnly affirm in the presence of Almighty God that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law; and that I will not, unless it be necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it shall be published by authority."

(B) *Officer attending for the purpose of instruction.*

Form of oath.

"You do swear that you will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that you will not disclose or discover the vote or opinion

of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law. So help you God."

Form of affirmation.

"I solemnly affirm in the presence of Almighty God that I will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

(c) *Shorthand writer.*

Form of oath.

"You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial, and such other matters as you may be required, and will, when required, deliver to the court a true transcript of the same. So help you God."

Form of affirmation.

"I solemnly affirm in the presence of Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial, and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same."

(d) *Interpreter.*

Form of oath.

"You do swear that you will faithfully interpret and translate, as you shall be required to do, touching the matter before this court-martial; and that you will not divulge the sentence until it shall be published by authority; and further, that you will not disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law. So help you God."

Form of affirmation.

"I solemnly affirm in the presence of Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial; and that I will not divulge the sentence until it shall be published by authority; and further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

The notes to Rule 35 apply, *mutatis mutandis*, to this Rule.

The interpreter may be required to be present during the time the court is closed (see Rule 69) and he consequently takes the oath of secrecy.

This differs from the procedure under the (British) Army Act, where the interpreter cannot be present when the court is closed, and where his oath therefore contains no such obligation.

Persons to administer oaths and affirmations.

37. All oaths and affirmations shall be administered by a member of the court, the judge-advocate, the superintending officer or some other person empowered by the court to administer such oath or affirmation.

Natives of India are generally sworn by a person professing their religion, who may be either a member of the court or a person empowered by the court under this rule: In the case of Sikhs this person is generally a *Granthi* who attends in court with a *Granth* for the purpose of swearing Sikh members and witnesses

Affirmations may be administered by any of the persons mentioned in this Rule Their being of the same religion as the person affirmed is immaterial.

When a court-martial is composed of British officers it will generally be convenient for the judge-advocate to administer the oath or affirmation to the president and members, or if there is no judge-advocate, for the president to first administer it to the members and then be himself sworn or affirmed by one of them.

Prosecution, Defence and Summing-up.

Arraignment of accused.

38. (A) After the members of the court and other persons are sworn or affirmed as above-mentioned, the accused shall be arraigned on the charges against him.

(B) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

The accused is usually arraigned by the president, the superintending officer, or the judge-advocate When two or more persons are tried together for the same offences, each is separately arraigned.

(B) The charge sheet containing the charges as settled by the convening officer will be in the possession of the president judge-advocate or superintending officer who will lay it before the court immediately before the arraignment, and it will then be annexed to the proceedings.

If any charge appears to the prosecutor to require amendment, he should communicate with the convening officer before the trial begins.

Objection by accused to charge.

39. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

See Rules 18 to 21. For Form see Appendix III. Form of Proceedings, paragraph (3) An objection to the jurisdiction of the court must be raised by way of special plea, Rule 41. If it appears that the accused is, by reason of insanity, unfit to take his trial, the court will find the fact specially, and he will be dealt with as provided in Rule 131.

Amendment of charge.

40. (A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening

authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused.

(A) A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that he is not prejudiced in his defence by the mistake having been made.

(B) The court may act under this paragraph whether the objection to the charge is taken by the accused or the judge-advocate, or by a member of the court, and either before or after the arraignment of the accused. See Rules 32 and 39.

The witnesses.—That is, the witnesses on the substance of the charge, not witnesses as to objections to the officers, or with respect to a special plea to the jurisdiction.

If the addition, omission, or alteration can be met by means of a special finding under Rule 51 (as, for instance, by omitting some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material, or if the charge appears not to disclose an offence under the Indian Army Act, or if any addition requires to be made to the charge, it will be safer for the court to adjourn and apply for the amendment of the charge.

Special plea to the jurisdiction.

41. (A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court; and if he does so, and the court consider that anything stated in such plea shews that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the accused and reply by the prosecutor in reference thereto.

(B) If the court overrule the special plea, they shall proceed with the trial.

(C) If the court allow the special plea, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(D) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision with respect to such plea, and proceed with the trial.

(A) *May offer a special plea to the general jurisdiction of the court.*—A plea to the general jurisdiction, that is, to the right of the court generally to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the accused is brought before the court. Under the former he may plead, for example, that the court is improperly constituted in respect of the number of the members, or that he is not amenable to the court, either as not being subject to military law or not subject to that description of court; as, for instance, in the case of a commissioned officer being brought before a district court-martial.

A plea relating to the particular charge, and raising the defence of previous conviction or acquittal by a court-martial or criminal court, summary punishment by the commanding officer, pardon of the offence or its condonation by the deliberate act of some superior authority or of the

lapse of more than three years since the date of the offence (Indian Army Act, section 67) will be raised by way of plea in bar of trial, under Rule 43.

Evidence, when necessary, is heard in support of a plea to the jurisdiction, and if taken, must be taken on oath or affirmation like the evidence of other witnesses.

(B) The confirmation of the finding, after a plea to the jurisdiction is overruled, will, without any special mention, necessarily have the effect of confirming the decision of the court overruling the plea. If, on the other hand, the confirming officer thinks that the plea to the jurisdiction, although it was overruled, is valid, he must refuse to confirm the finding of the court: but inasmuch as the court must in that case be considered as having had no jurisdiction to try the accused, the accused, in strict law, will not have been tried at all, and can, therefore, still be tried for the alleged offence.

(C) If the court allow the plea, the convening officer cannot overrule the finding, inasmuch as to do so would be to compel the court to try the accused, and thus render its members liable to a possible action for damages, after the expression of their own opinion that they had no jurisdiction. But the convening officer may convene another court.

(D) *May record a special decision.*—This in effect transfers the question to the decision of the confirming authority, who should act merely as if the plea had been overruled. See note to (B).

General plea "Guilty" or "Not guilty."

42. (A) If no special plea to the general jurisdiction of the court is offered, or if such plea being offered, is overruled, the accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(B) If an accused person pleads "Guilty," that plea shall be recorded as the finding of the court; but, before it is recorded, the officer conducting the proceedings, on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty.

(A) *Plead intelligibly*—If the accused pleads in some language not understood by the court, or inarticulately, he will not plead intelligibly, and a plea of "Not guilty" will be entered.

(B) *Officer conducting the proceedings.*—See Rule 64.

Understands the nature of the charge.—This direction is to prevent the accused pleading guilty under a misapprehension. For instance, a man charged with wilfully injuring Government property may, under a misapprehension, plead guilty, because the property has been actually injured, though not wilfully. In such a case the officer conducting the proceedings must explain to him that if he did not do it wilfully, he must plead not guilty. So, again, on a charge for desertion, the plea "Guilty, but I intended to return" amounts to a plea of "Not guilty," as the intention not to return is generally an essential element in the offence of desertion.

A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of these articles only, must be taken to have pleaded "Not guilty" as regards the remaining articles. An accused person arraigned upon a charge of receiving property knowing it to have been stolen, who pleads guilty "except that he did not know it was stolen," must be dealt with as having

pleaded not guilty. So as regards any act of which the intention is an element, where the accused pleads guilty, but says that he 'did not intend to do it," or words to that effect; so if the accused pleads guilty to two or more alternative charges, the officer conducting the proceedings should point out that he can only be guilty of one.

Generally, the officer conducting the proceedings has, under this rule, the duty of advising the accused to withdraw a plea of guilty, if it appears from the summary of evidence that he ought to plead not guilty.

If the accused pleads guilty, a statement that the requirements of Rule 42 (B) have been complied with must be recorded. See Form of Proceedings, Appendix III, paragraph (3).

Difference in the procedure.—This is shown by Rule 44. Under that rule the accused, though able to call witnesses as to character, cannot call them in extenuation of the offence, except by leave of the court under Rule 44 (F) to prove what he alleges in mitigation of punishment. Consequently if he wishes, though admitting the offence, to show extenuating circumstances, he must plead not guilty, and cross-examine the witnesses for the prosecution, or call witnesses on his own behalf, to prove the extenuating circumstances.

It must be recollected that there is nothing untrue in an accused person pleading not guilty, even though he committed the offence, as the plea merely amounts to an expression of desire to have a formal trial.

For example, if a man admits that he struck his non-commissioned officer, but wishes to show that it was done under circumstances of very great provocation, and does not therefore deserve severe punishment, he must plead not guilty; as if he pleads guilty he will not be able, either by cross-examination of the prosecutor's witnesses or by calling witnesses on his own behalf, to show the existence of such provocation, save as above-mentioned under Rule 44 (F).

As to procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see Rule 44 (D).

43. (A) The accused, at the time of his general plea of " Guilty " or " Not guilty " to a charge for an offence, may offer a plea in bar of trial on the ground that— **Plea in bar.**

(1) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial or has been dealt with summarily under section 20 or 22 of the Act for the offence; or

(2) the offence has been pardoned or condoned by competent military authority; or

(3) the time which has elapsed between the commission of the offence and the beginning of the trial is more than three years, and the limit of time for trial is not extended under section 67 of the Act.

(B) If he offers such plea in bar, the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered, and hear any address made by the accused and the prosecutor in reference to the plea.

(C) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(D) If the finding that a plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(E) If the court find that the plea in bar is not proved, they shall proceed with the trial, and the said finding shall be subject to confirmation like any other finding of the court.

The Indian Army Act provides that a man shall not be liable to trial for an offence of which he has been convicted or acquitted by a court-martial or by a criminal court, or for which he has been dealt with summarily (section 66), or which was committed more than three years before the date of his trial, unless the offender by reason of absence, or some other manifest impediment, could not be arrested or confined and brought to trial within that period (section 67). Any other manifest impediment must be read "ejusdem generis" with absence, that is, it must be in some way analogous to, or of the nature of, absence.

Under the (British) Army Act a soldier is, in the case of certain offences, amenable to trial for a period of more than three years, and is also amenable to trial for three months after he ceases to be subject to military law. There are no such provisions in the Indian Army Act and amenability ceases absolutely on the expiration of the above period or on the previous dismissal or discharge of the offender.

Evidence offered.—See note to Rule 41 (A).

Procedure after plea of "Guilty."

44. (A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty," the trial shall first proceed with respect to those other charges, and, after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Not guilty" on each alternative charge to which the prisoner has not pleaded "Guilty."

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary of evidence, and annex it to the proceedings, or if there is no such summary, shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty."

(C) After evidence has been so taken, or the summary of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.

(D) If from the statement of the accused or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) shall take place when the finding on the other charges in the same charge-sheet are recorded.

(F) When the accused at any court-martial states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

(A) The accused cannot be found guilty on both of two alternative charges. If, therefore, he pleads guilty to one alternative charge the court should usually enter a finding of not guilty on the other, as inconsistent with the one to which he has pleaded guilty; but if one alternative offence is graver than the other and the accused pleads guilty to the less grave of the two, the court should try him for the graver as he ought not, by pleading guilty to the lesser offence, to escape punishment for the graver.

(B) and (D) *Any statement*—If it appears from this statement or otherwise that the accused did not understand the effect of his plea of "Guilty," it will be the duty of the court to record a plea of "Not guilty," and to proceed with the trial. (See notes to Rule 42.) Or, again, if he alleges very great provocation for the offence, it may be desirable to record a plea of "Not guilty," in order to allow the existence of such provocation to be proved in the ordinary way.

If a court fail to observe this rule and treat such a plea as mentioned in the note to Rule 42 (B), in the case of desertion as a plea of "Guilty," the confirming officer should refuse confirmation; he can then order a new trial. If he confirms the whole proceedings are nevertheless invalid.

In the case of a plea of "Guilty," the accused will always be asked whether he has any witnesses to call as to character—see (C).

For form see Appendix III, Form of Proceedings, paragraph (4).

If evidence is taken under (B), the accused can cross-examine the witnesses both in extenuation of the offence with a view to the mitigation of punishment, and as to character. See Rule 46, and for form, Appendix III, Form of Proceedings, paragraph (4).

(C) It will be observed that the accused cannot, except by permission of the court under (F), call witnesses in extenuation of the offence and consequent mitigation of punishment.

(F) The court should always, if the accused requests it, allow witnesses to be called, to prove any statement made by him in mitigation of punishment.

Withdrawal of plea of "Not guilty."

45. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court will at once, subject to a compliance with Rule 42 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 44.

If the accused proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under Rule 42.

Plea "Not guilty" and case for the prosecution.

46. After the plea of "Not guilty" to any charge is recorded, the trial shall proceed as follows:—

(A) The prosecutor may, if he desires, make an opening address.

(B) The evidence for the prosecution shall then be taken.

(C) If it should be necessary for the prosecutor to give evidence for the prosecution on the facts of the case, he shall give it after the delivery of his address, and he must be sworn and give his evidence in detail.

(D) He may be cross-examined by the accused and afterwards may make any statement which might be made by a witness on re-examination.

For form, see Appendix III, Form of Proceedings, paragraph (5).

(A) In cases of any complication, the prosecutor should always make an opening address for the purpose of explaining the charge, and enabling the court better to follow the evidence. This is the only object of the address. As a rule the address of the prosecutor should be in writing. See further Rule 66 and note.

(B) As to the evidence, see Rules 125 to 129. The evidence will be taken by question and answer, Rule 127, but recorded as directed in Rule 78 and note thereto All facts essential to constitute the offence charged must be proved ; *e.g.*, on a charge of making false accusations, etc , it is necessary to prove—

(1) that the accusation was made against a person subject to military law by the accused ;
(2) that it was false ;
(3) that the accused made it knowing it was false.

Respecting the duty of the officer conducting the proceedings, see Rule 65 and note.

(C) The prosecutor should never himself give evidence for the prosecution *before* the finding unless it be to prove a date or other formal matter, or to produce documents ; but even formal matters should not be left to be proved by him, if it can possibly be helped. The production of documents which are in his possession is not open to the same objection.

The only possible exception to the rule of the prosecutor not giving evidence will be occasionally on active service, where the trial cannot be postponed, and the same officer is a material witness and also the only available officer for the duty of prosecutor. In these exceptional cases, it is essential that his sworn statements as a witness should be kept quite distinct from his statements made as prosecutor. Consequently he must give his evidence before any other witness, and in detail, and must not, after delivering an address, be allowed to swear generally to the statements contained in it.

Documentary evidence will be read by the judge-advocate, the president, the superintending officer or some member of the court, and will be entered on the proceedings.

When counsel appears on behalf of the prosecutor, (C) and (D) do not apply. See Rule 83.

Close of case for the prosecution and procedure for defence where accused does not call witnesses.

47. (1) At the close of the evidence for the prosecution, the accused shall be asked if he intends to call any witnesses to the facts of the case.

(2) If the accused does not state that he intends to call witnesses to the facts of the case the procedure shall be as follows :—

(A) The prosecutor may address the court a second time for the purpose of summing-up the evidence for the prosecution.

(B) The accused shall be asked if he has anything to say in his defence and may address the court in his defence.

(C) The accused may call witnesses as to his character.

(D) The prosecutor may produce, in reply to the witnesses as to character, proof of former convictions, and entries in the defaulter's book, but he may not again address the court.

1) The question to the accused as to the calling of witnesses will be put by the judge-advocate, or, if there is none by the president or superintending officer. The accused must be informed of the difference between witnesses to facts and witnesses as to character only. In particular it must be explained that if he wishes to produce any evidence in extenuation of the offence with a view to the mitigation of punishment, he will not be entitled to do so if he only calls witnesses as to character.

Witnesses to the facts of the case.—Every witness, except a witness to character only, is a witness to the facts of the case. Accordingly a witness as to extenuating circumstances is a witness to the facts of the case.

(2) (A) The observations with respect to the opening address of the prosecutor (see note to Rule 66) apply equally to his second address. In summing up the evidence the prosecutor must confine his remarks to the evidence. He must not keep back or gloss over any weak points of the evidence of the prosecution, or the strong points of the evidence for the defence; in fact, he should understate rather than overstate that view of the facts which it is his duty to bring before the court on behalf of the prosecution; still less must he state any new fact relating to the case which has not been given in evidence. Any deviation in these respects on the part of the prosecution or any want of moderation, may lead to the proceedings being invalidated. The court should, so far as possible, stop the prosecutor transgressing in any of these respects. The accused, on the other hand, has the privilege of making statements in his address unsupported by evidence, and when those statements are made of his own knowledge they must be dealt with as evidence, though not on oath. See also note to Rule 50.

(D) This evidence can only be adduced before the finding in cases where the accused calls witnesses as to character or obtains from the prosecutor's witnesses evidence of his good character.

For form, see Appendix III, Form of Proceedings, paragraph (6).

48. If the accused states that he intends to call witnesses to the facts of the case, the procedure shall be as follows:— **Defence where accused calls witnesses.**

(A) The accused shall be asked if he has anything to say in his defence, and may address the court in his defence.

(B) The accused may call his witnesses, including witnesses as to character.

(C) The prosecutor may, in special cases, with the permission of the court, call witnesses in reply.

(D) After the evidence of all the witnesses for the defence has been taken, the accused may again address the court, and the time at which such second address is allowed is in these rules referred to as the time for the second address of the accused.

(E) The prosecutor shall be entitled to address the court in reply.

For form, see Appendix III, Form of Proceedings, paragraph (7).

(A) The utmost liberty consistent with the interests of parties not before the court, and with the dignity of the court itself, should be allowed to the accused in making his defence (see Rule 66); and the court should, if necessary, adjourn to allow him time for its preparation. As to friend of accused and counsel, see Rules 81—88.

(B) The accused cannot give evidence on oath or affirmation as there is no provision of Indian military law corresponding to Rule 80 of the Rules of Procedure under the (British) Army Act.

49. (A) The judge-advocate, if any, shall, unless both he and the court think a summing-up unnecessary, sum-up in open court the whole case. **Summing-up by judge-advocate.**

(B) After the judge-advocate has spoken, no other address shall be allowed.

(A) The summing-up of the judge-advocate ought, like that of a judge to a jury, to be perfectly impartial. In simple cases a summing-up is unnecessary; but even where the facts are simple, difficult questions may sometimes arise as to the particular offence which the acts constitute in law, and in that case the judge-advocate should give his opinion on the legal point. The judge-advocate has, it will be observed, a right to sum-up whenever he considers summing-up necessary. The summing-up should invariably be in writing.

If the summing-up is unnecessary, an entry to that effect must be made in the proceedings. See Appendix III, Form of Proceedings, paragraph (8).

Finding and Sentence.

Consideration of finding.

50. (A) The court shall deliberate on their finding in closed court.

(B) The opinion of each member of the court shall be taken separately on each charge.

(A) *Closed court.*—See Rule 69

The president, or superintending officer, may commence the deliberation on the finding by a statement of the questions to be considered, and the order in which they are to be considered, and the bearing of the evidence on those questions, and other members of the court may comment on the evidence, and the truth or otherwise of the defence.

The great points for all the members to keep before their minds are, (1) that according to one of the fundamental maxims of law, a man is to be presumed innocent till he is proved guilty, and (2) that they have to find *according to the facts proved in evidence*; and to this end they must carefully separate mere statements made by the prosecutor or accused from facts proved by the respective witnesses. Some weight may, however, be allowed to a statement of the accused which is corroborated incidentally or otherwise by evidence, especially if he has been unable to procure a witness who might have given evidence on the point.

Where the proceedings are voluminous, the judge-advocate should be prepared with such notes as may assist the members in referring to any particular part of the evidence. He will not offer any opinion except on legal points (see Rule 91).

It is competent to the court, if they think fit (see Rule 129 (D)] to call or re-call a witness for the purpose of putting any question deemed essential; but any such witness must be examined in the presence of the parties and all questions put to him, whether by a member of the court, the prosecutor, or accused, will be put through the officer conducting the proceedings.

(B) As to taking opinions, see Rule 73 and note

The opinions will be taken separately on each charge, and the court, if they think that the offence stated in any charge is not proved, must acquit the accused on that charge, irrespective of any other charge; but where the charges are *alternative*, the conviction under one necessarily involves an acquittal under the other charges.

Form and record of finding.

51. (A) The finding on every charge shall be recorded, and, except as mentioned in these rules, shall be recorded simply as a finding of "Guilty," or of "Not guilty," or of "Not guilty and honourably acquit him of the same."

(B) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty," record a special finding.

(C) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.

(D) Where the court are of opinion as regards any charge that the facts proved do not disclose an offence under the Act, the court shall acquit the accused of that charge.

(E) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of an offence under

the Act, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, and, if necessary, adjourn for that purpose.

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, then they may, either before recording a finding on those charges refer to the confirming authority for an opinion, and, if necessary, adjourn for the purpose, or they may record a special finding, stating the facts which they find to be proved, and stating that they doubt whether those facts constitute in law the offence in such one or another of the alternative charges as are specified in the finding.

(A) For form, see Appendix III, Form of Proceedings, paragraphs (9) and (10). The finding of honourable acquittal may be recorded in the case of non-commissioned officers and soldiers as well as officers, but is not to be recorded as a matter of course upon an acquittal. It is incorrect to honourably acquit a person on a charge not affecting his honour.

(B) For form of special finding, see Appendix III Form of Proceedings, paragraph (9) and for form of acquittal paragraph (10) In case of immaterial variation, the finding may simply be recorded as "Guilty"; as, for example, if the accused is found to have lost his regimental necessaries on the 25th, and not on the 26th of August, or to have lost two pairs of boots, and not one pair of boots, the variation is immaterial, and he may simply be found guilty of the charge.

(C) Thus, if the court find that the facts stated in the charge are only proved in part, they may find the accused guilty, subject to exceptions or variations. The facts, however, which they find to be proved, subject to the exceptions or variations, must amount to the substance of the offence actually charged, otherwise the court should acquit the accused. Thus, if he is charged with being absent without leave, and the particulars specify an absence from the 20th to the 30th of June, and the evidence prove an absence from the 21st to the 30th of June, the court may find the accused guilty with the variation of the 21st for the 20th. But if the evidence proves an absence from the 20th to the 30th of July, the difference is so material as to amount to a new charge, and the court must acquit the accused and he can be tried on the new charge for the absence in July. See Rule 20 (D), note.

(D) If, for example, a man is charged with dishonestly receiving, knowing it to be stolen, the property of a person subject to military law, and the court are of opinion that although the property had actually been stolen, the accused was unaware of the fact, they must acquit him, inasmuch as the act of receiving stolen property, apart from guilty knowledge, would not amount to an offence.

(E) This paragraph provides that where the court doubt as to whether the facts proved constitute in law the offence charged, the court may refer to the confirming authority. For instance, if, on a charge under section 41, they find that the accused misappropriated certain sums of money, but doubt whether the circumstances under which he took them do or do not constitute criminal breach of trust, they may state the facts which they find proved, and refer to the confirming authority for an opinion as to whether they constitute the offence. The court, however, cannot refer to the confirming authority for any opinion as to the facts, but merely as to the legal results to which those facts amount.

(F) The special findings before mentioned relate only to the *particulars* in the charge A special finding can in no case (except under section 86 of the Indian Army Act) alter the statement of the offence in

the charge; but under this paragraph, if there are alternative charges, and the court doubt whether the facts proved amount in law to one charge or the other, and they do not think it advisable to refer to the confirming authority for an opinion, they can record a special finding, and thus leave it to the confirming authority under Rule 60 (A) to determine whether the facts found by the court constitute in law the one offence or the other. For example, if in a charge under section 28 (*a*) of the Indian Army Act the use of certain language constitutes the offence charged and they find that the accused used the language charged, but doubt whether the language is such or was used under such circumstances as to be in law an offence within that section, they may record a special finding, setting out the language they find to be used, and the officer to whom, and the circumstances under which, it was used, and state that they doubt whether the use of the language under the circumstances is grossly insubordinate or not, or whether the officer was in the execution of his office. The confirming authority will then decide, under Rule 60 (A), whether such a finding amounts to a conviction on any of the charges.

The only other description of special finding which affects the statement of the offence is one not mentioned in the rules, but allowed by Indian Army Act, section 86. That section enables a person charged with an offence mentioned in the first column of the table at the end of this note to be found guilty of the offence of a similar character mentioned opposite to that offence in the second column of the table, where the evidence shows that the latter offence, and not the precise offence charged, has been in fact committed.

TABLE.

A person charged with	May be found guilty of
(*a*) Desertion	Attempting to desert or of being absent without leave.
(*b*) Attempting to desert . .	Desertion or of being absent without leave.
(*c*) Any of the following offences specified in section 31 of the Indian Army Act, *viz.*, theft, dishonest misappropriation or conversion to his own use of property entrusted to him or dishonestly receiving or retaining property in respect of which any of these offences has been committed, knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted.	Any other of these offences with which he might have been charged.
(*d*) A civil offence tried under section 41 or 42 of the Indian Army Act.	Any offence of which he might have been convicted if the provisions of the Criminal Procedure Code were applicable.
(*e*) Any other offence committed under circumstances involving a more severe punishment.	The same offence as being committed under circumstances involving a less severe punishment.

For such findings as are referred to in (*d*), see Code of Criminal Procedure, sections 237 and 238.

52. If the finding on all the charges is "Not guilty" the president shall date and sign the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate or superintending officer, if any, shall be at once transmitted for confirmation. Procedure on acquittal.

This differs from the procedure under the (British) Army Act where an acquittal is announced in open court and the accused forthwith released. Under Indian military law a finding of acquittal by a general or district court-martial requires confirmation in the same manner as any other finding by such a court, and is not valid until so confirmed.

53. (A) If the finding on any charge is "Guilty," then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, may take evidence of and record the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused, any previous convictions of the accused either by a court-martial or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 20 of the Act, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit. Procedure on conviction.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental or departmental books respecting the accused and identifying the accused as the person referred to in that summary.

(C) The accused may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the accused so requests, the regimental or departmental books, or a duly certified copy of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental or departmental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

(D) When all the evidence on the above matters has been given the accused may address the court thereon.

(A) The court will always take evidence as to character, etc., unless the circumstances render it impracticable so to do, in which case they will record the reasons for such impracticability in the proceedings. The procedure is the same in this respect, whether the accused is an officer, warrant officer or person enrolled under the Indian Army Act, and if such evidence is available in the case of a person casually subject to military law under Indian Army Act, section 2 (1) (*c*), it should also be produced at his trial.

Evidence on the part of the prosecutor upon the matters referred to in this rule should not be given by a member of the court.

Witnesses in favour of an accused person's character will be called, as a rule, either as part of his defence, or after his address and before the finding, but under this rule (C) may be called to rebut the evidence given by the prosecutor after the finding.

In cases of alleged desertion, the fact of the accused having surrendered or been apprehended should not be left until after the finding; it is one

of the material facts of the case, and as such ought to be proved by the prosecutor; it may have some bearing on the question of whether the accused intended or not to return.

The court will not take evidence of any conviction against the accused by a criminal court whilst he was a civilian. But convictions by a criminal court while the accused is a soldier may be given in evidence, although the offence was committed while he was in a state of absence or desertion.

Evidence of loss or damage will be taken in the course of the trial, as Rule 20 (F) provides that the facts justifying any deduction from pay are to be stated in the particulars. In case such evidence has not been taken there is nothing to prevent the court taking it after the finding, if necessary. In case of damage caused by an offence, the cause and effect must be closely related in order to warrant a sentence of stoppages. Thus a person would not for this purpose be said to have caused damage to a military policeman's clothes because the policeman fell down and damaged them while in pursuit of the accused when endeavouring to escape.

If two or more accused persons are convicted of a joint offence, each of them may be ordered to pay the whole amount of the compensation for any loss or damage occasioned by that offence. They will, ordinarily, contribute equally, but each of them is liable to pay the whole compensation in default of the other. In no case can the sum of both contributions exceed the whole compensation awarded, as when that is recovered the loss or damage is "made good" [Indian Army Act, section 43 (*h*)], and no further stoppages can legally be enforced

Can sentence him to forfeit.—See Indian Army Act, section 43 (*h*) (ii). The object of taking this evidence, and evidence of the rank of the accused is for the purpose of enabling the sentence to be awarded correctly.

(B) *Regimental or departmental books.*—A statement containing a summary of the entries against the accused person's name in those books with a statement as to his age, service, rank, etc., is to be produced and verified by a witness as being correctly extracted from those books; a witness must also identify the accused as being the person referred to in such statement This witness should usually be the adjutant or some other officer. There is nothing to prevent the prosecutor being the witness, and the remarks in the note to Rule 46 (C) do not apply. He must, however be sworn like any other witness; it is not sufficient that he should have been sworn as a witness before the same court on the same day in the course of the trial of some other person. If the accused challenges the correctness of the statement, the regimental or departmental books, or a duly certified copy thereof, must be produced, and the court must compare the statement with the books—see (D).

(D) *Duly certified copy.*—This means a copy certified by the officer having custody of the book

Any previous convictions of the accused may be proved by the production of a *verbatim* extract from the regimental or departmental books, certified by the officer in charge of those books A conviction by a criminal court may also be proved by an extract certified under the hand of the person having the custody of the records of the court in which the conviction was had, and must be so proved if there is reason to doubt the correctness of the entry of the conviction in the regimental or departmental books. A witness must always be called to prove the identity of the accused with the person stated in the extract or certificate to have been convicted.

54. The court shall award one sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

For form, see Appendix III, Form of Proceedings, paragraph (11).

The court will award such sentence as they think the accused ought to suffer, and the judge-advocate, president, or superintending officer will enter it at once in the proceedings.

The object of the latter portion of this rule is to prevent legal objections to the sentence. If, for example, the accused has been convicted on a charge of making away with his regimental necessaries, which cannot be punished with transportation, and also on a charge of desertion, which is punishable with transportation, the court may pass a sentence of transportation and that sentence will, under this rule, be valid because justified by the second charge, although not justified by the first charge.

With respect to the opinions on the sentence, see Rule 73 and the note thereon.

The sentence must, of course, be authorised by the Indian Army Act, and the court cannot, for example, sentence a person to restore stolen property, or to confinement to lines.

Sentences, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days are to be recorded in months and days. A month means a calendar month without any specification of the word calendar.

Even if the accused is considered, by the medical officer who examines him before trial, unfit to undergo rigorous imprisonment the court can sentence him to it, as it is the business of the medical officer of the prison, or place of military custody, to decide what severity of labour he can undergo. Sentences of simple imprisonment are obviously inexpedient and inconvenient of execution.

Recommendation to mercy.

55. (A) If the court make a recommendation to mercy, they shall give their reasons for their recommendation.

(B) The number of opinions by which a recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

(A) A recommendation to mercy will be appended to the sentence, and be embodied in the proceedings before they are signed by the president.

For form, see Appendix III, Form of Proceedings, paragraph (11).

Signing and transmission of proceedings.

56. Upon the court awarding the sentence, the president shall date and sign the sentence and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate or superintending officer, if any, shall be at once transmitted for confirmation.

For form, see Appendix III, Form of Proceedings, paragraph (11), and see Rule 80.

It is essential that the sentence be signed by the president, as, by section 106 of the Act, the term of transportation or imprisonment commences on the day on which the sentence and proceedings were signed by him. His signature after the sentence will authenticate all the proceedings of the trial.

The judge-advocate or superintending officer (if any) will sign after the president.

As a rule, certified copies of original documents produced in evidence by the prosecutor, and not the originals themselves, will be annexed to the proceedings.

Confirmation and Revision.

Revision.

57. (A) Where the finding or sentence is sent back for revision under section 100 of the Act the court shall re-assemble in closed court, but if the court is directed to take fresh evidence

on revision such evidence must be taken in open court and in the presence of the accused.

(B) Where the finding is sent back for revision and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and if such new finding involves a sentence, pass sentence afresh.

(C) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(D) After revision, the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate or superintending officer, if any, shall be at once transmitted for confirmation.

(A) Indian military law as to revision differs from that contained in the (British) Army Act. Under the former, a finding of acquittal can be revised and the accused found guilty and sentenced, a sentence can be increased on revision and evidence can (if so ordered) be taken on revision. None of these things can be done under the (British) Army Act.

The court should re-assemble at the time mentioned in orders, which should be as soon as practicable. If it is reduced by death, inability to attend, or otherwise, below the legal minimum [see Indian Army Act, section 100 (3)] it is dissolved and cannot re-assemble for revision, and the proceedings must be returned, without any entry thereon, to the confirming authority.

(B) Where the finding is sent back for revision and the court adhere to their finding, they can nevertheless revise their sentence.

If the new finding is acquittal or insanity no fresh sentence is involved, but in all other cases where the old finding is revoked, a new sentence must be recorded, even though it be identical with that formerly passed, inasmuch as on the revocation of the old finding the sentence passed thereon ceases to have effect.

If the original finding was acquittal and the revised finding is "Guilty," the court will (whether ordered to take fresh evidence or not) proceed as directed in Rule 53. The evidence referred to in clause (A) of the present rule is evidence of the facts relating to the charge, and must not be taken on revision unless specially ordered [Indian Army Act, section 100 (1)].

(D) For form, see Appendix III, Form of Proceedings, paragraph (12).

All letters or memoranda containing instructions to a court for a revision, or copies thereof, are to be attached to the proceedings.

Promulgation.

58. The charge, finding, sentence, and confirmation of a court-martial shall be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service.

In the absence of any direction by the confirming authority the usual custom of the service will be followed, but a written notice to the offender of the charge, finding, sentence and confirmation will be sufficient promulgation to satisfy this rule.

A recommendation to mercy should be promulgated and communicated to the accused together with the finding and sentence.

See Indian Army Act, sections 105, 107, as to committal to a civil prison or to military custody of persons sentenced to transportation or imprisonment: as to action in exceptional cases, see section 108. For forms of committal warrant, see Appendix IV.

Mitigation of sentence on partial confirmation.

59. (A) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such

charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed.

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of such charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

(A) In the case of a man convicted on a charge of desertion, and also on a charge of making away with his regimental necessaries and sentenced to transportation—if the confirming officer confirms the finding on the second charge, but not that on the first charge, which justified the sentence of transportation he is bound under this rule to commute the sentence at least to imprisonment. Otherwise the sentence would be in excess of what is justified by the finding which is confirmed, and therefore be invalid.

Again, if the second charge in the above case were using criminal force to an officer, and the confirming officer refuses to confirm the finding on that charge while confirming the finding on the first charge, it will be his duty to consider whether the sentence of transportation is not too severe for the offence of desertion, unaccompanied by aggravating circumstances, and if he thinks so, he will commute it to some less punishment.

(B) The object of this paragraph is to allow any permanent authority to do after confirmation, what paragraph (A) allows to be done before confirmation, that is to say, to provide that, if the judge-advocate-general in India, the deputy judge-advocate-general of the army or a court of law declares one of several charges to be invalid, the commuting authority may mitigate or commute the sentence, so as to prevent the whole sentence being invalid, and to make it a valid sentence in respect of any other charge which is valid.

Confirmation of finding on alternative charges.

60. (A) Where a special finding has been recorded in relation to alternative charges under Rule 51 (F), and the confirming authority is of opinion that the facts found by the special finding constitute in law the offence charged by any of the alternative charges, that authority may confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge; but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority as aforesaid, may declare that the finding amounts to a finding of guilty on that alternative charge; and the finding shall be a valid finding of guilty on the charge specified in that behalf in the declaration made on confirmation, or, in case of a subsequent declaration, in that subsequent declaration.

(B) The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of the alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge

of which the accused is found to be guilty under the terms of any declaration mentioned in (A), the authority making the declaration, or some other authority having power to mitigate, remit, or commute the punishment awarded, shall mitigate, remit, or commute the punishment according as seems just, having regard to the last-mentioned offence; and the punishment as so modified shall be as valid as if it had been originally awarded in respect of the last-mentioned offence.

(A) See note to Rule 51 (F).

For forms, see Appendix III, Form of Proceedings, paragraph (13). The object of this rule, as already explained in the note to Rule 51 (F), is to prevent a miscarriage of justice in consequence of a difference of opinion as to the offence which is legally constituted by the acts committed by the accused. If, in such a case, the court-martial have recorded a special finding of the facts, it remains under this rule for the confirming authority, and ultimately for any authority having power to commute the punishment, to declare what offence in law the acts committed by the accused constitute. So that if the opinion of the confirming officer is eventually overruled by any superior authority, the finding will take effect accordingly in respect of the charge for the offence which the acts of the accused are declared by the superior authority to constitute.

(B) As respects the sentence, see note to preceding rule.

Confirmation notwithstanding informality in, or excess of, punishment.

61. (A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence, as so varied, of the court-martial.

(A) The object of this rule is to prevent the proceedings of courts-martial being rendered invalid, when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents, superintending officers and members of courts-martial who pass sentences which are informal, or in excess of their powers, and confirming officers will, if practicable, send the sentence back for revision, and if they act under this rule, will call the attention of the court to the informality or illegality of the sentence.

Under this rule the confirming authority may vary the form in which a sentence is expressed, but cannot amend a sentence wholly illegal; as, for example, if an officer were sentenced to reduction to the ranks, or if a soldier were sentenced by district court-martial to transportation, or if a non-commissioned officer were sentenced to be reduced to the rank of lance naik, or a lance naik to the ranks.

In any such case the confirming officer should treat the sentence as a nullity, and direct the court to re-assemble and pass a valid sentence.

Where the punishment exceeds what is authorised by law, the confirming authority can, though such sentence is illegal, vary the sentence so as to bring it into conformity with law, and confirm it as varied.

Member or prosecutor not to confirm proceedings.

62. A member of a court-martial, or an officer who has acted as prosecutor at a court-martial, shall not confirm the finding or sentence of that court-martial, and where such member or prosecutor becomes confirming officer, he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial.

Proceedings of General and District Courts-Martial.

63. The members of a court-martial shall take their seats according to their army rank. Seating of members.

For rules as to the precedence of native officers, see Army Regulations, India, Volume II.

64. (A) In the case of a court-martial composed of British officers, the president shall conduct the proceedings. Conduct of proceedings.

(B) In the case of a court-martial composed of native officers, the judge-advocate, if there is one, shall conduct the proceedings. If there is no judge-advocate, the superintending officer shall conduct them.

65. (A) The officer conducting the proceedings is responsible for the trial being conducted in proper order, and in accordance with the Act, and will take care that everything is conducted in a manner befitting a court of justice. Responsibility of officer conducting the proceedings.

(B) It is the duty of the officer conducting the proceedings to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or otherwise.

(A) The court should always have before them a copy of the Indian Army Act, of Indian Army Regulations, Volume II, and of these Rules, and any other official books or orders which are necessary for the purpose of its proceedings.

If any person, other than the accused, interrupts the proceedings of the court, the best course will ordinarily be to order him to be excluded from the court. The court have, however, further powers under Rule 136 for dealing with persons who interrupt their proceedings.

It must be remembered that the trial of a person cannot proceed in his absence, even though he interrupts the proceedings.

(B) The officer conducting the proceedings should, like a judge in a criminal court, act as counsel for an accused person not defended by counsel, and he will, therefore, cause to be called before the court any witness, though not called either by the prosecution or the defence, whom he considers able to give material evidence to the court, and such witness may be cross-examined by the prosecutor and the accused. He will also put to the witnesses any questions which appear to him necessary or desirable to elicit the truth, and will particularly take care that the accused does not suffer any prejudice in consequence of his inability to put proper questions to the witnesses, or in consequence of his not fully understanding the nature of the proceedings. He will examine the summary of the evidence, and if a witness gives different evidence from what is there stated, will question him as to the difference.

66. (A) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused. Power of court over address of prosecutor and accused.

(B) The court may stop the prosecutor in referring to any matter not relevant to the charge then before the court, or any matter which the court is not investigating, and it is the duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(c) The court shall allow great latitude to the accused in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability to further proceedings to which he would otherwise be subject. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

(A) On a plea of not guilty the prosecutor should, if the case is complicated, make an opening address giving an outline of the evidence he intends to call, but abstaining from any argument and comments not required to explain the nature of the case. The prosecutor is an officer for securing that justice is done, not a partisan to obtain a conviction, independently of the justice of the case. Therefore he should prove, either by witnesses called for the purpose or by the examination of his other witnesses, any facts which show the true character of the offence whether they tend to aggravate or alleviate it, or to show the innocence, of the accused, and he must be especially careful to prove any facts tending to show either the innocence of the accused, or to extenuate his offence. If, for example, the accused is charged with grossly insubordinate conduct to his superior officer, and there are circumstances of provocation which, if proved, might mitigate the punishment though not justifying an acquittal, the prosecutor should call evidence to prove those circumstances

Again many acts are only offences when done knowingly or with a certain intent. *Prim' facie* it lies on the prosecution to show that the accused had the guilty knowledge which constitutes the offence; but absolute proof of guilty knowledge or intent is frequently impossible, and it can only be inferred from the circumstances. This inference the court is at liberty to draw unless the accused produces evidence to rebut it; but in this, as in every other case, all facts which tend to show either the existence or the absence of the intent or knowledge on the part of the accused must be brought out by the prosecutor. For example, if a soldier is charged with attempting to desert, and the evidence is that he went to a railway station and took a ticket for (say) Peshawar, and the fact is that several other soldiers in possession of passes took tickets for Peshawar at the same time, the latter fact should be brought out; as it gives a different complexion to the fact of taking a ticket, which of itself might be strong evidence against the accused.

The prosecutor must not introduce into the evidence against the accused any matters of aggravation which do not form part of the transaction in respect of which the accused is charged before the court, nor, as a rule, matters which, if true, are specific military offences with which the accused might be charged. If, for instance, he is charged with desertion, the prosecutor must not introduce, by way of aggravation, that he has been insolent or insubordinate, or that he had been previously intoxicated. On the other hand, if a soldier is charged with serious acts of insubordination, and the soldier was intoxicated, that fact should be brought out in the examination of the witnesses. Not only is the intoxication part of the circumstances of the case, but it may modify the character of the offence.

(B) *Matter not relevant to the charge.*—What is, and what is not relevant to any charge, is in some cases a matter of considerable difficulty, but in ordinary cases, common sense will determine whether the matter referred to does or does not bear on the particular charge before the court.

Anything which tends to show that the accused committed the offence mentioned in the charge, or to show the true character of the offence, see note to (A), is, ordinarily speaking, relevant

(C) The right of the accused in making his defence is stated in this paragraph. The case must be very special indeed to justify the court in

stopping an accused person in his defence, or in excluding, on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against an accused person on account of his defence.

Where a person tried for desertion made in his defence statements reflecting on the officers of the regiment as the reason for the prevalence of crime in the regiment, it was held that the defence, although the statements in it were eventually proved to be false, was not wholly irrelevant, as the accused might have hoped that the statements would lead to a mitigation of his punishment; and it was also held that the proper course was not to try the offender again for the purpose of ascertaining the truth of his statements, but to hold a court of inquiry for that purpose.

Procedure on trial of accused persons together.

67. Where two or more accused persons are tried together and any evidence is tendered by any one or more of them, the evidence and addresses on the part of all the accused persons shall be taken before the prosecutor replies, and the prosecutor shall make one address only in reply as regards all the accused persons.

Separate charge-sheets.

68. (A) When the convening officer directs any charges against an accused person to be inserted in different charge-sheets, the accused shall be arraigned and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 38 to 51, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(C) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 52, and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 44 and 53 to 56, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(D) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the accused upon any of the subsequent charge-sheets, proceed as before directed by (C).

(E) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(F) If the accused pleads "Guilty" to a charge in a charge-sheet, and the trial does not proceed [as mentioned in Rule 44 (A)] with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the accused on the charges in the next charge-sheet before they proceed as directed by Rule 44 (B) and (C).

(A) Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not embarrassed by being tried at the same time on several charges; but embarrassment will certainly arise if the facts of any of the charges are very complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different offences. In such cases, even practised advocates and judges find a great difficulty in keeping the different charges and the evidence on each charge distinct and still more will the difficulty be felt by an uneducated person, and by a court not constantly accustomed, like a criminal court, to deal with evidence.

In such cases, therefore, as a general rule, the convening officer should cause the charges to be inserted in separate charge-sheets.

The cases which are likely to arise may be classified as follows:—

Case No. 1.—(Single offence repeated on different days.) The first case arises where the accused has been guilty of the same description of offence on two or more different days. For example, a soldier steals from a comrade a watch on Monday, a pair of shoes on Tuesday, a pair of socks on Wednesday, and so forth. Supposing he had stolen all these articles at the same time, it would have constituted the same offence, but if he steals them on separate days, the offences are obviously distinct.

Case No. 2.—(Several offences forming part of one wrongful transaction.) A more difficult case arises where the acts of which a person has been guilty are in fact parts of one wrongful transaction, so to speak, and yet involve several military offences of different descriptions.

For instance, a soldier, being intoxicated uses grossly insubordinate language to his havildar, who is in the execution of his office, knocks him down and then runs away. He commits four offences: (1) the offence of intoxication; (2) the use of grossly insubordinate language to his superior officer in the execution of his office; (3) the use of criminal force to his superior officer; (4) desertion, or absence without leave.

Case No. 3.—(Several offences not forming part of the same wrongful transaction.) Another case arises where several offences of different descriptions have been committed by the same person, but at different times. For example, suppose that in the preceding case, the desertion, or absence without leave, had taken place sometime after the commission of the two previous offences, and in such manner that they could not be deemed part of the same wrongful transaction.

In case No. 1, the offences being of the same description, may, as a general rule, be contained in the same charge-sheet; but many offences of the same description should not be inserted in the same charge-sheet; as to do so might embarrass the accused in his defence. Usually it will be undesirable to insert more than three charges for offences of the same description in the same charge-sheet, unless the offences have been part of a system, as, for instance, a system of fraudulent misapplication carried on by the accused, in which case it may not be improper to increase the number of charges.

In case No. 2, four offences constitute one wrongful transaction, and therefore may be included in the same charge-sheet; but if they are so included, the accused must not at the same time be charged in the same charge-sheet with any previous offence of the same description; as, for instance, any previous offence of using criminal force to a superior officer, or of desertion, etc.

In case No. 3, if the accused is charged both with using criminal force to his superior officer and with desertion, or absence without leave, the latter offence should not be included in the same charge-sheet as the former.

In practice, in such an instance as case No. 2, the serious offences of using criminal force to a superior officer and of desertion, or absence without leave, should alone be charged.

Indeed, it is advisable, as far as possible, to avoid charging an accused person with more than one offence, as a multiplicity of charges leads to unnecessary trouble and confusion; and if the gravest of several offences is selected, the punishment will, in all probability, be sufficient to satisfy

the ends of justice. It may, however, in some cases be necessary to prove several offences, in order to guide the court as regards the proper amount of punishment.

Assuming that it is doubtful whether one or more of a set of offences can be proved, it will of course be advisable to omit any offence the evidence with respect to which is doubtful, and to bring before the court those charges only of which the proof appears to be sufficient.

The result of the above remarks is as follows :—

(i) Repeated instances of the same description of offence may be included in the same charge-sheet, though each instance must constitute a separate charge.

(ii) Offences of different descriptions should be included in separate charge-sheets, except where they form part of the same wrongful transaction.

(iii If offences of different descriptions are included in one charge-sheet, as forming part of one wrongful transaction, any act other than an act which forms part of that wrongful transaction should not be charged as an offence in the same charge-sheet.

(iv) Where one offence has in fact been committed but doubt arises as to what particular description of offence has been committed, one charge-sheet may include alternative charges for offences of different descriptions, but each charge will refer to the same set of particulars.

(B) The convening officer will regulate the order for the trial of different charge-sheets according to the gravity of the offence and the convenience of summoning the witnesses, or other circumstances. It is desirable to try first the gravest offence, as, if the accused is convicted, he will be sufficiently punished without trying him on the minor offences. In some cases it may be better to try an accused person on a simple case first, so as to avoid the necessity, if he is convicted upon that, of trying him for an offence where the case is complicated, and the number of witnesses is large.

(C) It will be observed that the separation of charges in different charge-sheets is merely for the purpose of enabling the court and the accused to keep distinct in their minds the different cases and the evidence thereon, with a view to the accused making a proper defence, and the court arriving at a proper finding, without being confused by evidence on entirely distinct cases; and that the result, when the time for sentence is reached, is the same as if the prisoner had been tried at the same time on all the charge-sheets. Unless, therefore, the convening officer directs under (D), that the accused need not be tried upon the subsequent charge-sheets, the court will not sentence the accused, until they have disposed of all the charge-sheets, and will then award one sentence in respect of all the charges contained in the different charge-sheets of which the accused has been found guilty.

(D) It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the different charge-sheets.

(E) The court should always, unless they think the claim very unreasonable, accede to a demand to be tried separately in respect of any particular charge.

(F) The object of this is only to provide that all the charge-sheets should be disposed of before the court proceed to sentence the offender; in the case of "Not guilty" this is provided for by (C).

69. (A) When a court-martial sits in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, or superintending officer, any officers under instruction, and, if an interpreter has been appointed and the court consider his presence necessary, the interpreter; and the court may either retire, or may cause the place where they sit to be cleared of all other persons not entitled to be present. Sitting in closed court.

(B) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the accused.

(B) *Shall be in open court.*—This does not control the power of the court to exclude a person who interferes with the proceedings —a power incident to every court as necessary for the proper conduct of the proceedings, though it does not extend to the exclusion of the accused, as the trial cannot proceed in his absence.

View.—All the members must proceed to view any place and the accused must be present there. usually the court will adjourn for the purpose to the place to be viewed.

70. (A) When a court is once assembled and the accused has been arraigned, the court shall continue the trial from day to day and sit for a reasonable period on every day unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

(B) A court may adjourn from time to time, and from place to place, and may, when necessary, view any place.

(C) A court-martial, in the absence either of a judge-advocate or superintending officer (if such has been appointed for that court-martial), shall not proceed, and, if necessary, shall adjourn.

(D) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(E) If the time to which an adjournment is made is not specified, the adjournment shall be until further orders from the proper military authority; and, if the place to which an adjournment is made is not specified, the adjournment shall be to the same place or to such place as may be specified in further orders from the proper military authority.

(A) It is very important that a trial by court-martial once begun should proceed with strict regularity and without interruption to its conclusion. This paragraph, therefore, requires the court to sit continuously from day to day, unless it is impracticable to do so, or unless an adjournment is necessary for the ends of justice.

Thus the court may adjourn on account of the illness of the accused, or for the purpose of viewing any place, or of securing the attendance of witnesses or their examination on commission (see Rule 124), or of obtaining evidence from recusant witnesses, or of obtaining the opinion of the deputy judge-advocate-general, or for reference to the convening or confirming officer on any question, or for any purpose, if the court are of opinion that such adjournment is necessary for the ends of justice (see note to Rule 121).

The court, however, should not as a rule permit an adjournment for the purpose of obtaining further evidence on the part of the prosecution, and should only adjourn for the production of evidence for the accused, where they consider that he has not previously had sufficient opportunity for procuring his witnesses or where it would be unjust to the accused not so to adjourn Great care, therefore, must be taken, both by the prosecutor and by the accused, to have ready at the trial all the witnesses and documents they desire respectively to produce. The court should adjourn if an adjournment is requested by the accused person to prepare his defence, by the prosecutor to prepare his reply, or by the judge-advocate to prepare his summing-up.

In the event of the illness of a member, the court may, if not reduced below its legal minimum either proceed without him, or adjourn, as they think proper; but if reduced below the legal minimum, Indian Army Act, section 65, applies. A member absent during any part of the proceedings cannot again take his seat in court.

When a court adjourns before the conclusion of the trial the adjournment is to be entered in the proceedings [see Appendix III, Form of

Proceedings, paragraph (5)], and either announced in court in the presence of the prosecutor and accused or communicated to them. A brief adjournment (*e.g.*, one of an hour or two) need not be recorded.

Reasonable period.—Sittings of six or seven hours will be found as a rule quite long enough, and they should not be further protracted without some special reason.

Too long sittings unduly strain the attention of the members and may operate unfairly to the prisoner, as at the close of a long sitting he cannot properly make his defence. Under Indian military law, trials by court-martial may be carried on at any time.

(B) *From place to place.*—This meets the case of a view, as well as of a court-martial held on the line of march, also the case of adjournment to the quarters of a sick witness, for the purpose of taking his evidence.

(C) *Military exigencies.*—These can seldom occur, except on active service.

Proceedings on death or illness of accused.

71. In case of the death of the accused, or of such illness of the accused as renders it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority.

This evidence will be taken on oath or solemn affirmation in the same manner as on the trial.

Death, retirement or absence of president.

72. (A) In the case of the death, retirement on challenge or unavoidable absence of the president, the next senior officer shall take the place of the president and the trial shall proceed if the court is still composed of not less than the smallest number of officers of which it is required by law to consist.

(B) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that court of that person, but the court will not be affected unless it is reduced below the legal minimum.

(C) An officer shall not be added to a court-martial after the accused has been arraigned.

(*a*) *Smallest number.*—See Indian Army Act, section 65 (1), and notes.

(C) *Arraigned.*—See note to Rule 23 (A).

Taking of opinions of members of court.

73. (A) Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(B) The opinions of the members of the court shall be taken in succession, beginning with the junior in rank.

Indian Army Act, section 81, requires all decisions to be by an *absolute* majority. Otherwise, a punishment might be imposed by a minority. For instance, if the punishment proposed by three members was transportation, by two imprisonment, and by two a forfeiture, the transportation might be imposed although four members were opposed to it.

In order to obtain the absolute majority, it will be desirable first to take the opinions of the members of the court as to the nature of the punishment to be awarded, that is to say, transportation, imprisonment, dismissal, forfeiture, or other punishment.

Where opinions differ as to the nature of punishment, the most lenient should be put first, then the next most lenient, and so forth, the most severe being put last. Any member who is in favour of the most lenient punishment, if overruled, will of course give his opinion in favour of the next most lenient, and will not oppose this because he is desirous of having the punishment still more lenient.

For example, if the court consist of seven members, of whom three are in favour of transportation, two of imprisonment, and two of a forfeiture, the forfeiture will be put first to the court, and when negatived, the imprisonment will be put next. The members who were in favour of forfeiture will of course vote for imprisonment as against transportation, and thus four votes will be given in favour of imprisonment, being an absolute majority of the court.

When the nature of the punishment has been determined, the quantum of punishment must be ascertained; that is to say, in the case of imprisonment, the number of months or days of imprisonment.

As before, the most lenient proposal will be put first, and a member who is in favour of the shortest term of imprisonment will of course support the next shortest term, rather than support a longer term, and will not give his opinion against the next shortest term merely because he desires to have a term shorter still.

For example, if in a court of nine members, two members desire to award three months' imprisonment, two others four, another six, and the other four ten months, the three months will be put first, and when negatived, the four months will be put next, which will be supported by the members who wished for three months, but will be opposed by the members who desire a longer term. The six months will next be put, and will be supported by those who desire to award three months and four months, so that the ultimate sentence will be six months imprisonment.

It is not a proper course of proceeding to take the terms of imprisonment or other punishment proposed by each member, and strike an average; but naturally in the course of discussion among the members of the court, some punishment intermediate between the most severe and most lenient punishment proposed by the different members will usually be arrived at, without necessarily resorting to actual voting, as in the above examples.

Junior in rank, i.e., rank in which they take their seats (Rule 63).

The opinion of each member is taken separately on each charge [Rule 50 (B)]. If there is a judge-advocate, the opinions are taken by him; if there is not, then by the president or superintending officer.

The oath taken by the members of the court operates, as a general rule, to prevent the opinions of the individual members being disclosed. See note to Rule 35

Procedure on incidental question.

74. If any question should arise incidentally during the trial, the person, whether prosecutor or accused, requesting the opinion of the court, is to speak first: the other person is then to answer, and the first person is to be allowed to reply.

This rule will apply to such questions as the admissibility of evidence, the propriety of any question, or the recalling of a witness.

Swearing of court to try several accused persons.

75. (A) A court may be sworn or affirmed at the time to try any number of accused persons then present before it, whether those persons are to be tried together or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(B) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that

objection or postpone the case of that person and swear or affirm the members of the court for the trial of the others alone.

(c) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.

(A) Under this rule it will not be necessary, where there are several accused persons to be tried separately, to go through the process of swearing the court for each, but all the accused may be brought up together, and the proceedings for objections to and swearing or affirming the members, etc. (see Rules 34 to 37 and 76), may be gone through for all the accused at the same time. After the members, etc., are sworn or affirmed, those persons who are not then to be tried will be removed.

This course of procedure will not affect the position of the court, which will, as heretofore, be a separate court for the trial of each case, and, as heretofore, the swearing or affirming of the court will be mentioned in the proceedings of each separate case.

(B) It need hardly be observed that when, in consequence of an objection by one accused a new officer serves, the other accused persons who before made no objection to the court will have the right to object to the new officer.

(C) It is obvious that in the case of several accused persons being tried together, each person will be called on separately to plead and make his defence, and a finding must be arrived at separately for each person accused, and each person found guilty must be separately sentenced, and a separate record accordingly will be made in the proceedings. It may be proper to make a distinction between the sentences of persons found guilty of the same offence, having regard to rank, character, degree of criminality, or other considerations.

Swearing of interpreter and shorthand writer.

76. (A) At any time during the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused request it on any reasonable ground, be sworn or affirmed to act as interpreter.

(B) An impartial person may at any time of the trial, if the court think it desirable, be sworn or affirmed to act as a shorthand writer.

(C) Before a person is sworn or affirmed as interpreter or shorthand writer, the accused shall be informed of the person who is proposed to be sworn or affirmed and may object to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

(A) and (B) It will often be convenient to swear or affirm a shorthand writer and interpreter at the same time as the members and officers of the court are sworn, but this is not obligatory. For forms of oath and affirmation see Rule 36.

An interpreter may either be appointed by the convening officer [Rule 27 (C)] or be called in by the court under the present rule. In either case he must be sworn or affirmed in the form prescribed in Rule 36.

(C) Any objection made by the accused to the interpreter or shorthand writer will be dealt with in the same way as an objection to a member of the court.

The court should, if the accused requests it, allow him to call witnesses in support of the objection. Any objection which appears to the court to have any foundation should, as a rule, be allowed.

Evidence, when to be translated.

77. When any evidence is given in a language which any of the officers composing the court, the judge-advocate, the superintending officer, the prosecutor or the accused does not understand, that evidence shall be interpreted to such officer or person in a language which he does understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed, an impartial person shall be sworn or affirmed by the court as required by Rule 76. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

The charge-sheet and the documentary evidence as to character will be in English and an interpreter in the language of the accused person should therefore be appointed in every case in which the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so. See note to Rule 78 as to evidence given in a language which the officer recording the proceedings does not understand.

Record in proceedings of transactions of court-martial.

78. (A) At a court-martial the judge-advocate, or, if there is none, the president or superintending officer, shall record, or cause to be recorded, in the English language, all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president (if the court is composed of British officers) shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(B) If the court is composed of native officers and the judge-advocate or superintending officer is called as a witness by the accused, the interpreter shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate or superintending officer. If no interpreter has previously been appointed, or if the interpreter is unable to record the proceedings in the English language, an interpreter shall be appointed for this purpose by the Court.

(C) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*.

(D) Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or accused so requests, or the court think fit, be entered with the grounds of the objection, and the decision of the court thereon.

(E) Where any address by, or on behalf of, the prosecutor or person under accusation, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court think proper, except that—

(1) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by,

or on behalf of, the accused to each charge against him; and

(2) the court shall also record any particular matters in the address by, or on behalf of, the prosecutor or accused person, which the prosecutor or accused person, as the case may be, requires.

(F) The court shall not enter in the proceedings any comment, or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president.

(A) The record must be taken in a clear and legible hand without erasures. Interlineations or corrections must be avoided as much as possible; when made they should be verified by the initials of the officer responsible for the accuracy of the record. The pages should be numbered and the sheets fastened together, and sufficient space must be left below the signature of the president for the remarks of the confirming authority. The station must be added, together with the date

No corrections or additions may be made to the proceedings of a court-martial after promulgation When an obvious oversight has been made in the record, such as the omission of the words—"The president and members are duly sworn" or the date of the sentence, a certificate, signed by the president, to the effect that they were sworn or that the sentence was dated on a particular day, should be attached. This has been ruled not to be an addition to the proceedings.

(C) *In a narrative form*—That is to say, the material effect of a question and answer is to be written down as the evidence given by the witness, without distinguishing the question and answer. Thus suppose the question to be "What did the accused do then?" and the answer to be "He left the room," the evidence taken down would be "Accused then left the room." Often especially in cross-examination, the question is irrelevant, or is made irrelevant by the answer; in such cases it will be unnecessary to take anything down

The officer responsible for the record is, in every case, one of those mentioned in Rule 77 and any evidence which he does not understand will therefore be translated into English by an interpreter duly sworn or affirmed as such.

Where a question or answer is required to be taken down in the proceedings *verbatim*, and is not in English, it must be taken down, as nearly as may be, in the English character and the interpretation of it into English added.

(F) The court can state in a separate document any remark they think proper to make on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also if they think the evidence shows that the accused has committed some offence not charged, *e.g.*, if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.

79. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the president or superintending officer, but may, with proper precautions

Custody and inspection of proceedings.

for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable times before the court is closed to consider the finding.

Transmission of proceedings after finding.

80. The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or, in default of any such direction, to the confirming officer.

Person having the custody, that is (see Rule 79), if it is a general court-martial, or a district court-martial with a judge-advocate, the judge-advocate, and, in any other case, the president or superintending officer of the court.

If from any cause a member of the court-martial has become confirming officer, he cannot confirm the finding and sentence of the court, but must transmit the proceedings for confirmation to a superior officer who is competent to confirm the findings and sentences of the like description of court-martial (see Rule 62).

The proceedings should be dated and signed immediately after the finding in the case of an acquittal on the charges (see Rule 52); and after the sentence in case of a conviction (see Rule 56).

The proceedings of courts-martial, when despatched by post, should invariably be sent under registered cover.

Friend of Accused and Counsel.

Accused may have a person to assist him on trial.

81. (A) At any general or district court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person.

(B) A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses; and, if an officer subject to military law, shall have the same rights and duties as counsel have under these rules, and the right of the accused shall be limited in like manner.

A person who is not subject to military law cannot, unless a counsel [as defined in Rule 87 (B)], under any circumstances either examine witnesses orally or address the court, though he may be present in court and aid the accused by his advice.

The court should not allow the accused to address them in addition to his counsel, or officer acting as counsel, except as prescribed by Rule 88 (A).

The accused will, of course, be allowed every facility for communicating with his friend, whether a military man or counsel or not.

Counsel allowed in certain general and district courts-martial.

82. (A) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial if the Commander-in-Chief in India or the convening officer declares that it is expedient to allow the appearance of counsel thereat, and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 81, the rules with respect to counsel shall apply only to the courts-martial at which counsel are, under this rule, allowed to appear.

No one can appear as counsel unless he is qualified as provided in *Rule 87 (B). There is no restriction on the number of counsel.*

A person acting as counsel, though not bound to such strict impartiality as the prosecutor, must still recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour. In his address, however, he will have the same liberty as the accused, see Rule 66 (C), but he must be even more guarded in referring to the conduct of persons not before the court.

Requirements for appearance of counsel.

83. (A) Where an accused person gives notice of his intention to have counsel to assist him during the trial, either on the day on which he is informed of the charge or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, counsel to assist him during the trial, and would have enabled the authority appointing a judge-advocate to appoint counsel to act as judge-advocate at the trial, or where such notice as mentioned in (B) is given to the accused on the part of the prosecution, counsel may appear at the court-martial to assist the accused.

(B) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(C) The counsel, who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rule 88 or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 46 (C) and (D) shall not apply.

Counsel for prosecution.

84. The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 66 (B).

The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the accused, and the nature and general effect of the evidence which he proposes to adduce in support of it, without entering into unnecessary detail.

Counsel for accused.

85. The counsel appearing on behalf of the accused has the like rights, and is under the like obligations as are specified in Rule 66 (C) in the case of the accused.

General rules as to counsel.

86. Counsel, whether for the prosecution or for the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination,

and re-examination of witnesses, and relating to the duties of counsel.

Counsel should treat the court and judge-advocate (or superintending officer) with due respect, and should, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

Rules of criminal courts in India.—See Part I, Chapter V, paragraphs 101 to 112, especially paragraph 110, as to injurious questions. Counsel ought not to state as a fact any matter which is not proved, or which he does not intend to prove, neither ought he to state what is his own opinion on any matter of fact before the court. In a question to a witness he should not assume that facts have been given in evidence which have not been so given, or that particular answers have been given contrary to the fact.

Qualifications of counsel.

87. (A) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified.

(B) Counsel shall be deemed properly qualified if he is a legal practitioner authorised to practise with right of audience in a Court of Sessions in British India, or if, in any part of His Majesty's dominions other than British India, he is recognised by the convening officer as having in that part rights and duties similar to those of such a legal practitioner in British India and as being subject to punishment or disability for a breach of professional rules.

Statement by accused defended by counsel or officer.

88. (A) An accused person assisted by counsel, or by an officer subject to military law, may, if he thinks fit, at the close of the case for the prosecution and before the address by such counsel or officer, make a statement giving his own account of the subject of the charges against him.

The statement may be made either orally or in writing, but the accused making the statement shall not be sworn, and no question can be put to him by the court or by any other person.

(B) If the accused make such a statement, the procedure shall, so far as possible, be the same as if the accused had called witnesses to the facts of the case.

(B) Therefore the prosecutor will be entitled to call witnesses in reply, and to reply to the address of counsel or the officer acting as counsel for the accused.

Judge-Advocate.

Disqualification of judge-advocate.

89. An officer who is disqualified for sitting on a court-martial, and any other person who would have been so disqualified had he been an officer, shall be disqualified for acting as judge-advocate at that court-martial.

Disqualified.—See Rule 29 (B) and note thereon.

Substitute on death, illness or absence of judge-advocate.

90. If the judge-advocate dies, or from illness or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance to the convening authority; and a person not disqualified to be judge-advocate may be appointed by that authority, who shall be sworn, or affirmed, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

Sworn or affirmed.—See Rule 36. See Appendix III, Form of Proceedings, paragraph (5).

91. The powers and duties of a judge-advocate are as follows :— Powers and duties of judge-advocate.

(A) The prosecutor and the accused, respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(B) At a court-martial he represents the judge-advocate-general.

(C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(D) Any information or advice given to the court on any matter before the court shall, if he or the court desire it, be entered in the proceedings.

(E) At the conclusion of the case he shall, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.

(F) The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion.

(G) The judge-advocate has, equally with the officer conducting the proceedings, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(H) In fulfilling his duties the judge-advocate must be careful to maintain an entirely impartial position.

(F) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by the opinion of the judge-advocate, and not overrule it, except for very weighty reasons. The courts are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The members of the court may become responsible to the ordinary civil courts of law in the event of the accused being unjustly convicted. This liability may turn on the question whether they exercised a *bonâ fide* judgment; and though they are not bound by the opinion of the judge-advocate, yet disregard of his advice, if that advice is right, might be held to show that they did not exercise a *bonâ fide* judgment. On the other hand, the adoption of the advice of the judge-advocate, even if wrong, may, in a doubtful case, practically exonerate the members from liability.

(G) *Permission of the court.*—This should never be refused unless the court consider that the judge-advocate is acting improperly, or in such a manner as to obstruct the proceedings, and they should always record their reasons for refusing the permission.

As to the duty of the officer conducting the proceedings towards the accused, see Rule 65 (B) and note.

SECTION 3.—SUMMARY COURTS-MARTIAL.

Proceedings.

92. The officer holding the trial, hereinafter called the court, shall record, or cause to be recorded, in the English language, the transactions of every summary court-martial.

Evidence when to be translated.

93. When any evidence is given in a language which the court or the accused does not understand, that evidence shall be interpreted to the court or accused as the case may be in a language which it or he does understand. The court shall, for this purpose, either appoint an interpreter, or shall itself take the oath or affirmation prescribed for an interpreter at a summary court-martial. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

Any evidence not understood by the officers attending the trial should also be translated to them.

The commanding officer should, as a general rule, take the interpreter's oath or affirmation himself. In the rare cases where the commanding officer does not know the language of the accused he should appoint a competent interpreter. Whoever interprets any evidence *must* be sworn or affirmed as an interpreter before doing so.

Assembly.

94. When the court, the interpreter (if any), and the officers attending the trial are assembled, the accused shall be brought before the court, and the oaths or affirmations prescribed in Rule 95 taken by the persons therein mentioned.

The accused cannot object to the court or interpreter.

Swearing or affirming of court and interpreter.

95. (A) The court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience.

Form of oath.

"I do swear that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection, and if any doubt shall arise, then, according to any conscience, the best of my understanding, and the custom of war in the like cases. So help me God."

The words "So help me God" may, when necessary, be omitted or varied.

Form of affirmation.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice,"—etc.,—as in the form of oath but omitting the words "So help me God."

(B) After which the court, or some person empowered by it, shall administer to the interpreter (if any) an oath or affirmation in one of the following forms, or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of oath.

"You do swear that you will faithfully interpret and translate, as you shall be required to do touching the matter before this court-martial So help you God."

The first person may, when necessary, be substituted for the second in this form of oath, and the words "So help you God" omitted or varied.

Form of affirmation.

"I solemnly affirm, in the presence of Almighty God, that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

(c) After the oaths and affirmations have been administered all witnesses will withdraw from the court.

See notes to Rules 35 and 37 which apply *mutatis mutandis* to the oaths and affirmations referred to in this note.

The "Court" is, of course, the officer holding the trial. The officers attending the trial do not form part of the court and are not, as such, sworn or affirmed.—Indian Army Act, section 64 (2).

Swearing of court to try several accused persons.

96. (A) A summary court-martial may be sworn or affirmed at the time to try any number of accused persons then present before it whether those persons are to be tried together or separately.

(B) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases and taking them afterwards in succession.

Arraignment of accused.

97. (A) After the court and interpreter (if any) are sworn or affirmed as above-mentioned, the accused shall be arraigned on the charges against him.

(B) The charges on which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

(A) When two or more accused are tried together for the same offence each is separately arraigned.

(B) The charge-sheet, after being read to the accused, is attached to the proceedings.

When the sanction of superior authority is necessary for the trial of a charge by summary court-martial, such sanction should be entered at the foot of the charge-sheet and signed by the superior authority or a staff officer.

Objection by accused to charge.

98. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

See Rules 18 to 21. An objection to the jurisdiction of the court must be raised by way of special plea.—Rule 100.

If it appears that the accused is by reason of insanity unfit to take his trial, the court will find the fact specially and he will be dealt with as provided in Rule 131.

Amendment of charge.

99. (A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, it may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a district court-martial for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

See notes to Rule 40.

It will be observed that if the amended charge is one requiring the sanction of superior authority (see Indian Army Act, section 74) reference must be made to such authority before the trial is proceeded with. If, however, the commanding officer considers that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline, *reference becomes unnecessary* The commanding officer should, in such a case, attach the usual memorandum (Rule 116) and, after giving the accused sufficient notice of the amendments, proceed with the trial.

Special pleas.

100. If a special plea to the general jurisdiction of the court, or a plea in bar of trial, is offered by the accused, the procedure laid down for general and district courts-martial when disposing of such pleas shall, so far as may be applicable, be followed, but no finding by a summary court-martial on either of such pleas shall require confirmation.

See Rules 41 and 43 and notes thereto.

General plea of "Guilty" or "Not guilty."

101. (A) The accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(B) If an accused person pleads "Guilty," that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

See notes to Rule 42, which apply *mutatis mutandis* to this Rule.

Procedure after plea of "Guilty."

102. (A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty," the trial shall first proceed with respect to those other charges, and, after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Not guilty" on each alternative charge to which the accused has not pleaded "Guilty."

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall read the summary of evidence, and annex it to the proceedings,

or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence. This evidence shall be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty."

(C) After such evidence has been taken, or the summary of evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(D) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the

See notes to Rule 44.

103. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court shall at once, subject to a compliance with Rule 101 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 102. Withdrawal of plea of "Not guilty."

104. After the plea of "Not guilty" to any charge is recorded the evidence for the prosecution will be taken. At the close of the evidence for the prosecution the accused shall be asked if he has anything to say in his defence, and may address the court in his defence, or may defer such address until he has called his witnesses. Procedure after plea of "Not guilty."

The accused may then call his witnesses, including also witnesses to character.

See Rules 125 to 129 regarding witnesses and evidence.

The utmost liberty consistent with the interest of parties not before the court, and of the dignity of the court itself, should be allowed to the accused in making his defence, and the court should, if necessary, adjourn to allow him time for its preparation. The accused cannot give evidence himself—see note to Rule 48.

105. The court may, if it thinks it necessary in the interests of justice, call witnesses in reply to the defence. Witnesses in reply to defence.

This is an extreme measure and should only be resorted to when the accused has made or elicited from his witnesses some statement material to his defence, which could not reasonably have been foreseen when the case for the prosecution was being investigated.

Verdict.

106. After all the evidence, both for prosecution and defence, has been heard, the court shall give its opinion as to whether the accused is guilty or not guilty of the charges.

The court need not be closed and the finding may be pronounced at once. On the other hand, however, the officer holding the trial may clear the court to consider the evidence, or to discuss any point with the officers attending the trial, or may adjourn the court to allow himself time for mature consideration or reference as to any doubtful point.

Finding.

107. (A) The finding on every charge shall be recorded, and except as mentioned in these rules shall be recorded simply as a finding of "Guilty," or of "Not guilty," or of "Not guilty and honourably acquit him of the same."

(B) When the court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty," record a special finding.

(C) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.

(D) When the court is of opinion that the facts proved do not disclose an offence under the Act, the court will acquit the prisoner on that charge.

See notes to Rule 51.

Procedure on acquittal.

108. If the finding on each of the charges in a charge-sheet is "Not guilty," the court shall date and sign the proceedings, the findings will be announced in open court, and the accused will be released in respect of those charges.

Procedure on finding of "Guilty."

109. (A) If the finding on any charge is "Guilty," the court may record of its own knowledge, or take evidence of and record, the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused, any previous convictions of the accused either by a court-martial, or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 20 of the Act, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit.

(B) If the court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner directed in Rule 53 for similar evidence at general and district courts-martial.

See notes to Rule 53.

Sentence.

110. The court shall award one sentence in respect of all the offences of which the accused is found guilty.

See Indian Army Act, Chapter VI.

The sentence must, of course, be one authorised by the Indian Army Act, and the court cannot, for example, sentence a person to restore stolen property, or to confinement to lines.

Sentences exceeding one month and of less than one year should be recorded in months, or in months and days. A month means a calendar month.

When a summary court-martial awards a sentence of rigorous imprisonment which does not involve dismissal (Indian Army Act, section 15), and no sentence of dismissal is added, the court should be careful to *enter in its sentence* a direction that the imprisonment is to be undergone in military custody (Indian Army Act, section 107). If this is not done, the offender will return to his corps after completing his sentence in a civil prison.

As to sentences of imprisonment in military custody when combined with dismissal, see Rule 154. Signing of proceedings.

111. The court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

See notes to Rule 56.

112. When the charges at a trial by summary court-martial are contained in different charge-sheets, the procedure laid down for general and district courts-martial when trying charges contained in different charge-sheets, shall, so far as may be applicable, be followed. Charges in different charge-sheets.

Procedure laid down.—See Rule 68. Each charge-sheet will therefore be tried from *arraignment* to *finding* separately. When all the charge-sheets are disposed of, one sentence will—unless the accused is found not guilty on all the charges—be passed. For circumstances under which charges should be in different charge-sheets, see notes to Rule 68.

113. (A) The officer holding the trial may clear the court to consider the evidence or to consult with the officers attending the trial. Clearing the court.

(B) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the accused.

See notes to Rule 69.

114. A summary court-martial may adjourn from time to time, and from place to place, and may, when necessary, view any place. Adjournment.

115. In any summary court-martial an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court. Friend of accused.

116. An explanatory memorandum is to be attached to the proceedings when a summary court-martial tries, without reference, an offence which should not ordinarily be so tried. Memorandum to be attached to proceedings.

See Indian Army Act, section 74. The commanding officer is the sole judge as to whether reference can, without detriment to discipline, be made to superior authority before trying these offences.

117. The sentence of a summary court-martial shall (except as provided in Rule 118) be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation. Promulgation.

The promulgation is generally on a parade of the regiment.

Promulgation to be deferred in certain circumstances

118. When the officer holding the trial has less than five years' service, the sentence of a summary court-martial shall not (except on active service) be promulgated or carried out until approved by superior authority as provided in section 101 of the Act.

The officer to whom the sentence is referred cannot in any way alter the finding, or remit, mitigate, or commute the sentence, but if he considers the sentence too severe he should inform the officer holding the trial of his views and direct him to modify the sentence, which order should be obeyed as a matter of discipline. The original sentence must not be carried out until the case is finally settled.

Review of proceedings.

119. The proceedings of a summary court-martial shall, immediately on promulgation, be forwarded (through the deputy judge-advocate-general of the army in which the trial is held) to the officer authorised to deal with them in pursuance of section 102 of the Act. After review by him they will be returned to the accused person's corps for preservation in accordance with Rule 132.

Irregularities in procedure and minor irregularities in evidence should not be reviewed so severely in a summary court-martial as in another court. So long as the charge and sentence are legal, the evidence the accused is convicted on is given on oath or affirmation and is reasonably sufficient, is not hearsay and has not been largely elicited by leading questions, so long as the accused has not been in any way prejudiced in his defence, has been allowed to call all the witnesses he wishes and to cross-examine the witnesses against him, minor irregularities need not vitiate the proceedings or call for more than a remark for future guidance.

Section 4.—General Provisions.

Witnesses and evidence.

Calling of all prosecutor's witnesses.

120. The prosecutor or, in the case of trials by summary court-martial, the court is not bound to call all the witnesses whose evidence is in the summary of evidence or whom the accused has been informed they intend to call, but they should ordinarily call such of them as the accused desires, in order that he may cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of all such witnesses.

As the cross-examination of a witness for the prosecution may be most material for the purposes of the defence, a prosecutor, or officer holding a trial by summary court-martial, should always have all the witnesses present. Failure to produce a material witness for cross-examination might invalidate the proceedings. Any witness whose evidence is in the summary of evidence or regarding whom notice has been given and whom the accused asks to have called should be called by the prosecution.

The object of this rule is to enable the prosecution to proceed, although some witness is not available, and the rule is not intended to absolve the prosecutor or officer holding the trial from the responsibility for calling all the available witnesses who can give material evidence (see note to Rule 66) and, as a rule, the whole case, as it appears in the summary of evidence, should be proved by him. If the case fails from the prosecutor not calling any available witness, or not asking any necessary questions of a witness, he becomes personally responsible to the convening officer.

Calling of witness whose

121. If the prosecutor or (in the case of a summary court-martial) the court intends to call a witness whose evidence is not

contained in any summary given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called; and if such witness is called without such notice having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court shall inform the accused of his right to demand such adjournment or postponement. evidence is not contained in summary.

Where no summary has been delivered, this rule will apply to every witness. In such cases notice of the intention to call the witnesses should be given to the prisoner when he is warned for trial (Rule 23). This will prevent delay at the trial.

The court are justified in calling of their own motion a witness not produced by the parties, if they consider it necessary for the ends of justice, but this power should be sparingly exercised: and they should not ordinarily adjourn in order to obtain for themselves further testimony.

122. The accused shall not be required to give to the prosecutor or court a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary, and for whose attendance the accused has not requested steps to be taken as provided by Rule 23 (A). List of witnesses of accused.

The prosecutor may be called as a witness for the defence. The judge-advocate, though not competent as witness for the prosecution, may be called for the defence. A member of a court-martial is a competent witness for the defence, but not for the prosecution, and may be sworn at any stage of the proceedings; but it is desirable to avoid placing officers on courts-martial whose evidence is likely to be required. It need scarcely be observed that a member, if called on to give evidence, must be sworn like other witnesses in open court, and be subject to cross-examination, and that he does not cease in any respect to be a member of the court.

123. (A) In the case of trials by general or district court-martial, the convening officer, or, after the assembly of the court, the president, shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of his attendance. Procuring attendance of witnesses.

(B) The court shall, in the case of trials by summary court-martial, take proper steps to procure the attendance of the witnesses whom the accused desires to call and whose attendance can reasonably be procured, but the accused may be required to undertake to defray the cost (if any) of their attendance.

Proper steps.—See Indian Army Act, section 84, as to summoning witnesses, etc.; military witnesses actually serving with a corps may of course be ordered by the proper authority to attend, as a matter of military discipline, without the issue of a formal summons.

Whose attendance can reasonably be procured.—These words will prevent a prisoner having any technical ground of complaint in case a distant witness whom he requires is not procured; but it is the duty of the officer (whether the convening officer, the president or the officer holding the trial) to secure the attendance of every witness whom there is any ground to suppose to be material for the defence and the court should adjourn, if necessary, for the purpose.—(See Rule 124.)

May be required to undertake to defray the cost.—This power is given in order to prevent accused persons or prosecutors demanding unreasonably the attendance of witnesses. In the case of the prosecutor, the cost

would usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness may be held afterwards to invalidate the proceedings of the court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had on the court.

If a witness has in his possession or under his control any books, accounts, letters, returns, papers, or other documents which are thought necessary for the trial, care must be taken, in summoning him, to require him to bring them with him as he would be justified in declining to acknowledge a mere verbal request. See Indian Army Act, section 84 (4).

For action when a civil witness who has been duly summoned, and whose expenses have been tendered, does not attend, see Rule 136 (c) and notes thereto.

For form of summons, see Appendix III.

As to privileges of witnesses, see Indian Army Act, section 118.

Procedure when essential witness is absent.

124. If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall—

(*a*) take steps to procure the issue of a commission for the examination of such witness; or

(*b*) if it is a general or district court-martial, adjourn and report the circumstances to the convening officer;

(*c*) if it is a summary court-martial, adjourn to enable the witness to attend, or adopt such other course as appears to the officer holding the trial best calculated to do justice.

(a) *Issue of a commission.*—See Indian Army Act, section 85, and notes. Only the judge-advocate-general in India or the deputy judge-advocate-general of an army can issue a commission and then only when action is initiated by a court-martial.

Such other course.—For instance, he can acquit the prisoner forthwith, or order his release for the present but without prejudice to his subsequent trial should the witness become available.

Withdrawal of witnesses from court.

125. During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted to be present in court while not under examination, and if, while he is under examination, a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

As the trial begins with the arraignment of the prisoner, any witnesses in court should be ordered to withdraw before he is arraigned. If any such discussion as is mentioned in the rule arises, the court should generally order the witness to withdraw, as the discussion might influence his answer.

Oath or affirmation to be administered to witnesses.

126. An oath or affirmation shall be administered to every witness, before he gives his evidence by a member of the court, the judge-advocate, the superintending officer or some other person empowered by the court, in one of the following forms or in such other form to the same purport as the court ascertains to

be according to the religion or otherwise binding on the conscience of the witnesses.

Form of oath.

"You do swear that what you shall state shall be the truth, the whole truth, and nothing but the truth. So help you God."

The first person may, when necessary, be substituted for the second in this form of oath, and the words "So help you God" omitted or varied.

Form of affirmation.

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

As to manner in which oaths and affirmations are administered, see notes to Rules 35 and 37.

The Hindustani translation of the above affirmation (for Muhammadans and Hindus) is as follows:—

Maiṇ ímán (dharm) se Hakk Taálá Khudá ko házir aur názir ján ke (Parmeshwar Bhagwán ko ján mán ke) ikrár (iqrár) kartá húṇ ki maiṇ jo bát kahúṇgá so sachchi kahúṇgá aur bin chhipáye kisí bát ke sab sach kahúṇgá aur siwáe sach ke kuchh aur na kahúṇgá.

Its Pushtu form is as follows:—

Zah Pák Khudáí Taálá ta házir au názir pohegam au la ímán sara ikrár kawam chi tsa tsa wáyam ba rikhtiyá wáyam, au tsa pata khabara ki wí tol ba rikhtiyá wáyam, au pa ghair da rikhtiyá ba na nor tsa na wáyam.

Sikhs are sworn on the Granth. The following is the form:—

"Maiṇ Srí Gurú Granth Sáhibjí kí sugand khátá húṇ ki bát jo maiṇ kahúṇgá, so sachchi kahúṇgá; aur bina kisháne já ghatáne ke, sab kuchh sach sach kahúṇgá; aur siwáe sach ke, kuch aur na kahúṇgá; aur jo maiṇ jhúth kahúṇ, to Srí Gurú Granth Sáhib mujh par áfat dálen."

If a witness refuses to be sworn or affirmed, or to produce any document in his possession or control, legally required by the court to be produced, or to answer any question to which the court may legally require an answer, the court may, if he is subject to military law, report his conduct to the proper military authority and if he is subject to the Indian Army Act may also order him to be taken into military custody with a view to his punishment. As to action when he is a civilian, see Rule 136.

Mode of questioning witness.

127. (A) Every question may be put to a witness orally by the officer holding the trial, the prosecutor, accused, or judge-advocate, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he shall not reply until the objection is disposed of. The witness shall address his reply to the court.

(B) The evidence of a witness as taken down shall be read to him after he has given all his evidence and before he leaves the court, and shall, if necessary, be corrected.

(C) If the witness denies the correctness of any part of the evidence when the same is read over to him, the court may instead of correcting the evidence, record the objection made to it by the witness.

(D) If the evidence is not given in English and the witness does not understand that language the evidence as recorded shall

be interpreted to him in the language in which it was given, or in a language which he understands.

(A) As under this rule every question may be put to a witness without being previously written down and submitted for the approval of the officer conducting the proceedings or the court, that officer, the court and the judge-advocate, as well as the prosecutor, will have to attend to questions put, so as to object, if necessary, to the question before the witness replies to it.

A witness is first examined by the party calling him, then cross-examined by the opposite party, after which he may be re-examined by the party calling him on matters raised by the cross-examination. The court should, if requested by either party, allow the cross-examination of a witness by that party to be postponed, unless the request appears to be made only for the purpose of obstruction.

Address his reply to the court.—That is, he must not address the prosecutor or accused in the second person, as such mode of address may lead to an altercation.

(B) *Read to him.*—When the evidence of a witness has been read to him he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end and not by way of interlineation or erasure.

Questions to witnesses by court or judge-advocate.

128. (A) At any time before the time for the second address of the accused (or at a summary court-martial at any time before the finding of the court), the officer holding the trial, the judge-advocate and any member of the court may, subject to the provisions of this rule, address any question to a witness.

(B) At a general or district court-martial such questions shall only be addressed to witnesses with the permission of the court and through the officer conducting the proceedings.

(C) Upon any such question being answered, the officer holding the trial or conducting the proceedings shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the accused, and which the court deems reasonable.

(A) Any such question will ordinarily be more conveniently put after the examination of the witness by the prosecutor and the accused is concluded, but before any other witness is called.

Any question means, in this rule and the next, any question which might have been put to the witness when first called.

The court should always, under the power given by this rule, ask a witness any question which they are requested by the prosecutor or the accused to ask, and which does not seem unreasonable.

Re-calling of witnesses and calling of witnesses in reply.

129. (A) At the request of the prosecutor or accused person a witness may, by leave of the court, be recalled at any time before the time for the second address of the accused (or at a summary court-martial at any time before the finding of the court), for the purpose of having any question put to him through the officer holding the trial or conducting the proceedings.

(B) A witness may, in special cases, be allowed by the court to be called or re-called by the prosecutor, before the time for the second address of the accused, for the purpose of rebutting any material statement made by a witness for the defence upon his examination by the accused on any new matter which the prosecutor could not reasonably have foreseen.

(c) Where the accused has called witnesses to character, the prosecutor, before the time for the second address of the accused, may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulters' book against the accused.

(d) The court may call or re-call any witness at any time before the finding, if it considers that it is necessary for the ends of justice.

(a) The officer conducting the proceedings should also put to the witness any question relevant to the answer given, which, if the witness was re-called at the request of the prosecutor, the accused, or if he was re-called at the request of the accused, the prosecutor, requests him to put.

(b) (c) These paragraphs are inapplicable to summary courts-martial where there is no prosecutor. Paragraph (d) will, however, admit of the officer holding the trial calling or re-calling witnesses in similar circumstances, when the ends of justice require it. See also Rule 105.

(d) The power of calling a new witness should, except as mentioned in the preceding paragraph, only be exercised by the court in cases of unforeseen witnesses becoming available, or of some exceptional circumstances, and should not be exercised to supplement any negligent conduct on the part of the prosecution. If a new witness is so called, the court should ordinarily allow him to be cross-examined by the other parties. If a witness is re-called, the questions asked should be limited to one or two questions relating to the evidence previously given by that witness.

It is very desirable that no witness should be called or re-called after the second address of the accused as otherwise some irregularity is introduced into the proceedings; because, if new matter is introduced by such witness, it is necessary for the court, if so requested, to allow the prosecutor and the accused, respectively, to call witnesses in reply, and the accused to address the court with respect to such evidence, and the judge-advocate to supplement his summing up by a reference to such evidence. This remark, however, will not apply where the questions put to a witness re-called are limited as before suggested.

Addresses.

130. All addresses by the prosecutor and the accused and the summing-up of the judge-advocate may either be given orally or be in writing, and, if in writing, shall be read in open court. Addresses may be in writing.

The summing-up of the judge-advocate should, however, invariably be in writing.

Insanity.

131. (a) Where the court find either that the accused is unfit, by reason of insanity, to take his trial, or that he committed the offence with which he is charged, but was insane at the time of the commission thereof, the president or officer holding the trial shall date and sign the finding. Provision as to finding of insanity, and custody of insane person.

(b) In the case of a general or district court-martial the proceedings, upon being also signed by the judge-advocate, if any, shall be at once transmitted for confirmation. If such finding is not confirmed, the accused may be tried by the same or another court-martial for the offence with which he was originally charged.

(c) Where such a finding of a general or district court-martial is confirmed, and in all cases of such a finding by a summary court-martial, then, until the directions of the Governor General in Council as to the disposal of the accused are known, or in the

case of an accused person unfit to take his trial, until any earlier time at which the accused is fit to take his trial, the accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

It is to be observed that two distinct cases are contemplated. A person may have been sane at the time he committed the offence, but may not be sane enough to take his trial: while, on the other hand, a man insane at the time of committing the offence may have recovered sufficiently to take his trial. In the former case, if an accused person, found not sane enough to take his trial, recovers before any directions of the Government as to his disposal are known, he should be ordered for trial.

Preservation of Proceedings.

Preservation of proceedings.

132. (A) The proceedings of a court-martial (other than a summary court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in India, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

(B) The proceedings of a summary court-martial shall be preserved for not less than three years, with the records of the corps or department to which the accused belonged.

Right of person tried to copies of proceedings.

133. Every person tried by a court-martial shall be entitled on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings, a copy thereof, including the proceedings upon revision, if any, upon payment for the same of seven annas for the first two hundred words, and half that rate for each subsequent two hundred words, or part thereof.

Loss of proceedings.

134. (A) If the original proceedings of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president, the judge-advocate, the superintending officer or the officer holding the trial, may be accepted in lieu of the original.

(B) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof lost.

(C) In any case above in this rule mentioned, the finding and sentence, if requiring confirmation, may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(D) If, in a case where confirmation of a finding or finding and sentence, is required, the proceedings, or part thereof, were lost before confirmation, and there is no such copy or evidence, or the accused refuses such assent, as above-mentioned, the accused may be tried again, and on the issue of an order convening the court for the trial, the finding and sentence of the previous court, of which the proceedings were so lost, shall be null.

(B) *Sufficient evidence.*—This may be obtained from the rough notes of the judge-advocate, or by the president, superintending officer, or some

member of the court, writing out from memory the substance of the charge, finding and sentence, and a summary of the transactions of the court, which should be authenticated by the signature of the superintending officer or members. A copy of the charge, however, should always be procured, if practicable, from the officer who framed it, or any other available source.

Irregular Procedure when no injustice is done.

Validity of irregular procedure in certain cases.

135. Whenever it appears that a court-martial had jurisdiction to try any person and that that person was charged with some offence or offences under the Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence may (if confirmation is necessary) be confirmed, and shall, if so confirmed, and in all cases where confirmation is not necessary, be valid, notwithstanding any deviation from these rules, or any defect or objection, technical or other, unless it appears that any injustice has been done to the offender; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

This rule will prevent a miscarriage of justice arising in consequence of defects in the procedure which do not affect the real merits of the case These defects will usually be of a technical character as any substantial defect, such as taking illegal evidence by accepting hearsay, or using a copy of a document when the original ought to have been produced, or calling a witness without proper notice to the accused, or refusing to admit evidence adduced by the accused, would ordinarily cause injustice to the person charged. The court should never allow any technicality to interfere with the accused making his defence in the fullest manner, and while as a whole disregarding technicalities in favour of what they consider to be, in substance, fairness for the purposes of the trial, they must recollect that even a disregard of a technicality may, in some cases, cause injustice, as the object of most technical rules is to prevent injustice. Before, therefore, a confirming officer, in reliance on this rule, confirms a finding and sentence in any respect irregular, he must take care to ascertain that no injustice, however small, has been done to the accused; and the preferable course is, where possible, to send the case back for revision or for another trial. In every such case the confirming officer will call the attention of the officer responsible for the irregularity to the deviation from the rule, or the defect in the proceedings; as officers will be held responsible for such deviation or defect, even though under this rule the conviction of the person tried may be upheld.

It may be convenient to note here, that if, after confirmation, the charges or the finding thereon are declared to be invalid, the trial must be treated as null, and consequently the person convicted must be relieved from all consequences of his conviction, and all record of such conviction must be erased; but in cases where the sentence alone is invalid the finding will stand good, and therefore the person convicted will suffer the forfeitures and other penalties which are consequential on conviction. An invalid sentence can, however, be dealt with by one of the higher authorities acting under Indian Army Act, section 103.

Offences of Witnesses and others.

Offences of witnesses and others.

136. When any court-martial is of opinion that there is ground for inquiring into any offence specified in section 38 of the Act and committed before it or brought under its notice in the course of its proceedings, or into any act done before it or brought under its notice in the course of its proceedings which would, if done by a person subject to the Act, have constituted

such an offence, such court-martial may proceed as follows, that is to say—

(A) If the person who appears to have committed the offence is subject to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be placed in military custody with a view to his punishment by an officer exercising authority under section 20 of the Act or to his trial by court-martial.

(B) If the person who appears to have done the act is subject to the Army Act, the court may bring his conduct to the notice of the proper military authority.

(C) If the person who appears to have done the act is subject neither to the Act nor to the Army Act, the court, after making any preliminary inquiry that may be necessary, may send the case to the nearest magistrate of the first class for inquiry or trial in accordance with section 476 of the Code of Criminal Procedure, 1898.

Act done.—This includes an illegal omission, see Indian Army Act, section 7 (23), and Indian Penal Code, section 32.

When a person subject to the Indian Army Act commits an offence under clause (A) or (B) of section 38, or when a corresponding offence is committed by a person subject to the (British) Army Act or by a civilian, courts-martial will often act wisely in accepting an apology sufficient to vindicate their dignity instead of resorting to the more severe measures here indicated. As already pointed out (Rule 65, note) the best course to adopt when a person, other than the accused, interrupts the proceedings will ordinarily be to order his exclusion from the court.

Courts-martial should exercise the greatest discretion in instituting proceedings, or in taking measures which may result in the institution of proceedings, against a person subject to the Indian Army Act for the offence specified in clause (C) of section 38, or against a person subject to the (British) Army Act, or a civilian, for a corresponding offence. It is not enough that the court-martial has by its verdict shown that it did not believe the witness, for it may have thought him to be mistaken or, on the balance of probabilities, it may have accepted another version of what took place. Before instituting proceedings as indicated in this rule against a witness the court should be satisfied that there are good grounds for believing that the witness has wilfully given false evidence on some point which is material to the issue, and that his conviction is likely. The credit of another witness is a point material to the issue.

When it is likely that a witness will be prosecuted for giving false evidence the exact words used, in the language in which the evidence was given, should be recorded. See Rule 78 (C) and note.

(A) In the case of a person *subject to the Indian Army Act*, the court-martial may, in its discretion, either merely report his conduct to the proper military authority, or may in addition order him into military custody pending disposal of his case.

If a person is so ordered into custody this fact should be mentioned in the report; and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with section 124 (3) of the Indian Army Act. The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order trial by court-martial if he is competent to do so, or to direct other summary disposal of the case, or to refer it to superior authority.

Proper military authority.—See Rule 2 (A).

This will depend on the status of the offender, and the authority under whose orders the court has been convened.

In the case of a summary court-martial the officer holding the trial would, ordinarily, report to the officer commanding the division or brigade, and a general or district court-martial would report to the convening officer, observing in each case the usual channel of correspondence.

Trial by court-martial.—As explained in the notes to section 38 of the Indian Army Act, the members of a court-martial reporting an offender under this rule are individually disqualified (Rule 29 (B) (iii) and (v)) from trying him on charges arising out of their report. Thus although there is no restriction similar to that contained in section 28 of the (British) Army Act, the result is practically the same, and the officer to whom the case is finally referred, if he decides on trial, must convene a new court for the purpose. For similar reasons it is undesirable that a commanding officer should try by summary court-martial a person under his command who has offended against his authority when holding a summary court-martial or when sitting as a member of a general or district court-martial. He could, save in a grave emergency, only do so with the sanction of superior authority, which should, therefore, as a rule, be withheld —Indian Army Act, section 74, proviso (B).

(B) Over a person *subject to the (British) Army Act* a court-martial convened or assembled under the Indian Army Act has, *as such*, no authority, and cannot as a court order him into military custody. This clause, therefore, enables the court merely to report offences of contempt or of giving false evidence committed by such persons to the proper military authority for disposal under the Army Act. The president (if a British officer) or the superintending officer has, however, *in his individual capacity*, authority over such an offender, if his junior in rank, and may, in that capacity, order such offender into military custody under the provisions of section 45 of the Army Act. This individual authority should be rarely exercised and, as a rule, only when justified by cases of gross disrespect or violence towards the court.

If the trial of a person against whom action has been taken under clause (B) of this rule is ordered, the charge can only be framed under section 40 of the Army Act as a court-martial convened under the Indian Army Act is not a "court-martial" for the purposes of charges under section 28 of the (British) Army Act.

For the converse case, *i.e.*, when a person subject to the Indian Army Act commits contempt or gives false evidence before a court-martial convened under the (British) Army Act, see notes to Indian Army Act, section 38.

(C) This clause deals with the case of *civilian offenders*; section 476 of the Code of Criminal Procedure provides for the institution of proceedings for certain offences against the Indian Penal Code on the written complaint of the court against which the offence complained of was committed. A court-martial is a "criminal court" for the purposes of the above section and is also a "court of justice" for the purposes of the Indian Penal Code. See Code of Criminal Procedure, section 6, and Indian Penal Code, section 20. The effect of this, read with sections 174, 175, 178, 179, 193, 194 and 228 of the Indian Penal Code is that all the acts and omissions which are punishable under section 38 of the Indian Army Act when committed by persons subject to that Act, are, when committed by civilians, offences under the Indian Penal Code for which the aggrieved court-martial can institute proceedings under section 476 of the Code of Criminal Procedure. Before instituting such proceedings a court-martial must *primâ facie* be satisfied that a definite offence has been committed by some definite person or persons against whom proceedings in a criminal court are to be taken. It is not sufficient that the evidence may raise some sort of a suspicion against some one. In such a case the court should either allow the matter to drop, or should hold a preliminary inquiry to see who is to be prosecuted and for what. The court's decision to institute proceedings must be a judicial one, *i.e.*, either based on what the court has itself heard or seen and considered, or on evidence taken before it and considered.

The report to the magistrate may be in letter form, and should be sufficiently detailed to place him in full possession of all the materials

the court had before it when deciding to send the case to him. It should set forth the name and identity of the person accused and of the witnesses who can substantiate the accusation. A narrative of the events complained of should be included in the report and a record of the evidence taken in the preliminary inquiry (if any) attached.

It will be noticed that the law does not require a preliminary inquiry in all cases. If, however, the facts on which the decision to prosecute is arrived at could not be otherwise properly before the court-martial which arrives at that decision, such an inquiry is essential. For instance, no preliminary inquiry is necessary when a witness is to be prosecuted for acts of violence committed in the presence of a court-martial, but on the other hand, such an inquiry is necessary when an absentee witness is to be prosecuted for his failure to attend, and the service of a summons and tender of expenses have to be proved, or when a prosecution for perjury is instituted. In the latter case sufficient evidence to disclose a *primâ facie* case must be recorded. It is—as previously pointed out—not enough that the court has not believed the person's evidence at the trial. A court-martial has no powers under section 476 of the Code of Criminal Procedure until it is sworn or affirmed, as that section only relates to "judicial proceedings"—that is, proceedings in the course of which evidence may be legally taken on oath. A civilian who interrupts the proceedings of, or insults, a court-martial before it is sworn or affirmed can only be dealt with by exclusion. The other offences specified in section 28 of the Indian Army Act, *i.e.*, those in clauses (*a*) and (*c*), can, from their nature, only be committed or brought under the notice of a court-martial after it has been sworn or affirmed.

If a case arises in which it appears necessary to resort to the provisions of section 476 of the Code of Criminal Procedure *when outside of British India*, the court-martial should, in the first instance, ascertain that the civilian concerned is amenable to the laws of British India. Pending a decision on this point, the court-martial should content itself with excluding him from the room in which its proceedings are held, if such a course appears to it to be necessary. For list of places which, though in *India* are not in *British India*, see notes to section 41 of the Indian Army Act. In such places the local political officer will generally be the person empowered to administer British Indian criminal law as against persons subject thereto, and should be consulted as to whether any civilian whom it is proposed to prosecute is subject to his jurisdiction.

Section 5.—Summary General Courts-Martial.

The foregoing rules in this Chapter shall not, save as hereinafter mentioned, apply to summary general courts-martial, which shall be subject to the following rules :—

Convening the court and record of proceedings.

137. The court may be convened and the proceedings of the court recorded in accordance with the form in the third appendix to these rules, with such variations as the circumstances of each case may require.

Charge.

138. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act.

Trial of several accused persons.

139. The court may be sworn at the same time to try any number of accused persons then present before it, but, except so far as accused persons are tried together for an offence committed collectively, the trial of each accused person will be separate.

Challenges.

140. (A) The names of the president and members of the court shall be read over to the accused who shall thereupon be asked if he objects to be tried by any of these officers.

(B) Any objection will be decided as provided for in section 80 of the Act—the vacancies being filled from among the waiting

members (if any) or by fresh members being appointed by the convening officer.

Swearing or affirming the court.

141. (A) As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to every member in such of the forms laid down in Rule 35 as shall be appropriate, or in such other form to the same purport as the court ascertain to be according to his religion or otherwise binding on his conscience.

(B) If an interpreter or superintending officer has been appointed the appropriate oath or affirmation, as laid down in Rule 36, shall be administered to him.

(C) All oaths and affirmations shall be administered by a member of the court or by some person empowered by the court to do so.

(B) If a summary general court-martial consists solely of native officers a superintending officer is required The cases in which such a court is convened will however be rare as it will generally be more convenient to assemble a court of one British and two native officers instead of one of three native officers and a British superintending officer.

Arraignment.

142. When the court are sworn or affirmed, the president shall state to the accused then to be tried, the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and shall ask the accused whether he is guilty or not of the offence.

Plea to jurisdiction.

143. If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

See Rule 41 and note.

Evidence.

144. (A) The witnesses for the prosecution will be called and the accused shall be allowed to cross-examine them and to call any available witnesses for his defence.

(B) An oath or affirmation as laid down in Rule 126 shall be administered to every witness, before he gives his evidence, by one of the persons specified in that rule.

Defence.

145. The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence.

Evidence need not be recorded.

146. The evidence for the prosecution and defence need not be recorded in writing, but the convening officer may, in respect of any trial, specially order that such evidence, together with the statement of the accused person in his defence, shall be so recorded.

Whenever it is possible the order mentioned in this rule should be made.

Finding and sentence.

147. The court shall then be closed to consider its finding. If the finding on any charge is "guilty" the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

As to voting of members, see Indian Army Act, section 81.

Proceedings after sentence or finding.

148. (A) If the proceedings do not require confirmation, the result shall be announced in open court and the sentence carried into effect as soon as possible.

(B) If the proceedings require confirmation they shall be transmitted without delay to the confirming officer and the sentence (if any) carried out as soon as possible after his confirmation has been received.

See Indian Army Act, section 98, as to when confirmation is necessary.

Adjournment.

149. (A) A summary general court-martial may adjourn from time to time and from place to place and may when necessary view any place.

(B) The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members, when the court may be closed.

Application of rules.

150. The foregoing rules—59 (Mitigation of sentence on partial confirmation), 61 (Confirmation notwithstanding informality in or excess of punishment), 80 (Transmission of proceedings after finding), 132 (Preservation of proceedings), 133 (Right of person tried to copies of proceedings), 134 (Loss of proceedings), and 135 (Validity of irregular procedure in certain cases)—shall, so far as practicable, apply as if a summary general court-martial were a district court-martial.

Evidence of opinion of convening officer.

151. Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

SECTION 6.—EXECUTION OF SENTENCES.

Committal warrants.

152. A warrant for the committal of a person sentenced by a court-martial to a civil prison under the provisions of section 107 of the Act shall be in one of the forms given in the Fourth Appendix to these Rules. Such warrant shall be signed by the commanding officer of the prisoner or by a staff officer of the division, brigade or station.

Warrants under section 109 of the Act.

153. Any warrant issued under the provisions of section 109 of the Act shall be in one of the forms given in the Fourth Appendix to these Rules, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer.

Sentence of dismissal or suspension.

154. (A) A sentence of dismissal awarded by a court-martial shall take effect from the date on which a discharge certificate is furnished to the person under sentence. Such certificate shall be so furnished with all convenient speed:

Provided that when dismissal is combined with simple imprisonment, or with rigorous imprisonment which is carried out in military custody, or with corporal punishment, the certificate shall not be furnished until the completion of the imprisonment or the infliction of the corporal punishment unless such imprisonment or corporal punishment is remitted by competent authority.

(B) A sentence of suspension awarded by a court-martial shall, if no confirmation is necessary, take effect from the date

on which it is signed by the president; if confirmation is necessary, such sentence shall take effect from the date on which, having been duly confirmed, it is communicated to the offender.

(A) *Discharge certificate.*—See Rule 11 (A).

The proviso to clause (A) of this rule ensures that an offender sentenced to dismissal combined with imprisonment which is to be undergone in military custody or with corporal punishment, *shall not cease to be subject to* military law until his sentence is inflicted or remitted. This is obviously necessary on disciplinary grounds. The proviso does not, however, admit of the indefinite postponement of a sentence of corporal punishment, and the retention of the offender in the ranks until it is convenient to inflict it, as *all* sentences, including those of corporal punishment, must, in the absence of an express provision of law to the contrary, be carried out without delay.

"Regulation cat."

155. The "regulation cat," referred to in sections 24 and 111 of the Act, shall consist of nine whip-cord lashes secured to a wooden handle. Each lash shall be twenty-four inches in length and as nearly as possible one quarter of an inch in circumference, three knots being tied on each lash at about one and a half, three and a quarter and five inches from its end. The handle shall not exceed eighteen and a half inches in length and its diameter shall in no place exceed seven-eighths of an inch.

CHAPTER V.

Courts of Inquiry.

Losses or thefts of arms.

Court of inquiry when rifles, etc., are lost or stolen.

156. (A) Whenever any rifle, carbine or bolt forming part of the equipment of a half-squadron, battery, company or other similar unit is lost or stolen, a court of inquiry shall be assembled, under the orders of the officer commanding the army, division or independent brigade, to investigate the circumstances under which the loss or theft occurred.

(B) The officer who assembled the court shall direct it to record an opinion as to the circumstances of the loss or theft.

Collective fine may be imposed.

157. (A) The officer commanding the army, division or independent brigade shall then record his opinion on the circumstances of the loss or theft, and may impose a collective fine, not exceeding five hundred rupees for each rifle or carbine lost or stolen and twenty-five rupees for each bolt lost or stolen, on the native officers, non-commissioned officers, and men of such unit, or upon so many of them as he considers should be held responsible for the occurrence.

(B) Such fine will be assessed as a percentage on the pay of the individuals on whom it falls.

Regulations for courts of inquiry other than courts of inquiry held under section 126 of the Act.

Courts of inquiry.

158. (A) A court of inquiry is an assembly of officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

(B) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

(c) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

(d) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific, and shall state the general character of the information required. They shall also state whether a report is required or not.

(e) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

(f) Whenever any inquiry affects the character or military reputation of a person subject to military law, full opportunity must be afforded to such person of being present throughout the inquiry, and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witnesses in defence of his character or military reputation.

(g) It is the duty of a court of inquiry to put such questions to a witness as they think desirable for testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(h) When a court of inquiry is held on recovered prisoners of war, and in any other case in which the officer who assembled the court has so directed, the evidence shall be taken on oath or affirmation, in which case the court shall administer the same oath or affirmation to witnesses as if the court were a court-martial.

The officer who assembled the court shall, when the court is held on a returned prisoner of war, direct the court to record their opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, whether he served with or under, or aided, the enemy, and whether he returned, as soon as possible, to the service. The officer who assembled the court shall also record his own opinion on these points. In other cases the court shall give no opinion on the conduct of any person unless so directed by the officer who assembled the court.

(i) The members of the court shall not themselves be sworn or affirmed, but when the court is a court of inquiry on recovered prisoners of war the members shall make the following declaration :—

I, A.B., do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which————became a prisoner of war, according to the true spirit and meaning of the Regulations of the Army; and I do further declare, upon my honour, that I will not on any account, or at any time, disclose or discover my own vote or opinion, or that of any particular member of the court, unless required to do so by competent authority.

(j) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining

additional witnesses, or further examining any witness, or recording further information.

(K) The whole of the proceedings of a court of inquiry shall be forwarded by the president to the officer who assembled the court.

(L) The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to military law, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before that court.

(M) Any person subject to the Act who is tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, and, unless the Commander-in-Chief in India sees reason to order otherwise, any person so subject whose character or military reputation is, in the opinion of the said Commander-in-Chief, affected by anything in the evidence before, or in the report of a court of inquiry, shall be entitled to a copy of the proceedings of the court, including any report made by the court, on payment at the rate laid down in Rule 133 for copies of the proceedings of courts-martial.

(H) See Rule 163 as to the authorities who can remit the forfeiture of pay and allowances incurred by absence as a prisoner of war. If the officer who assembles the court is not one of these authorities, he should forward the proceedings, with his recommendation, to one of these authorities.

Regulations for courts of inquiry under section 126 of the Act for the purpose of determining the illegal absence of persons subject to that Act.

159. (A) A court of inquiry under section 126 of the Act shall, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in that section. Courts of inquiry as to illegal absence under section 126 of the Act.

(B) They shall take down the evidence given them in writing, and at the end of the proceedings shall make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent person shall enter in the court-martial book of the corps or department a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given, and otherwise for eliciting the truth, and the court in making their declaration shall give due weight to the evidence of all such witnesses.

(E) A court of inquiry shall administer the same oath or affirmation to the witnesses as if the court were a court-martial, but the members of such court shall not themselves be sworn or affirmed.

(E) *Same oath or affirmation.*—See Rule 126.

CHAPTER VI.

PRESCRIBED OFFICERS, AUTHORITIES AND OTHER MATTERS.

Prescribed officers under section 6 of the Act.

160. All powers which may, under the Act and these rules, be exercised by the officer commanding a division shall, as regards persons subject to the said Act who may be serving under his orders, be exercised by each of the following officers, that is to say :—

The officer commanding in North China.
The officer commanding in South China.
The officer commanding in Ceylon.
The officer commanding in the Straits Settlements.
The officer commanding in Egypt.

Provided that, if any warrant officer or attested person is dismissed or if his discharge is authorized by any of the aforesaid officers, his dismissal or discharge shall not take effect until it has been approved by the Governor General in Council or by the Commander-in-Chief in India.

Proviso.—This proviso only relates to summary dismissal under section 14 of the Indian Army Act and to discharge under section 16 of the same and Rule 13. It does not limit the powers of these officers to confirm (*within the terms of their warrants*) court-martial sentences of dismissal.

"Corps" prescribed under section 7 (9) of the Act.

161. (A) Each of the following separate bodies of persons subject to the Act shall be a "corps" for the purposes of Chapter II and section 30 (*c*) of the said Act and of Chapters II and III of these Rules :—

(i) Each bodyguard.

(ii) Each regiment of Indian cavalry.

(iii) The Queen's Own Corps of Guides.

(iv) The "Horse and Field Artillery;" comprising the native personnel of the Royal Horse and Field Artillery.

(v) The "Garrison Artillery (Mountain);" comprising the native personnel of the Royal Garrison Artillery (Mountain Division).

(vi) The "Garrison Artillery (Heavy);" comprising the native personnel of the Royal Garrison Artillery (Heavy Batteries).

(vii) The Indian Coast Artillery.

(viii) The Corps of Followers—Royal Garrison Artillery (Coast and Inland).

(ix) The "Indian Artillery;" comprising the Indian mountain batteries and the Frontier Garrison Artillery.

(x) Each corps of sappers and miners.

(xi) Each military railway company.

(xii) Each signal company.

(xiii) Each regiment or, where the regiment consists of two or more battalions, each battalion of Indian infantry.

(xiv) The Supply and Transport Corps.

(xv) The Army Hospital Corps.

(xvi) The Army Bearer Corps.

(xvii) The Corps of Followers—British Cavalry.

(xviii) The Corps of Followers—British Infantry.

(xix) Any other separate body of persons subject to the Act employed on any service and not attached to any of the above corps or to any department.

(B) Every British or Indian unit in which a court-martial book is maintained shall be a "corps" for the purposes of section 126 of the Act and Rule 159.

(C) For the purposes of every other provision of the said Act and rules each of the following separate bodies shall be a "corps":—

(i) Each regiment of British cavalry, battalion of British infantry, and brigade, group or similar body of British artillery.

(ii) Each bodyguard.

(iii) Each regiment of Indian cavalry.

(iv) The Queen's Own Corps of Guides.

(v) Each group, or ungrouped battery, of Indian artillery.

(vi) Each corps of sappers and miners.

(vii) Each military railway company.

(viii) Each signal company.

(ix) Each regiment or, where the regiment consists of two or more battalions, each battalion of Indian Infantry.

(x) Each reserve centre.

(xi) Each transport corps or cadre.

(xii) Each company of the Army Hospital Corps.

(xiii) Each company of the Army Bearer Corps.

(xiv) Any separate body of persons subject to the Act which is a "corps" under the provisions of clause (A) (xix) of this rule.

For the purpose of Chapter II, etc.—The effect of this is that each of the bodies specified in clause (A) of this rule is a "corps" for the purposes of Enrolment, Attestation, Dismissal and Discharge, *i.e.*, for all purposes connected with a person's service in the Army. For all other purposes (except those of section 126) the bodies mentioned in clause (C) are "corps" and all other separate bodies of persons subject to the Army Act or Indian Army Act which are not "departments" are "detachments." The disciplinary powers of the commanding officer of a "corps" and those of the commanding officer of a "detachment" are identical, with the exception that the former can, when sitting as a summary court-martial, pass a sentence of one year's imprisonment, while the latter is restricted to six months. See note to Indian Army Act, section 76.

The effect of rule 7 (B), read with the forms of enrolment at present prescribed, is that every person enrolled under the Act must be enrolled either in some corps, as defined in clause (A) if this rule, or in some department, as defined in section 7 (*11*) of the Act, *e.g.*, the Indian Ordnance Department, etc.

(C) (i) (v).—In these clauses a "group" means the batteries grouped together under an officer exercising a "lieutenant-colonel's command."

Prescribed officer under section 19 of the Act.

162. The authorities empowered to reduce a non-commissioned officer to a lower grade or to the ranks shall, on active service, include the officer commanding the forces in the field.

Prescribed authorities under section 83 of the Act.

163. Any penal deduction from the pay and allowances of a person subject to the Act, made under Chapter VII thereof, may be remitted as hereinafter provided :—

(A) Any penal deduction from the pay and allowances of any such person may be remitted by the Governor General in Council.

(B) The commanding officer of any such person who has been absent without leave for a period not exceeding five days may, unless the person is convicted by a court-martial on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable.

(C) A forfeiture of pay and allowances incurred by any such person owing to his absence as a prisoner of war may (unless it shall have been proved before a court of inquiry that he was taken prisoner through his own wilful neglect of duty, or that he served with or under, or aided, the enemy, or that he did not, as soon as possible, return to the service) be remitted by the Commander-in-Chief in India, by the officer commanding an army, division or independent brigade, or by the officer commanding the forces in the field.

Prescribed authorities under sections 69 and 70 of the Act.

164. The prescribed military authority for the purpose of sections 69 and 70 of the Act shall be the officer commanding the army, division, brigade or station in which the accused person is serving.

Provided that, in cases falling under section 41 or 42 of the Act, in which death has resulted, the prescribed military authority shall be the officer commanding the army, division or independent brigade in which the accused person is serving, and no lower authority.

Prescribed persons under sections 114 and 115 of the Act.

165. (A) The prescribed person for the purposes of section 114 of the Act shall be,—

As regards estates remaining in the hands of commanding officers in the area of the Northern Army.	The Comptroller, India Treasuries.
As regards estates remaining in the hands of commanding officers in the area of the Southern Army.	The Accountant-General, Bombay or Madras, as the case may be.

(B) The prescribed person for the purposes of section 115 of the Act shall be the person referred to in paragraph (A) of this rule, and, so long as the commanding officer has under the Act the control of the property of the deceased person or lunatic or of the proceeds of the sale of such property, shall also include such commanding officer.

APPENDICES.

FIRST APPENDIX.

FORMS OF ENROLMENT.

The first appendix to the Indian Army Act Rules, as published in the *Gazette of India*, consists of forms of enrolment, which are thus "prescribed" under section 8 of the Act. It has, owing to the size of the pages, not been found practicable to reproduce the forms in this Manual. They are five in number, *viz.*:—

Form No.	I . .	Combatants.
„ „	II . .	Non-combatants (Ordnance)
„ „	III . .	Ditto (Supply and Transport Corps)
„ „	IV . .	Ditto (Army Bearer and Army Hospital Corps)
„ „	V . .	Ditto (Regimental and Miscellaneous)

and, being published as India Army Forms, are easily accessible. When necessary, the appropriate India Army Form, or the notification in the *Gazette of India* (for number and date, see Part IV) should be consulted.

Each form consists of—

(i) A number of questions, as to the candidate's caste, previous history, etc. Any false answer to these is punishable under section 37 of the Act.

(ii) A recital of the appropriate conditions of service. When these include a minimum period of service to be rendered before the person becomes entitled to his discharge, it is expressly provided that, should he desert, the period between his desertion and his apprehension or surrender shall not be reckoned as service towards discharge.

(iii) A declaration by the person enrolled, with a space for his signature. In this he declares his answers to be true and accepts the conditions of service.

(iv) Certificate by the enrolling officer and a space for his signature.

(v) Spaces for the record of attestation (section 12 (3) of the Act) and for any subsequent variations of the conditions of service, *e.g.*, on transfer to the reserve, re-transfer to the colours, etc.

SECOND APPENDIX.

FORMS OF CHARGES.

PART I.

Commencement of Charge Sheet.

The accused [*number, rank, name, corps*] *or*

The accused [*name*] being a person subject to Indian Military Law [as an officer, as a warrant officer, as a non-commissioned officer] under the provisions of section 2 (1) (*c*) [and section 3 (1)] of the Indian Army Act.

is charged with—

PART II.

Statement of offence.

OFFENCES IN RESPECT OF MILITARY SERVICE.

SECTION 25.

(*a*) Shamefully { abandoning a / delivering up a } { garrison / fortress / post / guard } { committed to his charge. / which it was his duty to defend. }

(*b*) In presence of an enemy { shamefully casting away his { arms. / ammunition. } / intentionally using { words / [*other means*] } { to induce a person subject to military law to abstain / to discourage a person subject to military law } from acting against the enemy. / misbehaving in such manner as to show cowardice. }

(*c*) (1) { Holding correspondence with / Communicating intelligence to } { the enemy. / a person in arms against the State. }

(2) Coming to the knowledge of a { correspondence with / communication of / intelligence to } { the enemy / a person in arms against the State. } and omitting to discover it immediately to his commanding or other superior officer

(*d*) Treacherously making known the watchword to a person not entitled to receive it.

(*e*) (1) { Assisting / Relieving } with { money / victuals / ammunition } { an enemy. / a person in arms against the State. }

(2) Knowingly { harbouring / protecting } { an enemy. / a person in arms against the State. }

(*f*) (1) { In time of war / During a military operation } { intentionally occasioning a false alarm in { action. / camp. / garrison. / quarters. } / spreading reports calculated to create { alarm. / despondency. }

(*g*) When a sentry { in time of { war / alarm } / over a { State prisoner / treasure / magazine / dockyard } } { sleeping upon his post. / quitting his post { without being regularly relieved. / without leave. } }

(*h*) In time of action, leaving his { commanding officer / post / party } to go in search of plunder.

(*i*) In time of war quitting his { guard / picquet / party / patrol } { without being regularly relieved. / without leave. }

(*j*) { In time of war / During a military operation } { using criminal force to / committing an assault on / forcing a safeguard. } { a person { bringing { provisions / [*other necessaries*] } to { camp / quarters } of His Majesty's Forces. } / breaking into { a house / [*other place*] } for plunder. / plundering { a field. / injuring { a garden. / destroying { [*other property*].

SECTION 26.

(a) {Striking / Forcing / Attempting to force} a sentry.

(b) In time of peace, intentionally occasioning a false alarm in {camp. / garrison. / cantonment.}

(c) {When a sentry, / When on guard} {plundering / wilfully destroying / wilfully injuring} property placed under {his charge. / charge of his guard.}

(d) When a sentry in time of peace, {sleeping upon his post. / quitting his post {without being regularly relieved. / without leave.}}

MUTINY AND INSUBORDINATION.

SECTION 27.

(a) {Beginning / Exciting / Causing / Joining in} a mutiny.

(b) Being present at a mutiny and not using his utmost endeavours to suppress the same.

(c) {Knowing / Having reason to believe in} the existence of {a mutiny, / an intention to mutiny, / a conspiracy against the State,} and failing to give information thereof without delay to his commanding or other superior officer.

(d) {Using / Attempting to use / Committing an assault on} criminal force to his superior officer {knowing / having reason to believe} him to be such.

(e) Disobeying the lawful command of his superior officer.

SECTION 28.

(a) Being grossly {insubordinate / insolent} to his superior officer in the execution of his office.

(b) Refusing to {superintend / assist in} the making of a {field work / [other military work]} ordered to be made {in quarters. / in the field.}

(c) (1) Impeding {a provost-marshal. / an assistant provost-marshal. / an officer / a non-commissioned officer / a person} legally exercising authority {under / on behalf of} a provost-marshal.

(2) Refusing when called on to assist in the execution of his duty {a provost-marshal. / an assistant provost-marshal. / an officer / a non-commissioned officer / a person} legally exercising authority {under / on behalf of} a provost-marshal.

DESERTION, FRAUDULENT ENROLMENT AND ABSENCE WITHOUT LEAVE.

SECTION 29.

(1) Deserting the service.

(2) Attempting to desert the service.

SECTION 30.

(a) (1) Knowingly harbouring a deserter.

(2) {Knowing / Having reason to believe} that {a person has deserted, / a deserter has been harboured by another person,} and {failing to give information thereof without delay to his own or some other superior officer. / failing to use his utmost endeavours to cause such deserter to be apprehended.}

(b) {Knowing / Having reason to believe} a person to be a deserter and {procuring / attempting to procure} the enrolment of such person.

(c) Without having first obtained a regular discharge from his {corps / department} enrolling himself in {the same / another} {corps. / department.}

(*d*) (1) Absenting himself without leave.
(2) Without sufficient cause overstaying leave granted to him.

(*e*) Having received information from proper authority that the {corps / portion of a corps / department} to which he belongs has been ordered on active service and failing without sufficient cause to rejoin from leave without delay.

(*f*) Without sufficient cause failing to appear at the time fixed at the {parade / place} appointed for {exercise. / duty.}

(*g*) Quitting {parade / the line of march} {without sufficient cause. / without leave from his superior officer.}

(*h*) In time of peace quitting his {guard, / picquet, / patrol,} {without being regularly relieved. / without leave.}

(*i*) Being found, without proper authority, two miles or upwards from camp.

(*j*) Absenting himself without proper authority from his {cantonments / lines / camp after retreat beating.} after tatoo.

DISGRACEFUL CONDUCT.

SECTION 31.

(*a*) Dishonestly {misappropriating / converting to his own use} {money, / provisions, / forage, / arms, / clothing, / ammunition, / tools, / instruments, / equipments, / military stores,} the property of Government, entrusted to him.

(*b*) Dishonestly { receiving / retaining } { money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments, military stores, } the property of Government { knowing / having reason to believe } the same to have been dishonestly { misappropriated / converted to his own use } { by a person / to whom } { it was / they were } entrusted.

(*c*) Wilfully { destroying / injuring } Government property entrusted to him.

(*d*) Committing theft in respect of the property of { Government. / a military { mess. / band. / institution. } / a person { subject to military law. / serving with / attached to } the army. }

(*e*) Dishonestly { receiving / retaining } { knowing / having reason to believe } it to be stolen, the property of { Government. / a military { mess. / band. / institution. } / a person { subject to military law. / serving with / attached to } the army. }

(*f*) Such an offence as is mentioned in clause (*f*) of section thirty-one of the Indian Army Act. } with intent to { defraud. / cause wrongful gain to a person. / cause wrongful loss to a person. }

(*g*) (1) Malingering.

(2) { Feigning / Producing } { disease, / infirmity, } in himself.

(3) Intentionally { delaying his cure. / aggravating his { disease. / infirmity. }

(*h*) Voluntarily causing hurt to { himself / a person } with intent to render { himself / that person } unfit for service.

(*i*) (1) Committing an offence of { a cruel / an indecent / an unnatural } kind.

(2) Attempting to commit an offence of { a cruel / an indecent / an unnatural } kind and doing an act toward its commission.

INTOXICATION.

SECTION 32.

Intoxication.

OFFENCES IN RELATION TO PERSONS IN CUSTODY.

SECTION 33.

Releasing without proper authority / Negligently suffering to escape { a State prisoner / an enemy / a person taken in arms against the State } placed under his charge.

SECTION 34.

(*a*) When in command of a { guard, / picquet, / patrol, } refusing to receive a { prisoner / person } duly committed to his charge.

(*b*) { Releasing without proper authority / Negligently suffering to escape } { a prisoner / a person } placed under his charge.

(*c*) When in military custody leaving such custody before being set at liberty by proper authority.

OFFENCES IN RELATION TO PROPERTY.

SECTION 35.

(*a*) (1) Committing extortion.

(2) Exacting, without proper authority { carriage / porterage / provisions } from a person.

(*b*) In time of peace, { committing / plundering / destroying / damaging } { house-breaking for the purpose of plundering. / a field. / a garden. / [*other property*.] }

(*c*) { Designedly / Through neglect } { killing / injuring / making away with / ill-treating / losing } { his horse. / an animal used in the public service. }

(*d*) { Making away with / Being concerned in making away with } his { arms. / ammunition. / equipments. / instruments. / tools. / clothing. / regimental necessaries. }

(*e*) Losing by neglect his { arms. / ammunition. / equipments. / instruments. / tools. / clothing. / regimental necessaries. }

(f) Wilfully injuring
- his { arms. / ammunition. / equipments. / instruments. / tools. / clothing. / regimental necessaries.
- property belonging to { Government. / a military { mess. / band / institution. / a person { subject to military law. / serving with / attached to } the army.

(g) { Selling / Pawning / Destroying / Defacing } { a medal / a decoration } granted to him.

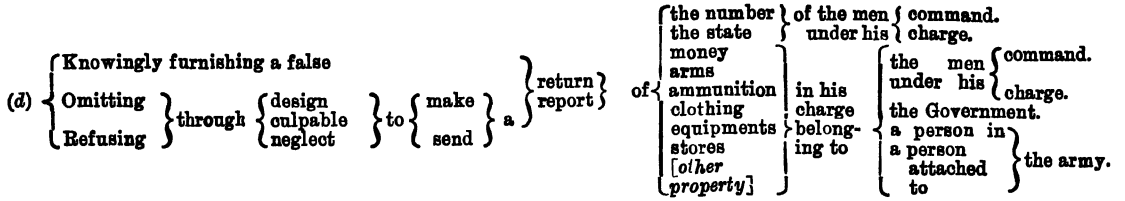
OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

SECTION 36.

(a) Making a false accusation against a person subject to military law knowing such accusation to be false.

(b) In making a complaint under section 117 of the Indian Army Act { knowingly making a false statement affecting the character of person subject to military law. / knowingly and wilfully suppressing a material fact.

(c) { Obtaining / Attempting to obtain. } { for himself / for person } a { a pension / an allowance / an advantage / a privilege }
- by a false statement which he { knew / believed / did not believe } to be false.
- by { making / using } a false entry in a { book. / record.
- by making a document containing a false statement.
- by omitting to make a { true entry. / document containing a true statement.

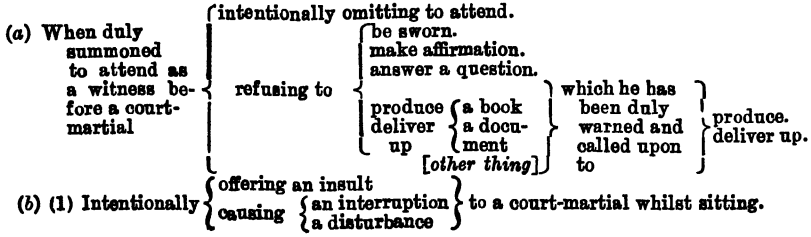


SECTION 37.

Making a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled.

OFFENCES IN RELATION TO COURTS-MARTIAL.

SECTION 38.



(2) { Using a { menacing / disrespectful } { word / sign / gesture } / Being { insubordinate / violent } } in the presence of a court-martial whilst sitting.

(c) Having been duly { sworn / affirmed } before { a court-martial / a military court competent to administer an oath or affirmation } { making a false statement which he } { knew / believed / did not believe to be true. }

MISCELLANEOUS MILITARY OFFENCES.

SECTION 39.

(a) Behaving in a manner unbecoming the position and character of { an officer. / a warrant officer. }

(b) { Striking / Ill-treating } a person subject to the Indian Army Act being his subordinate in { rank. / position. }

(c) When in command { at a post, / on the march, } { receiving a complaint that a person under his command has } { beaten / maltreated / oppressed } { a person, / disturbed { a fair, / a market, } / committed { a riot, / a trespass, } } and failing to have due reparation made to the injured person or to report the case to the proper authority.

(*d*) By defiling a place of worship, [*otherwise*] } intentionally { insulting the religion / wounding the religious feelings } of a person.

(*e*) Attempting to commit suicide and doing an act towards the commission of the same.

(*f*) Being below the rank of warrant officer and carrying when off duty a { sword / bludgeon / [*other offensive weapon*] } { without proper authority } { in / about } { camp. / cantonments. / a town. / a bazar. } / { going to / returned from } { a town. / a bazar. }

(*g*) { Accepting / Obtaining / Agreeing to accept / Attempting to obtain } for himself [*for any other person*] { a gratification / as a } { motive / reward } for procuring { the enrolment of a person. / leave of absence / promotion / an advantage / an indulgence } for a person in the service.

(*h*) Neglecting to obey { general / garrison / [*other*] } orders.

(*i*) { An act / An omission } prejudicial to good order and military discipline.

ABETMENT.

SECTION 40.

Abetment within the meaning of the Indian Penal Code of an offence punishable under the Indian Army Act.

CIVIL OFFENCES.

SECTION 41.

In a place beyond / When on active service in } British India { Committing a civil offence, that is to say (*state the offence as described in the Indian Penal Code or other law in force in British India*).

SECTION 42.

(1) { Committing / Attempting to commit / Abetting the commission of } an offence punishable under Chapter VI of the Indian Penal Code, that is to say (*state the offence as described in the Code*).

(2) { Committing / Attempting to commit / Abetting to commission of } { murder / culpable homicide } against a person subject to military law.

(3) { Voluntarily causing / Attempting to voluntarily cause / Abetting the voluntarily causing of } { hurt / grievous hurt } against a person subject to military law.

Charges for other offences referred to in section 42 will be similarly framed, the offence being stated as described in the Indian Penal Code (sections 324, 326 to 335, or 506) and the words "against a person subject to military law" *added.*

ILLUSTRATION OF CHARGE.

NOTE.—The following is an illustration of a complete charge-sheet, with statement of offence and particulars, as it would be placed before a district court-martial :—

Charge-sheet.

The accused No. 240, Sepoy Ali Baksh, —th Punjabis is charged with—

Disobeying the lawful command of his superior officer, First charge. Sec. 27 (c).

in that he

at Allahabad, on the 28th January 1911, disobeyed the lawful command of his superior officer, Jemadar Futteh Khan of the same regiment, to turn out for Commanding Officer's parade, by not turning out.

Being grossly insubordinate to his superior officer in the execution of his office, Second charge. Sec. 28 (a).

in that he

at Allahabad, on the 28th January 1911, when confined by Jemadar Futteh Khan of the same regiment, on the first charge, said to him "I am a better man than you and will not go to the guard-room by your order," or words to that effect.

A. B.,
Commanding —th Punjabis

Allahabad,
31st January 1911.

* To be tried by a district court-martial.

X. Y.,
Commanding Allahabad Brigade
(or Staff Officer, who should sign
for Officer Commanding
Allahabad Brigade).

Allahabad,
1st February 1911.

---

* When sanction is accorded for the trial of grave offences by summary court-martial (I. A. A. section 74, proviso) a similar entry should be made on the charge-sheet.

NOTE AS TO USE OF FORMS OF CHARGES.

This note does not form Part of the Appendix to the Indian Army Act Rules.

(1) Every charge-sheet will begin as shown in the form in Part I of the forms of charges, which are given as examples.

The description of an officer, warrant officer or person enrolled under the Act by his rank and corps is a sufficient averment that he is an officer, warrant officer or such a person and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 19.)

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts; a statement of the offence and a statement of the particulars. (Rule 20 (B))

(4) The statement of the offence will be in one of the forms in Part II.

(5) Where two or more words or expressions occur in Part II, bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and" accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 20 (A).)

(8) For example, a person may be charged with dishonestly misappropriating money, provisions, *and* forage, the property of Government entrusted to his charge; but a charge for dishonestly misappropriating money, provisions or forage will be a bad charge.

(9) In a few cases shewn in italics bracketed thus [ ] words may be inserted in the charge which are not in the Act. In these cases, the Act contains a general expression such as "other place," "other property," "or otherwise," and the officer framing the charge must omit these words and insert a description of the place, property or means.

(10) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," etc., or "in having," etc., and stating in brief ordinary language what the accused is alleged to have done.

(11) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(12) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 20 (E)), as, for example, "in having done the acts alleged in the particulars to the first charge," or "in that, at the place and time aforesaid, he was deficient in the necessaries abovementioned in the second charge, which it was his duty to have". If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(13) The statement of particulars should specify all the ingredients necessary to constitute the offence; for example, if the charge is one for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command.

(14) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town, or "the line of march," and if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(15) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed 'on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, in the case of absence without leave, or being asleep on a post.

(16) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times; as, for instance, in the case of absence without leave, or of quitting a post; in other cases "between" may be used in consequence of the exact day or exact time not being known.

(17) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(18) In many cases, as, for instance, where the defence is an *alibi*, the time and place may be of the utmost importance in proving that *alibi*, although it is not the essence of the offence.

(19) There must be added at the end of the "particulars" a statement of any expenses, loss or damage in respect of which the court-martial will be asked to award compensation under section 43 (*h*) of the Act. For example, there may be added to the "particulars" in the case of a charge under section 35 (*b*) that the accused thereby damaged ——— property to the value of
and other statements may be made, according to the facts.

(20) If, however, the expenses, loss or damage were caused by an act or omission which constitutes another offence, separately specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

The following further Illustrations of Charges will be found useful. They are not part of the Appendix to the Indian Army Act Rules.

FURTHER ILLUSTRATIONS OF CHARGES.

No. 1.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with—

In presence of an enemy shamefully casting away his arms,

in that he, at , on , when on outlying picquet and attacked by the enemy, shamefully cast away his rifle, left his picquet, and ran away.

No. 2.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with—

In presence of an enemy misbehaving in such manner as to show cowardice,

in that he, at , on , when one of the Barrack Guard of his Regiment misbehaved in the presence of Sepoy , the Barrack Guard sentry who had mortally wounded one sepoy of the guard and seriously wounded another and was firing his rifle in all directions, by abandoning his guard and shamefully running away and hiding himself.

No. 3.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with—

In time of war intentionally occasioning a false alarm in camp,

in that he at Camp , Field Force, on , by discharging his rifle, intentionally caused a false alarm in the said camp.

No. 4.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with—

When a sentry in time of alarm quitting his post without being regularly relieved,

in that he, at , on after having been posted as sentry on No. Post Guard at 6 P.M., when Sepoy , the Barrack Guard sentry ran amok at 7 P.M. the same evening and was firing his rifle in all directions, quitted his post without being regularly relieved.

No. 5.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with—

When a sentry over a magazine sleeping upon his post,

in that he, at , on , between 1 and 2 A.M. when sentry on No. Post of the Magazine Guard, was asleep.

No. 6.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 25 (i).

In time of war quitting his picquet without leave,

in that he, at , Field Force, on , between 5 and 6 P.M., when on outlying picquet No. quitted the said picquet without leave.

No. 7.

CHARGE-SHEET.

The accused (*name*) a of the Indian Telegraph Department being a person subject to Indian Military Law as a non-commissioned officer under the provisions of section 2 (*1*) (*c*) and section 3 (*1*) of the Indian Army Act, is charged with— Sec. 25 (*f*).

In time of war using criminal force to a person bringing provisions to the camp of His Majesty's Forces,

in that he, at , on , struck with his fist on the face A B who was bringing provisions to the camp of the Field Force.

No. 8.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 25 (*f*).

In time of war forcing a safeguard,

in that he, at , on , in time of war, wilfully, and after having been duly warned, entered a bannia's shop in village, in which by orders of the General Commanding, Havildar had been placed as a safeguard, for the protection of the occupants and the property therein, and took therefrom one tin of ghee, value , or thereabout.

No. 9.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 25 (*f*).

During a military operation breaking into a house for plunder,

in that he, at , on , when forming part of a force engaged in military operations against dacoits, broke into the house of in search of plunder.

No. 10.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 26 (*a*).

Forcing a sentry,

in that he, at , on , after being warned by the sentry on No. Post Guard, not to pass, passed the said sentry.

No. 11.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 26 (*c*).

When on guard, plundering property placed under charge of his guard,

in that he, at , on , when on guard over the canteen of the Regiment, took drams of rum, value , or thereabout, from a cask of rum which had been placed under the charge of his guard.

No. 12.

CHARGE-SHEET.

Sec. 26 (d). The accused, No. , Sepoy, Regiment, is charged with—
When a sentry in time of peace, sleeping upon his post,
in that he, at , on , between 1 and 2 A.M., when sentry on No. Post Guard, was asleep.

No. 13.

(Joint trial).

CHARGE-SHEET.

Sec. 27 (a). The accused persons No. Havildar; Regiment, No. , Sepoy, Regiment, (etc)., are charged with—
Joining in a mutiny,
in that they together, at , on , in company with a number of other Sepoys of the Company, Regiment, in a mutinous spirit marched to the orderly room of the said regiment with the object of making a combined representation on a matter of supposed grievance to their commanding officer, and then and there, they, with the exception of Havildar , on seeing the said Havildar marched out of the orderly room in custody, insubordinately took off their belts and threw them on the ground.

No. 14.

CHARGE-SHEET.

Sec. 27 (c). The accused, No. , Sepoy, Regiment, is charged with—
Knowing the existence of an intention to mutiny and failing to give information thereof without delay to his commanding or other superior officer,
in that he, at , on , was present when Naick , Driver and other soldiers of the Mountain Battery were assembled, and, in his hearing, agree to cut up and destroy the harness belonging to the said battery, and failed to give information thereof to his commanding or other superior officer.

No. 15.

CHARGE-SHEET.

Sec. 27 (d). The accused, No. , Sepoy, Regiment, is charged with—
Using criminal force to his superior officer knowing him to be such,
in that he, at , on , struck with his fist on the head Havildar of the same regiment.

No. 16.

CHARGE-SHEET.

Sec. 27 (d). The accused, No. , Sepoy, Regiment, is charged with—
Attempting to use criminal force to his superior officer knowing him to be such,
in that he, at , on , threw a stone at Havildar of the same regiment which missed the said Havildar.

No. 17.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with—
Committing an assault on his superior officer having reason to believe him to be such,
in that he, at , on , when ordered by Havildar Regiment to leave the lines of the said Regiment, picked up a stone and threatened to throw it at the said Havildar whom he had reason to believe was his superior officer.

No. 18.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 27 (c).
Disobeying the lawful command of his superior officer,
in that he, at , on , when ordered by Naick of the same regiment to fall in for fatigue, did not do so.

No. 19.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 28 (a).
Being grossly insubordinate to his superior officer in the execution of his office,
in that he, at , on , said to Havildar of the same regiment, who had ordered him to be confined, "I am as good a man as you and will fight you any day you like," or words to that effect.

No. 20.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 28 (b).
Refusing to assist in the making of a field work ordered to be made in quarters,
in that he, at , on , when undergoing a course of double company training, refused to assist in the making of an entrenchment, saying "I enlisted to fight and not to dig," or words to that effect.

No. 21.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 28 (c).
Refusing, when called on, to assist in the execution of his duty a provost marshal,
in that he, at , on , when called on by Captain , Provost Marshal of the Brigade, Field Force, to assist him in arresting an offender, refused to do so.

No. 22.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— First charge. Sec. 29.
Deserting the service,
in that he, at , on , absented himself from the Regiment, until apprehended by the Border Military Police , at , on .

Committing theft in respect of the property of Government, Second charge. Sec. 31 (d).
in that he, when absenting himself from his regiment at the place and day aforesaid, committed theft by dishonestly taking with him one rifle value and twenty rounds of ball ammunition value , the property of Government.

Note.—It is immaterial whether the rifle is the soldier's own or a comrade's. See Indian Penal Code, section 27 and illustration (*d*) to section 378.

No. 23.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 29.
Attempting to desert the service,
in that he, at , on , attempted to desert the service by attempting to quit the lines of the Regiment, disguised as a woman, with the intention of deserting from the said regiment.

No. 24.

CHARGE-SHEET.

Sec 30 (a). The accused No. , Sepoy, Regiment, is charged with—
Knowingly harbouring a deserter,
in that he, at , on , concealed in his house Sepoy, Regiment, whom he knew to be a deserter from the said regiment.

No. 25.

CHARGE-SHEET.

Sec. 30 (b). The accused, No. , Sepoy, , Regiment, is charged with—
Knowing a person to be a deserter and attempting to procure the enrolment of such person,
in that he, at , on , when employed on recruiting duty, brought before Major A. B., an Enrolling Officer, one C. D. whom he knew to be a deserter from the Regiment and attempted to procure the enrolment of the said C. D. into the Regiment

No. 26.

CHARGE-SHEET.

Sec. 30 (c). The accused, No. , Sepoy, Regiment, is charged with—
Without having first obtaining a regular discharge from his corps enrolling himself in another corps,
in that he, at , on , without having first obtained a regular discharge from the Regiment enrolled himself in the Regiment.

No. 27.

CHARGE-SHEET.

Sec. 30 (d). The accused, No. , Sepoy, Regiment, is charged with—
Absenting himself without leave.
in that he, at , absented himself from tattoo roll call on till 7-30 A. M. on .

No. 28.

CHARGE-SHEET.

Sec. 30 (d). The accused, No. , Sepoy, Regiment, is charged with—
Without sufficient cause overstaying leave granted to him,
in that he, having been granted leave of absence from to to proceed to , failed, without sufficient cause, to rejoin at on the expiry of the said leave.

No. 29.

CHARGE-SHEET.

Sec. 30 (e). The accused, No. , Sepoy, Regiment, is charged with—
Having received information from proper authority that the corps to which he belongs has been ordered on active service and failing without sufficient cause to rejoin from leave without delay
in that he, on , while on leave of absence at , having received information from that the Regiment had been ordered on active service, failed, without sufficient cause, to rejoin the said regiment.

No. 30.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (*f*).
Wilhout sufficient cause failing to appear, at the time fixed, at the place appointed for duty,
in that he, at on , failed without sufficient cause to appear at A.M. at , the place appointed for Commanding Officer's parade.

No. 31.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (*g*).
Quitting the line of march without leave from his superior officer,
in that he, at , on , when on the line of march from to , fell out without leave from the officer commanding his company.

No. 32.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (*h*).
In time of peace, quitting his guard without leave,
in that he at , on , when on regimental quarter-guard duty, quitted the said guard without leave.

No. 33.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with Sec. 30 (*i*).
Being found without proper authority two miles or upwards from camp,
in that he, when his Regiment was encamped at , on , was found at without proper authority for being at the said place.

No. 34.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (*j*).
Absenting himself without proper authority from his lines after tattoo,
in that he, at , on , absented himself without proper authority from his lines from P.M. to P.M.

No. 35.

CHARGE-SHEET.

The accused, No. , Naick, Supply and Transport Corps, is charged with— Sec. 31 (*a*).
Dishonestly misappropriating money, the property of Government, entrusted to him,
in that he, when on the march from to between the and , dishonestly misappropriated Rupees out of a sum of Rupees , the property of Government, entrusted to him for the daily purchase of bhoosa for feeding camels in his charge.

No. 36.

CHARGE-SHEET.

The accused, No. , 1st class Sub-Assistant-Surgeon, , Indian Subordinate Medical Department, is charged with— Sec. 31 (*a*).
Dishonestly misappropriating military stores, the property of Government, entrusted to him,

in that he, at , between and , dishonestly misappropriated the undermentioned military stores, the property of Government, of which he was in charge as Sub-Assistant Surgeon in Sub-Medical charge of No. Field Ambulance, *viz.*—
, value ,
, value ,
, value .

No. 37.

CHARGE-SHEET.

First charge, Sec. 31 (*a*). The accused, No. , Havildar, Regiment, is charged with—
Dishonestly misappropriating ammunition, the property of Government, entrusted to him,
in that he, at , on , dishonestly misappropriated twenty rounds of ball ammunition, the property of Government, value . which had been entrusted to his charge for the target practice of the casuals of the Double Company, Regiment.

Second charge. Sec. 39 (*f*) (Alternative). *An act prejudicial to good order and military discipline.*
in that he, at , on , through neglect lost twenty rounds of ball ammunition, the property of Government, value , which had been entrusted to him for the target practice of the casuals of the Double Company, Regiment.

No. 38.

CHARGE-SHEET.

Sec. 31 (*b*). The accused, No. , Jemadar, Regiment, is charged with—
Dishonestly receiving military stores, the property of Government, knowing the same to have been dishonestly misappropriated by a person to whom they were entrusted,
in that he, at , on , dishonestly received from Quartermaster-Havildar and applied to his own use, six pieces of flannelette, value , the property of Government, which he knew to have been dishonestly misappropriated by the said Quartermaster-Havildar to whom they were entrusted.

No. 39.

CHARGE-SHEET.

Sec. 31 (*c*). The accused, No. , Sepoy, Regiment, is charged with—
Wilfully destroying Government property entrusted to him.
in that he, at , on , wilfully destroyed by breaking it up one heliograph, value , the property of Government, which had been entrusted to him for his use as a regimental signaller.

No. 40.

CHARGE-SHEET.

First charge. Sec. 31 (*d*). The accused, No. , Sepoy, Regiment, is charged with—
Committing theft in respect of the property of a person subject to military law,
in that he, at on , committed theft in respect of a watch the property of sepoy in the same Regiment.

Second charge. Sec. 31 (*e*) (Alternative). *Dishonestly receiving, knowing it to be stolen, the property of a person subject to military law,*
in that he at the place and on the day aforesaid was in possession of a watch stolen from the said which he knew to have been stolen

No. 41.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with,— Sec. 31 (d).
Committing theft in respect of the property of Government,
in that he, at , on , committed theft in respect of one M. L. E. Rifle, value , the property of Government.

No. 42.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— First charge.
Dishonestly retaining knowing it to be stolen the property of Government, Sec. 31 (e).
in that he, at , on , was in unlawful possession of twenty fired rifle cartridge-cases, the property of Government, which he knew to have been stolen.

An act prejudicial to good order and military discipline, Second charge.
in that he, at , on , was in unauthorised possession of twenty fired rifle cartridge-cases, the property of Government. Sec. 39 (b) (Alternative).

No. 43.

CHARGE-SHEET.

The accused Ressaldar Regiment, is charged with—
Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud, Sec. 31 (f).
in that he, at , on or about the , when commanding L. A. squadron Regiment, with intent to defraud, caused the sum of to be transferred from the half squadron grain account to his own private account with the half squadron bania (*name*).

No. 44.

CHARGE-SHEET.

The accused, No. Havildar, Regiment, is charged with— Sec. 31 (f).
Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud.
in that he, at , on , having received from Lieutenant A B Regiment a cheque for Rupees payable to the Mess President, Regiment, irregularly cashed the same at the Regimental Treasure Chest, Regiment and fraudulently misappropriated the proceeds, namely, Rupees .

No. 45.

CHARGE-SHEET.

The accused, No. Havildar, Regiment, is charged with— Sec. 31 (f).
Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to cause wrongful loss to a person,
in that he, at , on , with intent to cause wrongful loss to Sepoy debited the said sepoy in the acquittance roll of Company, Regiment, with a deduction of Rupees on account of clothing which deduction he did not credit to the said sepoy's clothing account.

No. 46.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 31 (g).
Malingering,
in that he, at , on , (between and) with the intention of evading his duties as a soldier counterfeited dumbness.

No. 47.

CHARGE-SHEET.

Sec. 31 (g). The accused, No. , Sepoy, Regiment, is charged with—
Feigning disease in himself,
in that he, at , on , pretended to Captain , Indian Medical Service, that he was suffering violent pains in the head and down his back, whereas he was not so suffering.

No. 48

CHARGE-SHEET.

Sec. 31 (g). The accused, No. , Sepoy, Regiment, is charged with—
Intentionally delaying his cure,
in that he, at , on , when under medical treatment for a wound in his leg, removed the bandages from the said wound with intent, thereby to delay his cure and did thereby delay his cure.

No. 49.

CHARGE-SHEET.

Sec. 31 (h). The accused, No. , Sepoy, Regiment, is charged with—
Voluntarily causing hurt to a person with intent to render that person unfit for service,
in that he, at , on , at the request of Sepoy cut off the trigger finger of the said sepoy with intent to render him unfit for service.

No. 50.

CHARGE-SHEET.

First charge. Sec. 31 (i). The accused, No. , Sepoy, Regiment, is charged with—
Committing an offence of an unnatural kind,
in that he, at , on , committed an unnatural offence on the person of , a sepoy in the same regiment.

Second charge. Sec. 31 (i) (Alternative). *Attempting to commit an offence of an unnatural kind and doing an act towards its commission,*
in that he at , on , attempted to commit an unnatural offence on the person of , a sepoy in the same regiment, and did an act towards its commission, that is to say (*describe the act*).

No. 51.

CHARGE-SHEET.

Sec. 32. The accused, No. , Sepoy, Regiment, is charged with—
Intoxication,
in that he, at , on , [when on duty (*specify duty*) or having been previously warned for duty (*specify duty*)] was intoxicated.

No. 52.

CHARGE-SHEET.

Sec. 32. The accused, No. , Sepoy, Regiment, is charged with—
Negligently suffering to escape a person taken in arms against the State, placed under his charge,
in that he, at , on , when posted as a sentry over A B , a person taken in arms against the State, negligently suffered the said A B to escape.

No. 53.

CHARGE-SHEET.

The accused, No. , Havildar, Regiment, is charged with— Sec. 34 (*a*).
When in command of a guard refusing to receive a person duly committed to his charge,
in that he, at , on , when in command of the quarter guard of the Regiment, refused to receive Sepoy , who had been ordered into confinement by Jemadar and duly committed to his charge.

No. 54.

CHARGE-SHEET.

The accused, No. , Havildar, Regiment, is charged with— Sec. 34 (*b*).
Releasing without proper authority a person placed under his charge,
in that he, at , on , when in command of the quarter guard of the Regiment, without authority released Sepoy , who was confined in the said quarter guard.

No. 55.

CHARGE-SHEET.

The accused, Subadar, Regiment, is charged with— Sec. 34 (*c*).
When in military custody leaving such custody before being set at liberty by proper authority,
in that he, at , on , when under close arrest in his quarters went to the Bazaar.

No. 56.

CHARGE-SHEET.

The accused, No. , Naick, Regiment, is charged with— Sec. 35 (*a*).
Committing extortion,
in that he, at , on , by threatening to make a false report to the officer commanding their company to the effect that Sepoys and had committed an unnatural offence together, extorted Rupees from each of the said sepoys.

No. 57.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with — Sec. 35 (*b*).
In time of peace committing house-breaking for the purpose of plundering, in that he, at , on , broke into the house of for the purpose of plundering.

No. 58.

CHARGE-SHEET.

The accused, No. , Driver, Mule Corps, is charged with— Sec. 35 (*c*).
Designedly ill-treating an animal used in the public service,
in that he, at , between the and , designedly ill-treated Mule No. by placing a stone under its saddle, thereby causing a sore back.

No. 59.

CHARGE-SHEET.

Sec. 35 (d). The accused, No. , Sepoy, Regiment, is charged with—
Making away with his clothing,
in that he, at , on , sold his great coat to for three rupees.

Note.—If the man's kit had not, by Regulations, become his own property the value of the great coat should be entered in the particulars.

No. 60.

CHARGE-SHEET.

Sec. 35 (e). The accused, No. , Sepoy, Regiment, is charged with—
Losing by neglect his clothing and regimental necessaries,
in that he, at , on , was deficient of one khaki blouse, one button brush and one dhurrie.

Note.—See note to Charge No. 59 for difference in particulars if the man's kit had not yet become his own property.

No. 61.

CHARGE-SHEET.

Sec. 36 (a). The accused, No. , Sepoy, Regiment, is charged with
Making a false accusation against persons subject to military law knowing such accusation to be false,
in that he, at , on , when appearing before Colonel A. B. commanding the Regiment, to answer for an offence, used language to the following effect, that is to say, "Major C, the double company commander, takes no interest in his work and is entirely in the hands of the Native Officers who in their turn take bribes all round and allow no one, without a bribe, to approach the Major Sahib," well knowing the said statement to be false.

No 62.

CHARGE-SHEET.

Sec. 36 (e). The accused, No. , Sepoy, Regiment, is charged with—
Attempting to obtain for a person a pension by a false statement which he knew to be false,
in that he, at , on , when examined by Major A. B. Regiment, who was investigating a claim to family pension preferred by C. inhabitant of , stated that he knew the said C to be the father of late Sepoy D. Regiment, well knowing such statement to be false.

No. 63.

CHARGE-SHEET.

Sec. 36 (d). The accused, No. Havildar (Quartermaster-Havildar), Regiment, is charged with—
Knowingly furnishing a false return of clothing in his charge belonging to a person in the army,
in that he, at , on , in a return of clothing in his charge belonging* to Lieutenant-Colonel A B commanding the Regiment, furnished by him to Lieutenant and Quartermaster C D Regiment, shewed 154 suits of khaki clothing, value Rupees or thereabouts as in store on (*date*), which statement was, as he well knew, false.

* Regimental property is technically the property of the Commanding Officer, and should be so described.

No. 64.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 37.

Making a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled,

in that he, at , on , when he appeared before Major A. B. , an Enrolling Officer, for the purpose of being enrolled for service in the Regiment, to the question put to him, "Have you ever served in the Army?" answered "No" whereas, he had served, as he well knew, in the Regiment.

No. 65.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 38 (*b*).

Intentionally offering an insult to a court-martial whilst sitting,

in that he, at , on , when being tried by general court-martial, said in a loud tone "It is no use my making any defence, the court have been told by the General to convict me and of course they will" or words to that effect.

No. 66.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 38 *c*).

Having been duly affirmed before a court-martial, making a false statement which he knew to be false,

in that he, at , on , when examined as witness before a court-martial, stated on solemn affirmation that Sepoy Regiment, the person charged before the said court, was in his, the witness's, company in the lines at , between 4 and 5 P.M. on , which statement was, as he well knew, false.

No. 67.

CHARGE-SHEET.

The accused Subadar, Regiment, is charged with— Sec. 39 (*a*).

Behaving in a manner unbecoming the position and character of an officer,

in that he, at , on , when orderly officer of the day, when it was reported to him that Sepoy A. B. had armed himself with a rifle and ammunition, and run amok defying anyone to arrest him, did not go to the spot, nor take any prompt or adequate measures to capture, disarm or shoot down, or cause to be captured, disarmed or shot down the said A. B , either on receiving the report, or even subsequently when he became aware that the aforesaid A. B. had fired at and wounded Lieutenant C. D. of the same regiment.

No. 68.

CHARGE-SHEET.

The accused, No. 3rd Class Sub-Assistant Surgeon, Indian Subordinate Medical Department, is charged with— Sec. 39 (*a*).

Behaving in a manner unbecoming the position and character of a warrant officer,

in that he, at , on , when in subordinate charge of the Cholera Camp at that station, through cowardice absented himself from his duties and absconded to his home at in the District, hereby endangering the lives of the patients under his care.

No. 69.

CHARGE-SHEET.

Sec. 39 (b). The accused, No. , Havildar, Regiment, is charged with—
Striking a person subject to the Indian Army Act being his subordinate in rank,
in that he, at , on , when drilling a squad of recruits struck Sepoy of the same Regiment on the shoulder with a pace-stick.

No. 70.

CHARGE-SHEET.

Sec. 39 (c). The accused, No. , 1st class Sub-Assistant Surgeon, Indian Subordinate Medical Department, is charged with—
Attempting to commit suicide and doing an act towards the commission of the same,
in that he, at , on , attempted to commit suicide by taking strychnine.

No. 71.

CHARGE-SHEET.

Sec. 39 (g). The accused, No. , 3rd Class Sub-Assistant Surgeon, Indian Subordinate Medical Department, is charged with—
Accepting for himself a gratification as a motive for procuring leave of absence for a person in the service,
in that he, at , on , accepted the sum of Rupees from Sepoy Regiment as a motive for procuring leave of absence for the said sepoy on medical grounds.

No. 72.

CHARGE-SHEET.

Sec. 39 (h). The accused, No. , Havildar, Regiment, is charged with—
Neglecting to obey Regimental orders,
in that he, at , on , neglected to obey Regimental Order No. , dated , which requires the non-commissioned officer in charge of ammunition to return all fired cases to the magazine immediately on his return from the Range, by failing to return the fired cases of the casuals of Company until four hours or thereabouts after his return.

No. 73.

CHARGE-SHEET.

First charge. Sec. 39 (i). The accused, No. , Jemadar , Regiment, is charged with—
An act prejudicial to good order and military discipline,
in that he, at , on , when Superintendent at the butts during the repetition of Musketry Practice No. , by certain casuals of his regiment, wilfully caused it to be signalled to the firing point that four fair hits had been made on No 3 target, whereas actually only one fair hit and one ricochet had been made on the said target, as he well knew.

Second charge. (Alternative). Sec. 39 (i). *An omission prejudicial to good order and military discipline,*
in that he, at , on , when Superintendent at the butts on the occasion mentioned in the first charge, omitted to exercise proper care in checking the targets, and thereby caused it to be signalled to the firing point that four fair hits had been made on No. 3 target, whereas actually only one fair hit and one ricochet had been made on the said target.

No. 74.

CHARGE-SHEET.

The accused, No. , Naick, Regiment, is charged with— Sec. 39 (i).
An omission prejudicial to good order and military discipline,
in that he, at , on , after being duly warned by Havildar to parade the defaulters at 3 P.M. on that day, omitted to do so.

Note.—This form of charge is applicable when wilful disobedience is not imputed.

No. 75.

CHARGE-SHEET.

The accused, No. , Duffadar, , Regiment, is charged with— Sec. 39 (i).
An omission prejudicial to good order and military discipline,
in that he, at , between the and , when in charge of the Government forage in the Rukh, omitted to exercise a proper supervision over the operations of grass-cutting and stacking therein, and the issue of grass therefrom, and by such omission caused a loss to Government of Rupees or thereabouts.

No. 76.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 40.
Abetment within the meaning of the Indian Penal Code of an offence punishable under the Indian Army Act,
in that he, at , on , when sentry over the Fort Magazine Guard between 3 A.M., by omitting to keep on the alert, intentionally aided Sepoy of the same regiment to steal one box of ammunition value , the property of Government, and thereby abetted within the mening of the Indian Penal Code an offence punishable under section 31 (*d*) of the Indian Army Act.

Note.—If there is any doubt as to the assistance being *intentional*, an alternative charge under section 39 (i) may be added.

No. 77.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 41.
In a place beyond British India committing a civil offence, that is to say, "Voluntarily causing grievous hurt",
in that he, at , on , in the territories of His Highness the Maharaja of , by beating a villager named with a heavy stick broke, the arm of the said .

No. 78.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 42.
Committing murder against a person subject to military law,
in that he, at , on , by causing the death of Subadar Regiment, committed murder.

No. 79.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 42.
Attempting to commit murder against a person subject to military law,

in that he, at , on , fired two shots from a rifle at Jemadar , Regiment, with intent to kill him, and thereby wounded the said Jemadar in the right breast and left thigh.

No. 80.

CHARGE-SHEET.

Sec. 2.

The accused, No. , Sepoy, Regiment, is charged with—
Voluntarily causing hurt against a person subject to military law,
in that he, at , on , voluntarily caused hurt to Sepoy Regiment, by striking him on the shoulder and head with a clubbed rifle.

THIRD APPENDIX.

FORMS AS TO COURTS-MARTIAL.

FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

No. 1.—General and District.

Form of order for the Assembly of a General [or District] Court-Martial under the Indian Army Act.

Orders by
Commanding the
(*Place* *Date*)

The detail of officers as mentioned below will assemble at
on the day of
for the purpose of trying by a
court-martial the accused person (persons) named in the margin [and such other person or persons as may be brought before them.]

[Seven officers are not, due regard being had to the public service, available.]

The senior officer to sit as President.

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE [*or* Superintending Officer].
is appointed Judge-Advocate [or Superintending Officer.]

[INTERPRETER.
is appointed interpreter].

Note—
These members and the waiting members may be mentioned by name, or the number and ranks and the mode of appointment may alone be named.

The accused will be warned, and all witnesses duly required to attend.
The proceedings (of which only one copy is required) will be forwarded to

Signed this day of
A. B.

No. 2.—Summary General.

[See combined form for assembly and proceedings, below.]

No. 3.—Declaration for Suspension of Rules.

Form of Declaration of Military Exigencies or the Necessities of Discipline under Rule 25.

In my opinion [*military exigencies, namely (*state them*)] render it [†impossible] to observe the provisions of rules‡ on the trial of by court-martial assembled pursuant to the order of the of

Signed at this day of
A. B.

*[the necessities of discipline.]
†[*or* inexpedient.]
‡ State the rule or rules which cannot be observed. (See Rule 25.)

[Instruction.—*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings. It should not be included in the Convening Order but should be a separate document.*]

FORMS OF PROCEEDINGS OF COURTS-MARTIAL.

Form of Proceedings of a General (or District) Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure, with Instructions for the guidance of the Court).

PROCEEDINGS OF A COURT-MARTIAL, held at on the day of 19 by order of Commanding , dated the day of 19 .

PRESIDENT.

Rank.	*Name.*	*Regiment.*

MEMBERS.

Rank.	*Name.*	*Regiment.*

———, Judge-Advocate, [or Superintending Officer],

[———Interpreter,]

of*———

at———o'clock the trial commences.

**Here insert No., Rank, Name and Regiment, and appointment (if any).*

(1) The order convening the Court is read [orally translated], and [a copy thereof], is marked signed by the president [judge-advocate or superintending officer], and attached to the proceedings.

The charge-sheet and the summary of evidence are laid before the Court.

[Instruction.—*All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president (judge-advocate or superintending officer), and attached to the proceedings.*]

The Court satisfy themselves as provided by Rules 31 and 32.

(2)†

† Here state Rank and Name and Regiment (if any).

appears as prosecutor, and takes his place.

The above-named, the accused, is brought before the Court.

VARIATION.

appears as counsel for the prosecutor.

appears to assist [*or* as counsel for] the accused.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over? *Question by the President to the accused.*

No. *Answer by accused.*

[Instruction.—*The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.*]

VARIATIONS.

CHALLENGING OFFICERS.

Answer.—I object to

Question to accused.—Do you object to any other person?

(This question must be repeated until all the objections are ascertained.)

Answer—

Question to accused.—What is your objection to (*the junior officer objected to*)?

Answer by accused.—

The accused in support of his objection to , requests permission to call &c., &c.
is called into Court, and is questioned by the accused.

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused.

or,

Decision.—The Court allow the objection.

The Court is re-opened, and the above decision is made known to the accused.

retires.

Fresh Member.—* takes his place as a member of the Court. *Insert Rank, Name and Regiment.*

He appears to the Court to be eligible and not disqualified to serve on this court-martial.

Question to accused.—Do you object to be tried by (*the fresh member*)?

Answer.—

(*If he objects, the objection will be dealt with in the same manner as the former objection.*)

Question to the accused.—What is your objection to (*the junior of the officers objected to*)?

(*This objection will be dealt with in the same manner as the former objection.*

The Court adjourn for the purpose of fresh members being appointed,

or,

The Court is of the opinion that, in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because [*here state the reasons*].

At o'clock on the Court resumed their proceedings, and an order appointing fresh officers is read, marked and attached to the proceedings.

The Court satisfy themselves with respect to such fresh officers as provided by Rule 31.

[Instruction.—*The procedure as to challenging fresh officers, and the procedure, if any objection is allowed, will be the same as above.*]

The president and members of the Court, as constituted after the above proceedings, are as follows :—

PRESIDENT.

Rank.	*Name.*	*Regiment.*

MEMBERS.

Rank.	*Name.*	*Regiment.*

The president, members, and judge-advocate [superintending officer] are duly sworn [*or* affirmed] (also any officer under instruction).

[Instruction.—(1) *The witnesses if in Court, other than the prosecutor, should be ordered out of the Court at this stage of the proceedings.*

Question to the accused A.

(2) *Also any interpreter and short-hand writer should be now sworn.*]

Do you object to as interpreter?

[Instruction.—*In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.*]

Do you object to as short-hand writer?

[Instruction.—*In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.*]

CHARGE-SHEET.

Charge-sheet.

(3) The charge-sheet is signed by the president, [judge-advocate or superintending officer] marked and annexed to the proceedings.

The accused is arraigned upon each charge in the abovementioned charge-sheet.

Are you guilty or not guilty of the [*first*] charge against you, which you have heard read? *Question to the accused.*

A.

[Instruction.—*When there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.*]

Instruction.—*If the accused pleads guilty to any charge, the provisions of Rule 42 (B) must be complied with, and the fact that they have been complied with must be recorded.*]

VARIATIONS.

The accused objects to the charge.
What is your objection? *Question to the accused.*

The Court is closed to consider their decision. *Decision.*
The Court disallow the objection [*or*, the Court allow the objection, and agree to report to the convening officer].
The Court is re-opened, and the above decision is read to the accused.
The Court proceed to the trial [*or* adjourn].
The accused pleads to the general jurisdiction of the Court. *Plea to jurisdiction.*
What are the grounds of your plea? *Question to the accused.*

A.
Q.
Do you wish to produce any evidence in support of your plea?

Witness is examined on oath [*or* affirmation]. *A.*
[Instruction.—*The examination, etc., of the witnesses called by the accused and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (5) and (6). The prosecutor will be entitled to reply after all the evidence is given.*] *Witnesses.*

The Court is closed to consider their decision.
The Court allow [*or* overrule] the plea [*or*, resolve to refer the point to the convening authority, *or* decide specially that.] *Decision.*
The Court is re-opened, and the above decision is read to the accused.
The Court proceed to the trial [*or* adjourn].

VARIATION.

Accused, besides the plea of guilty [*or*, not guilty], offers a plea in bar of trial. *Plea in bar of trial.*
What are the grounds of your plea? *Question to the accused.*

A.
Q.
Do you wish to produce any evidence in support of your plea?

Witness examined on oath [*or* affirmation]. *A.*

[Instruction.—*The examination, etc., of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (5) and (6). The prosecutor will be entitled to reply after all the evidence is given.* *Witnesses.*

The Court is closed to consider their decision.

Decision.

The Court allow the plea and resolve to adjourn [*or* to proceed to the trial on another charge] [*or* the Court overrule the plea].

The Court is re-opened, and the above decision is read to the accused.

The Court adjourn [*or* proceed with the trial on another charge [*or* proceed with the trial].

Refusal to plead.

As the accused does not plead intelligibly [*or* refuses to plead to the above charge, *or* does not plead guilty to the above charge] the Court enter a plea of "not guilty."

PROCEEDINGS ON PLEA OF GUILTY.

(4) The accused [*number* , *rank* *name* *regiment*] is found guilty of the charge [all the charges]

or

is found guilty of the charge, and is found not guilty of the charge.

[Instruction.—*If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; and in that case the Court will be reopened and the charge on which the record is guilty must be read to the accused again.*

The accused may in accordance with rule 44 (B) make any statement he wishes in reference to the charge].

The summary of evidence is read, [orally translated] marked signed by the president [judge-advocate or superintending officer], and attached to the proceedings.

[Instruction.—*If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph* (5). *No address will be allowed.*]

VARIATION.

The Court being satisfied from the statement of the accused [or the summary of evidence, *or otherwise*], that the accused did not understand the effect of the plea of "guilty" alters the record and enters a plea of "not guilty".

[Instruction.—*The Court will then proceed in respect of this charge as in paragraph* (5).

Question to the accused. 4.

Do you wish to make any statement in mitigation of punishment?

No *or*

The accused in mitigation of punishment says [*or if the statement is in writing*, hands in a written statement, which is read [orally translated], marked , signed by the president, [judge-advocate or superintending officer] and attached to the proceedings].

[Instruction.—*If the statement of accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

If the statement is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

VARIATION.

The Court give permission to the accused to call witnesses to prove his above statement that [*here specify the statement which is to be proved*].

[Instruction.—*(1) The examination, etc., of witnesses called in pursuance of this permission will proceed in the same manner as under paragraph (6).*

(2) The procedure as to sentence, recommendation to mercy, and confirmation will be as in paragraphs (11) and (13)].

Evidence as to character. Question to the accused.

Do you wish to call any witnesses as to character?

A.

Yes. [No.]

[Instruction.—*(1) The examination, etc., of witnesses as to character will proceed as in paragraph (6).*

(2) Evidence as to character and particulars of service will be taken as in paragraph (11).]

PROCEEDINGS ON PLEA OF NOT GUILTY.

(5) [*If the prosecutor makes an address.*] The prosecutor makes the following address, [*or, if the address is written,* hands in a written address, which is read, (orally translated) marked , signed by the president, (judge advocate or superintending officer) and attached to the proceedings].

[Instruction.—*Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.*]

The prosecutor proceeds to call witnesses.

* being duly sworn [affirmed] is examined by the prosecutor.

First witness for prosecution.

* *Here insert his number, rank, name, and regiment, and appointment (if any), or other description.*

Cross-examined by the Accused.

Re-examined by the Prosecutor.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that rule 127 (B), (C), (D) have been complied with should be recorded.*]

The witness withdraws.

VARIATIONS.

The accused declines to cross-examine this witness.

[Instruction.—*In every case where the accused does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.*]

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

The accused [*or* the prosecutor] objects to the following question:—

The Court is closed to consider their decision.

The Court overrule [*or* allow] the objection, and the Court is re-opened and the decision announced.

The witness, on his evidence being read to him, makes the following explanation *or* alteration:—

Examined by the prosecutor as to the above explanation *or* alteration.

Examined by the accused as to the above explanation *or* alteration.

The prosecutor and accused decline to examine him respecting the above explanation *or* alteration.

Second witness for prosecution. being duly sworn, [affirmed] is examined by the prosecutor.

(*The examination, etc., of this and every other witness proceeds as in the case of the first witness.*

Adjournment. At o'clock the Court adjourn until o'clock on the

Second day. On the of 19 , at o'clock, the Court re-assemble, pursuant to adjournment, present the same members as on the of .

VARIATION.

[Instructions.—(1) *If a member is absent, and his absence will reduce the Court below the legal minimum and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.*

(2) *If the judge-advocate or superintending officer is absent, and cannot attend within a reasonable time, the Court will adjourn, and the president will thereupon report the case to the convening authority.* (*See Rule 90.*)]

Absent member. [*Rank—Name—Regiment*] being absent.

[*The absence is accounted for.*]

A medical certificate [*or* letter, *or as the case may be*] is produced, read, marked , and attached to the proceedings.

The Court adjourn until .

or,

There being present [*not less than the legal minimum.*] members, the trial is proceeded with.

New Judge-Advocate. An order bearing date appointing , to act as Judge-Advocate in the place of , who , is read, marked , signed by the president [judge-advocate] and attached to the proceedings, and the new Judge-Advocate duly sworn [affirmed].

The trial is proceeded with.

Instructions.—*(1) If the Court, in consequence of the adjournment having been prolonged by the senior officer on the spot, or otherwise, do not meet on the day to which they previously adjourned, or if the adjournment was until further orders, the words "pursuant to adjournment" will be omitted from the above form, and the cause of their meeting at the above time will be entered in the proceedings.*

(2) If the place of meeting has been altered by orders or otherwise, the place of meeting and the reason for meeting at that place will be entered in the proceedings.]

Examination (cross-examination) of continued.

The prosecution is closed.

DEFENCE.

Do you intend to call any witness in your defence? *Question to accused.*

Yes. [No]. *A.*

Is he a witness as to character only ? *Q.*

A.

VARIATION.

[*If the accused is defended by counsel or by an officer having the rights of counsel.*]

Do you wish to make any statement in addition to the address made by your counsel [*or*]?

(6) Instructions *(1).—If the accused calls no witnesses to the facts of the case, adopt this and omit* (7).

(2) *If the accused is defended by counsel or an officer having the rights of counsel and does not wish to make a statement in addition to the address of such counsel or officer, adopt this and omit* (7).]

The prosecutor addresses the Court upon the evidence for the prosecution as follows [*or, if the address is written,* hands in a written address, which is read (orally translated) marked , signed by the president (judge-advocate or superintending officer) and attached to the proceedings].

[Instruction.—*Where the address of the prosecutor is not in writing the Court should record so much as appears to them material and so much as the prosecutor requires to be recorded.*]

Have you any thing to say in your defence? *Question to accused.*

VARIATION.

The Court at the request of the accused, adjourn until to enable him to prepare his defence.

The accused in his defence says [*or* hands in a written address, which is read (orally translated) marked , signed by the president (judge-advocate or superintending officer) and attached to the proceedings].

[Instruction.—*If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

If the address is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

*First witness as to character. * Here insert his number, rank, name and regiment and appointment (if any), or other description.*

The accused calls the following witnesses as to character *
is duly sworn (affirmed).

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule 127 (B), (C), (D) have been complied with should be recorded.*]

The witness withdraws.

VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation *or* alteration.

Examined by the accused as to the above explanation *or* alteration.

Examined by the prosecutor as to the above explanation *or* alteration.

The accused and prosecutor decline to examine him respecting the above explanation *or* alteration.

(7) [Instruction.—*If the accused calls witnesses to the facts of the case, or if an accused person, being defended by counsel, or by an officer having the rights of counsel, wishes to make a statement in addition to the address by such counsel or officer, then omit paragraph (6), and adopt* (7).]

Have you anything to say in your defence?

VARIATION.

The Court, at the request of the accused, adjourn until to enable him to prepare his defence.

The accused in his defence says [*or if his address is in writing,* hands in a written address, which is read [orally translated] marked , signed by the president [judge-advocate or superintending officer] and attached to the proceedings.

[Instructions.—(*1*) *If the defence of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

(*2*) *If the address is not in writing and is not delivered by the accused himself, the material portions should be recorded.*

(*3*) *In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.*]

* is duly sworn [affirmed].

**Here insert his number, rank, name and regiment, and appointment (if any) or other description.*

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule 127 (B), (C), (D) have been complied with should be recorded.*]

The witness withdraws.

VARIATIONS.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation *or* alteration.

Examined by the accused as to the above explanation *or* alteration.

Examined by the prosecutor as to the above explanation *or* alteration.

The accused and prosecutor decline to examine him respecting such explanation *or* alteration.

[*Where the accused is defended by counsel or, an officer having the rights of counsel.*] The accused makes the following statement in addition to the address by his counsel [*or*]. (*a*)

The prosecutor [by leave of the Court] calls witnesses in reply.

The accused makes the following address [*or, if the address is in writing,* hands in a written address, which is read (orally translated) marked , signed by the president, (judge-advocate, or superintending officer) and attached to the proceedings.]

(*a*) The accused must make his statement at the close of the case for the prosecution and before the address by his counsel. See Rule 88.

The prosecutor makes the following reply [*or, if the reply is in writing* hands in a written reply, which is read (orally translated) marked signed by the president (judge-advocate or superintending officer [and attached to the proceedings] ;

or,

The prosecutor declines to make a reply.

[Instruction.—*Where the reply of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.*

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused himself, the material portions should be recorded.

In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not to record every point brought forward in the defence or in mitigation of punishment.]

VARIATION.

The Court, at the request of the accused, adjourn until to enable the accused to prepare his address.

The Court, at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.

SUMMING UP.

(8) The judge-advocate lands in a written summing up, which is read, [orally translated] marked
[signed by the president], and attached to the proceedings.

VARIATIONS.

The judge-advocate and the Court think a summing up unnecessary.

or,

The Court, at the request of the judge-advocate, adjourn until to enable him to prepare his summing up.

FINDING.

Finding. Not guilty.

(9) The Court is closed for the consideration of the finding.

The Court find that the accused [*No.—Rank—Name—Regiment*] is not guilty of the
charge [and honourably acquit him of the same], but is guilty of the

Guilty.

is guilty of the charge [all the charges] ;

or,

is guilty of the charge, and guilty of the charge with the exception of the words [*or* with exception that]

is not guilty of desertion, but is guilty of absence without leave from the to the , being a period of days;

[Instruction.—*Any special finding allowed by section 86 of the Indian Army Act may be expressed in this form;*

or,

find that the accused did [*Here set out such particulars in any charge as the Court find to be proved*], but the Court doubt whether such facts constitute in law the offence stated in the charge, or in the charge, or in the charge, and therefore they find him guilty of the offence in such one of those charges as the facts in law constitute; *Special findings.*

or,

adjourn for the purpose of consulting the convening [*or as the case may be*, confirming] officer;

On re-assembly on the day of , and on reading the opinion of , which is marked and annexed to the proceedings, find that the accused, etc.

PROCEEDINGS ON ACQUITTAL OF ALL THE CHARGES.

(10) The Court find that the accused (*No.—Rank—Name—Regiment*) is not guilty of the charge [*or* all the charges.]; *Acquittal.*

or,

is not guilty of the charge [*or* all the charges] and honourably acquit him of the same.

Signed at , this day of

(*Signature.*) (*Signature.*)

Judge-Advocate. President.

[*or* Superintending officer.]

VARIATION.

The Court find that the accused (*No.—Rank—Name—Regiment*] is, by reason of insanity, unfit to take his trial; *Insanity.*

is guilty of the charge *or* charges but was insane at the time of the commission of the offences specified in those charges.

Signed at , this day of

(*Signature.*) (*Signature.*)

Judge-Advocate. President.

[*or* Superintending officer.]

Confirmed.

At this day of

(*Signature of Confirming Authority.*)

PROCEEDINGS ON CONVICTION.

Before sentence.

(11) The Court being reopened the accused is again brought before it. —— —— —— is duly sworn [*or* affirmed].

Question.—What record have you to produce in proof of former convictions against the accused and of his character? *Evidence of character, etc.*

Answer by witness.—I produce a statement certified under the hand of the officer having custody of the regimental [*or other official*] records.

The statement is read, [orally translated], marked, ————————, signed by the president [judge-advocate, or superintending officer], and attached to the proceedings.

Q.—Is the accused the person named in the statement you have heard read?

A.

Q.—Have you compared the contents of the above statement with the regimental [*or other official*] records?

A.

Q.—Are they true extracts from the regimental [*or other official*] records and is the statement of entries in the defaulter sheet a fair and true summary of those entries?

A.————————

Cross-examined by the Accused.

Re-examined.

The accused declines to cross-examine this witness.

[Instruction.—*Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the accused on which the Court desire to have information for the purpose of their sentence.*

At the request of the accused, or by the direction of the Court, the regimental or other official books, or a certified copy of the material entries therein must be produced for the purpose of comparison with the statement.

The accused is entitled to call the attention of the Court to any entries in the regimental or other official books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given the accused may address the Court thereon].

Question to accused.
Do you wish to address the Court?
Answer.

The Court is closed for the consideration of the sentence.

SENTENCE.

The Court sentence the accused (*No.—Rank—Name—Regiment*).

Sentence. Death.
(*a*) to suffer death by being hanged by the neck until he be dead [*or* to suffer death by being shot to death].

Transportation ——years.
(*b*) to suffer transportation for the term of ————years [*or* for life].

Rigorous (Simple) imprisonment ——— (and solitary confinement).
(*c*) to suffer rigorous [simple] imprisonment for ————years [months *or* days] [of which ——————shall be in solitary confinement.]

Dismissal.
(*d*) to be dismissed from the service.

Suspension.
(*e*) to be suspended from rank pay and allowances for a period of————.

(*f*) to be reduced to a lower grade [*or* class] of warrant officer, that is to say, to———— *Reduction.*

or

to be reduced to the rank of ———— [*or* to the ranks].

(*g*) to take rank and precedence as if his appointment to the rank [grade *or* class] of ———— bore *Forfeiture of seniority.*

(*h*) to forfeit ———— past service for the purpose of————; *or* to forfeit ————good conduct [service] badges with the pay attached thereto; *or* *Forfeitures.*

to forfeit the (*state medal, clasp and decoration, or any of them, which is to be forfeited*) with any annuity or gratuity attached thereto; *or*

to forfeit all arrears of pay and allowances and other public money due to him at the time of his dismissal; *or*

to be put under stoppages of pay and allowances until he has made good the value of the following articles, *viz.*———— [*or* until he shall have made good the sum of———— in respect of ———— (*state the circumstances in respect of which the same is awarded*)] *Stoppages.*

(*i*) to suffer a corporal punishment of ———— lashes. *Corporal punishment ————lashes.*

RECOMMENDATION TO MERCY.

The Court recommend the accused to mercy on the ground that

SIGNATURE.

Signed at , this day of 19 .

(*Signature.*) (*Signature.*)

Judge-Advocate. President.

[*or* superintending officer.]

REVISION.

(12) At , on the day of , *Revision.*
at o'clock, the Court re-assemble by order of for the purpose of re-considering their

Present, the same members as on the

VARIATION.

[Instruction.—*If a member is absent and the absence will reduce the Court below the required minimum, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present shall thereupon report the case to the convening officer.*]

[*Rank, name, regiment*] being absent. *Absent member.*

[*The absence is accounted for.*]

A medical certificate [*or* letter, *or as the case may be*] is produced, read, marked and attached to the proceedings.

There being present [*not less than the required minimum*] members the Court proceeds.

The letter [order *or* memorandum] directing the reassembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding [finding and sentence] [*or* sentence] is read, marked , signed by the president [judge-advocate or superintending officer] and attached to the proceedings.

[Instruction.—*If the confirming authority so orders, additional evidence may be taken on Revision: such evidence will be taken as in paragraphs (5) and (6).*]

Revised finding. The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

(*a*) do now revoke their finding and sentence, and find and sentence the accused to.

Sentence.

(*b*) do now revoke their sentence, and now sentence the accused, etc., etc.,

or,

(*c*) do now respectfully adhere to their sentence [*or* finding and sentence.]

Signed at , this day of 19

(*Signature.*) (*Signature.*)
Judge-Advocate. President.

[*or* Superintending officer.]

CONFIRMATION.

Confirmation. (13) Confirmed,

or,

Confirmed. I direct that the sentence of rigorous imprisonment shall be carried out by confinement in military custody,

or,

I vary the sentence so that it shall be as follows , and confirm the finding and the sentence as so varied,

or,

I confirm the finding and sentence of the Court, but mitigate [remit, *or*, commute],

or,

[*Where it is necessary to confirm the special finding on several alternative charges.*]

I confirm the finding on and charges, and I confirm the special finding relating to the and charges, and declare that that finding amounts to a finding of guilty on the charge, and of not guilty on the and charges.

I confirm the sentence but mitigate [remit, or commute];

or,

[*Where the confirming officer desires partly to reserve his confirmation,*]

I confirm the finding of the Court on the and charges and reserve for confirmation by superior authority the finding on the and charges, and the sentence;

or,

I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority;

I confirm the findings of the Court, and the sentence of the Court as to , and reserve the sentence so far as it for confirmation by superior authority;

or,

[*Where the finding is not confirmed,*]

Not confirmed [*the reasons for non-confirmation may be stated.*]

Signed at , this day of 19 .

(*Signature of Confirming Authority.*)

[Instruction.—*Any remarks of the confirming authority should be separate from and form no part of the proceedings.*]

[*Where the declaration respecting a special finding on alternative charges is added subsequently to the confirmation (Rule 60.)*]

I declare that the special finding relating to the and charges amounts to a finding of guilty on the charge, and of not guilty on the and charges.

Signed at , this day of 19 .

(*Signature of Authority.*)

Form of Proceedings of a Summary Court-martial.

Proceedings of a Summary Court-martial held at————

on the——day of——19

by——

Commanding the——for the trial of all such accused persons as he may duly have brought before him.

PRESENT.

Commanding the——

Attending the trial.

[Interpreter.

(1) The Officers assemble at the——

and the trial commences at——o'clock

The accused No.————

of the————

is brought ("called" if a non-commissioned officer) into Court,

————, the Court is duly sworn [affirmed]

[——is duly sworn (affirmed) as Interpreter.]

All witnesses are directed to withdraw from the Court.

The charge-sheet is read, [translated.] and explained to the accused, marked , signed by the Court and attached to the proceedings.

[Instruction.—*The sanction of superior authority for trial by summary Court-martial should be entered, with the date and signature of the staff officer, at the foot of the charge-sheet, when such sanction is necessary.*]

ARRAIGNMENT.

Question to accused. *By the Court.*—How say you————are you guilty, or not guilty, of the————charge preferred against you?

A.

Question. Are you guilty or not guilty of the——charge?

A.

to others (not alternative) adopt (3), (4) or (5), and (2).]

PROCEEDINGS ON PLEA OF GUILTY.

(2) The accused [*number* *rank* *name* *regiment*] is found guilty of the charge [all the charges]

or

is found guilty of the charge, and is found not guilty of the charge.

[Instruction.—*If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; and in that case the charge on which the record is guilty must be read to the accused again.*]

The summary of evidence is read [translated], explained, marked , signed by the Court and attached to the proceedings.

[Instruction.—*If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the reviewing officer to know all the circumstances connected with the case will be taken as in paragraph (3). No address will be allowed.*]

VARIATION.

The Court being satisfied from the statement of the accused [*or* the summary of evidence, *or otherwise*] that the accused did not understand the effect of the plea of "guilty" alters the record and enters a plea of "not guilty."

[Instruction.—*The Court will then proceed in respect of this charge as in paragraph (3).*]

Do you wish to make any statement in reference to the charge or in mitigation of punishment? *Question to accused.*

No *or* *A.*

The accused says ——————

Do you wish to call any witnesses as to character? *Question to accused.*

Yes [No]. *A.*

[Instructions.—*(1) The examination of witnesses as to character will proceed as in paragraph (3).*

(2) Evidence as to character and particulars of service will be taken as in paragraph (6)].

PROCEEDINGS ON PLEA OF NOT GUILTY.

PROSECUTION.

Prosecution 1st witness.

(3).

. being sworn (affirmed) is examined by the court. *Religion to be recorded (Hindu, Musalman, Sikh), Sikhs should be sworn.*

Cross-examined by the accused.

Re-examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule 127 (B), (C), (D) have been complied with should be recorded.*]

The witness withdraws.

VARIATIONS.

The accused declines to cross-examine this witness.

[Instruction.—*In every case where the accused does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.*]

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

The Prosecution is closed.

Question to accused. Do you intend to call any witnesses in your defence ?

A. Yes

DEFENCE.

Defence. The accused is called upon for his defence and states-

Defence. 1st witness. , being duly sworn (affirmed) is examined by the accused.

Cross-examined by the Court.

Re-examined by the accused.

His evidence is read to the witness.

[Instruction.—*The fact that Rule 127 (B), (C), (D) have been complied with should be recorded.*]

The defence is closed.

REPLY.

Reply 1st witness. , being duly sworn (affirmed) is examined by the Court.

Q.

A.

VERDICT OF THE COURT.

(4) I am of opinion on the evidence before me that the accused No. , of the , is not guilty of the charge, [*or* all the charges,] [and honourably acquit him of the same.]

Finding Not guilty.

The verdict is read out and the accused released. He is to return to his duty.

Signed at _____ this _____ day of _____ 19 .

Commanding the _____
holding the trial.

The trial closes at—o'clock M.

(5) I am of opinion on the evidence before me that the accused No. _____ of the _____ is not guilty of the charge [and honourably acquit him of the same] but is guilty of the

or

is guilty of the charge [all the charges.] *Guilty.*

PROCEEDINGS BEFORE SENTENCE.

(6) The following Minutes by the Court are read and explained.

[Instruction.—*If the Court does not record the accused person's convictions and character of its own knowledge, evidence as to these matters will be taken as in paragraph 11 of the Form of Proceedings for a General or District Court-martial.*]

It is within my own knowledge, from the records of the _____ that the accused has _____ been previously convicted by Court-martial or Criminal Court (see Certificate annexed).

That the following is a fair and true summary of the entries in his defaulter sheet exclusive of convictions by a Court-martial or a Criminal Court.

	within last 12 months	since Enrolment.
For _____	times	times
For _____	times	times

That he is at present undergoing _____ sentence.

That, irrespectively of this trial, his general character has been

That his age is _____
his service is _____
and his rank is _____
that he has been in arrest [confinement] for _____ days.

That he is in possession of the following military decorations and rewards:—

[*Any recognised acts of gallantry or distinguished conduct should also be entered here.*]

SENTENCE BY THE COURT.

Taking all these matters into consideration, I now sentence the accused No. _____ of the _____ *Sentence.*

(*a*) to suffer rigorous [simple] imprisonment for _____ [of which _____ shall be in solitary confinement] [and I direct that the sentence of rigorous imprisonment shall be carried out by confinement in military custody]. *Rigorous (simple) imprisonment——, and solitary confinement.*

Dismissal. Reduction.

(*b*) to be dismissed from the service.

(*c*) to be reduced to the rank of _____ [or to the ranks].

(*d*) to take rank and precedence as if his appointment to the rank of _____ before date _____ .

Forfeiture of seniority.

(*e*) to forfeit _____ past service for the purpose of _____; *or*

Forfeitures.

to forfeit _____ good conduct [service] badges, with the pay attached thereto; *or*

to forfeit the (*state medal, clasp and decoration, or any of them, which is to be forfeited*) with any annuity or gratuity attached thereto ; *or*

to forfeit all arrears of pay and allowances and other public money due to him at the time of his dismissal ; *or*

Stoppages.

(*f*) to be put under stoppages of pay and allowances until he has made good the value of the following articles, *viz.*, _____ [*or* until he shall have made good the sum of _____ in respect of _____ (*State the circumstances in respect of which the same is awarded*)].

Corporal punishment — lashes.

(*g*) to suffer a corporal punishment of _____ lashes.

Signed at _____, this _____ day of 19_____.

Commanding the _____
holding the trial.

The trial closes at _____ o'clock _____

REMARKS BY REVIEWING OFFICER.

(*Indian Army Act, section 102*)

FORM OF SUMMONS.

Form of Summons to a witness summoned under section 84 of the Indian Army Act.

To

Whereas a Court-martial has been ordered to assemble at on the day of 19 , for the trial of , of the regiment I do hereby summon and require you *A.* *B.* to attend, as a witness, the sitting of the said Court at on the day of at o'clock in the forenoon [and to bring with you the documents hereinafter mentioned, namely,], and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at on the day of 19 .

(Signature)

Convening Officer [*or* Judge-Advocate *or* President of the Court *or* Commanding Officer of the accused].

FORM FOR ASSEMBLY AND PROCEEDINGS OF A SUMMARY GENERAL COURT-MARTIAL.

A.—ORDER CONVENING THE COURT.

At (place) this day of 19 .

* *(1) Beginning of Form in cases falling under clause (a) of section 62 of the Indian Army Act.*

Whereas it appears to me an officer empowered in this behalf by an order of the Governor General in Council / Commander-in-Chief in India that the person / persons named in the annexed schedule, and being subject to Indian Military Law, has / have committed the offence / offences in the said schedule mentioned;

* *(2) Beginning of Form in cases falling under clause (b) of section 62 of the Indian Army Act.*

Whereas it appears to me the / an officer commanding the forces in the field / empowered in this behalf by the officer commanding the forces in the field on active service that the person / persons named in the annexed schedule, and being subject to Indian Military law, has / have committed the offence / offences in the said schedule mentioned;

* *(3) Beginning of Form in cases falling under clause (c) of section 62 of the Indian Army Act.*

Whereas it appears to me an officer now in command of , being a detached portion of His Majesty's Troops upon active service that the person / persons named in the annexed schedule, and being subject to Indian Military law, has / have committed the offence / offences in the said schedule mentioned; and whereas I am of opinion that it is not practicable with due regard to discipline and the exigencies of the service that the said offence / offences should be tried by an ordinary general courts-martial;

(4) End of form applicable to all cases.

I hereby convene a summary general court-martial to try the said person / persons and to consist of,

Ranks, names and corps of members.

[*Here enter the special order (if any) under Rule 146 and any order under section 98 (1) (c) of the Indian Army Act.*]

(Signature of convening officer.)

* Only one of these will be used, the two which are inapplicable being struck out.

B.—CERTIFICATE OF PRESIDENT AS TO PROCEEDINGS.

I certify that the above Court assembled on the day of _____ 19 , and duly tried the person / persons named in the said schedule, and that the plea, finding and sentence in the case of such / each such person were as stated in the third and fourth columns of that schedule.

Signed at (place) _____ this _____ day of 19 .

(*Signature of President.*)

C.—CONFIRMATION.

[In cases in which confirmation is required by section 98 of the Indian Army Act.]

I have dealt with the finding / findings and sentence / sentences in the manner stated the last column of the said schedule, and, subject to what I have there stated I hereby confirm the above finding / findings and sentence / sentences.

Signed at (place) this _____ day of _____ 19 .

(*Signature of confirming officer.*)

SCHEDULE.

Date———————19 .

Name of alleged offender.*	Offence charged.	Plea.	Finding, and if convicted sentence.†	How dealt with by confirming officer.‡
1	2	3	4	5
Ram Bux (Bannia) . . .	Theft of Government property.	Guilty . .	Guilty. Rigorous imprisonment for ———.	Confirmed. I remit——— A———B———.
262, Sepoy Jhanda Singh,—— Regiment.	Breaking into house for plunder.	Not Guilty .	Guilty. Corporal punishment 25 lashes.	
564, Sowar Hussein Khan,—— Regiment.	Sleeping on post in time of war.	Not Guilty .	Guilty. Death. Recommended to mercy.	Confirmed, but commuted to corporal punishment 30 lashes. A———B———.
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek.	Impeding provost-marshal.	Not Guilty .	Not Guilty	Confirmed. A———B———.
Sepoy in uniform of——— Regiment (name unknown).	Civil offence Rape .	Not Guilty .	Guilty. Transportation for life.	Confirmed. A———B———.

A———B———. C ———D——— . E———F———.

Convening Officer. President. Superintending Officer (if any).

* If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

† Recommendation to mercy to be inserted in this column.

‡ If confirmation is not required this column should be left blank. See Indian Army Act, Section 98.

SUBSIDIARY ORDERS.

The following forms of subsidiary orders will be found useful. They do not form part of the Appendix to the Indian Army Act Rules.

NOTE 1.—Such of the orders (*a*) to (*e*) as are appropriate should—in the case of a general or district court-martial—be added after the minute of confirmation and be signed by the confirming officer or his staff officer; in the case of a summary court-martial these orders are signed by the Commanding Officer of the person acquitted or convicted.

NOTE 2.—In *all* cases where the sentence involves dismissal (Indian Army Act, section 15) subsidiary order (*f*) should be added by the Commanding Officer.

(*a*) *In cases of acquittal or when the sentence is Reduction or Forfeiture of Seniority* (*see also* (*d*) *below*).

The accused is to be released from his arrest (*or* confinement) and to return to his duty (as_____).

(*b*) *When the sentence is death.*

The execution will be carried out in accordance with instructions which will be communicated by the Assistant Adjutant General of the_____ Division to the (general) officer commanding at

(*c*) *When the sentence is Transportation or Rigorous Imprisonment* (*except Rigorous Imprisonment, which is ordered to be undergone in Military custody*).

The prisoner will be made over with the prescribed warrant to the officer in charge of a civil prison for the purpose of undergoing the sentence of transportation (*or* rigorous imprisonment).

(*d*) *When the sentence is Reduction* (*except Reduction to the Ranks*).

The name of_____ will be transferred to the bottom of the list of (*rank to which reduced*) and his appointment thereto will bear date the (*enter date of sentence*).

(*e*) *When the sentence is Corporal Punishment.*

The punishment will be carried out in the presence of a Medical officer (and of the_____ Regiment), and will be inflicted with the Regulation Cat on the bare back.

(*f*) *When the sentence is one involving Dismissal under section 15 of the Indian Army Act.*

The prisoner having been sentenced to transportation (rigorous imprisonment) for_____ is dismissed from the service.

MEMORANDA.

The following Memoranda are intended for the guidance of courts-martial with a view to securing uniformity of practice in details not specially dealt with in the Indian Army Act Rules :—

These Memoranda do not form part of the Appendix to the Indian Army Act Rules.

Application for court-martial.

(1) When application is made for a general or district court-martial the name of the officer who investigated the case and of any others disqualified under Rule 29 B (iii) from sitting on the court should be stated in the application.

Charge-sheet.

(2) The charge-sheet should be signed by the commanding officer of the accused person.

(3) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer or officer sanctioning trial under Indian Army Act, section 74, to be entered. The place and date should be entered by the officer signing the orders.

(4) The section of the Indian Army Act under which each charge is framed should be entered in the margin (in red ink) opposite the charge to which it refers.

Summary of evidence.

(5) When part of the evidence is documentary, the statement of the officer made on producing the documents should be included in the summary.

(6) A statement of evidence as to facts should commence by recording the place, date, and time (if material) to which the evidence refers.

(7) Where the charge is for deficiency of kit, the date on which the accused person's kit was last inspected, and the date and place of finding any subsequent deficiencies, should be included in the summary of evidence.

(8) A statement that the requirements of Rule 15 (D, E, F, G) have been complied with should be entered at the end of the summary of evidence and signed by the officer taking the evidence. If any statement by the accused, amounting to a confession, is included in the summary it should be definitely stated (if such is the case) that it was made voluntarily.

Proceedings.

(9) When several accused persons are tried successively by the same Court, the time at which each trial commences will be entered on its proceedings as the time at which the Court opens.

(10) The accused person's full name and description should be entered on the first page of the proceedings.

(11) Every witness, including the officer producing the statement referred to in Rules 53 (B) and 109 (B) must be sworn in the presence of the accused person to whom his evidence refers; he must not be examined on a former oath taken in the presence of another accused person.

(12) The prosecutor or other person producing documents must be sworn.

(13) When copies of documents are accepted it should be stated in the proceedings that they have been compared with the originals and found correct.

(14) Articles of equipment, clothing, etc., should be entered throughout the proceedings in the same order as stated in the charge.

(15) Where the value of arms, ammunition, equipment, or clothing is averred and proved, or where damage is averred and proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be dismissed, in case the latter part of the sentence should be remitted.

(16) Arrears of pay and allowances forfeited by sentence of court-martial under Indian Army Act, section 43 (*h*) (*iii*), cannot be applied to "making good" damage done. If, therefore, damage has been averred and proved stoppages should be awarded even if the accused is also

sentenced to forfeiture of arrears, so that the damage may first be "made good" and any balance remaining over be forfeited.

(17) The charge-sheet is to be inserted in the proceedings after the record of the arraignment of the accused; all other documents are to be attached at the end of the proceedings in the order of their production to the Court. Forms and documents.

(18) Every document attached to the proceedings should be signed by the president or superintending officer and marked with a reference letter, preferably not one used in the Form of Proceedings.

(19) In the case of a plea of "Not guilty" the summary of evidence will not be attached to the proceedings, but will be enclosed with them when sent to the convening or reviewing officer.

(20) All erasures of written or printed matter, and all corrections should be initialed by the officer responsible for the record of the proceedings.

(21) Pages should be numbered consecutively up to the end of the proceedings, after they have been put together in the order described above.

(22) Sufficient space should be left below the sentence and signature of the president for the minutes of confirmation and promulgation or remarks of the reviewing officer.

(23) The following form of promulgation should be used :—

Promulgated and extracts taken at
this day of 19 .

(Signature of the officer in charge
of documents.)

FOURTH APPENDIX.

WARRANTS UNDER SECTIONS 107 AND 109 OF THE INDIAN ARMY ACT.

FORM A.

Warrant of commitment for use when a prisoner is sentenced to transportation (Indian Army Act, section 107).

To the Superintendent of the (*a*) *Prison.*

Whereas at a (*b*) Court-Martial, held at on the day of , 19 (*Number, Rank, Name*) of the Regiment was convicted of (*the offence to be briefly stated here, as "desertion," "corresponding with the enemy", "disobedience of lawful command" or as the case may be*).

And whereas the said (*b*) Court-Martial, on the day of , 19 passed the following sentence upon the said (*Name*); that is to say:—

(*Sentence to be entered in full, but without signature.*)

And whereas the said sentence has been duly confirmed by (*c*) as required by law (*d*).

This is to require and authorise you to receive the said (*Name*) into your custody in the said prison as by law is required, together with this warrant, until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of undergoing the aforesaid sentence of transportation. The aforesaid sentence has effect from the (*e*).

Given under my hand at this the day of , 19 .

Signature (*f*)

(*a*) Enter name of civil prison.

(*b*) General or Summary General.

(*c*) Name and description of confirming authority.

(*d*) Add if necessary "with a remission of ".

(*e*) Enter date on which the *original* sentence was signed.

(*f*) Signature of Commanding Officer of prisoner or other prescribed officer—See Rule 152.

FORM B.

Warrant of commitment for use when a prisoner is sentenced to rigorous imprisonment which is to be undergone in a civil prison (Indian Army Act, section 107).

To the Superintendent

of the (a) *Prison,*

Whereas at a (*b*) Court-Martial, held at on the day of , 19 (*Number, Rank, Name*) of the Regiment was duly convicted of (*the offence to be briefly stated here, as "desertion," "theft," "receiving stolen goods," "fraud," "disobedience of lawful command" or as the case may be*).

And whereas the said (*b*) Court-Martial, on the day of , 19 passed the following sentence upon the said (*Name*); that is to say:—

(*Sentence to be entered in full, but without signature.*)

And whereas the said sentence

(*c*) has been duly confirmed by (*d*) as required by law (*e*).
is by law valid without confirmation.

This is to require and authorise you to receive the said (*Name*) into your custody together with this warrant, and there carry the aforesaid sentence of Rigorous Imprisonment into execution according to law. The sentence has effect from the (*f*).

Given under my hand at this the day of , 19 .

Signature (*g*).

(*a*) Enter name of civil prison.

(*b*) General, District, Summary General or Summary.

(*c*) Strike out inapplicable words.

(*d*) Name and description of confirming authority.

(*e*) Add if necessary "with a remission of ".

(*f*) Enter date on which the *original* sentence was signed.

(*g*) Signature of Commanding Officer of prisoner or other prescribed officer—See Rule 152.

FORM C.

Warrant for use when a prisoner is pardoned or his trial set aside, or when the whole sentence, or the unexpired portion thereof, is remitted (Indian Army Act, section 109).

To the Superintendent

of the (*a*) *Prison,*

Whereas (*Number, Rank, Name*) (*late*) of the Regiment is confined in the (*a*) prison under a warrant issued by (*b*) in pursuance of a sentence of (*c*) passed upon him by a (*d*) Court-Martial held at on ; and whereas (*e*) has, in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence, that is to say:—

(*f*)-

This is to require and authorize you to forthwith discharge the said (*Name*) from your custody unless he is liable to be detained for some other cause; and for your so discharging him this shall be your sufficient warrant.

Given under my hand at this the day of , 19 .

Signature (*g*)

(*a*) Enter name of civil prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus :—
"2 years' rigorous imprisonment reduced by Confirming Officer to 1 year").

(*d*) General, District, Summary General or Summary.

(*e*) Name and designation of authority pardoning prisoner, mitigating sentence, or setting aside trial.

(*f*) Order to be set out in full.

(*g*) Signature of prescribed officer—See Rule 153.

FORM D.

Warrant for use when a sentence of transportation is reduced by superior authority to one of a shorter period of the same. (Indian Army Act, section 109).

To the Superintendent
of the (*a*) *Prison.*

Whereas (*Number, Rank, Name*) (*late*) of the Regiment is confined in the (*a*) prison under a warrant issued by (*b*) in pursuance of a sentence of (*c*) passed upon him by a (*d*) Court-Martial held at on , and whereas (*e*) has, in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence; that is to say :—

(*f*)———————————————————

This is to require and authorise you to keep the said (*Name*) in your custody, together with this warrant, in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such transportation will reckon from the (*g*).

Given under my hand at this the day of , 19 .

Signature (*h*)

(*a*) Enter name of civil prison.
(*b*) Enter name or designation of officer who signed original warrant.
(*c*) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus :—
"2 years' rigorous imprisonment reduced by Confirming Officer to 1 year").
(*d*) General, or Summary General.
(*e*) Name and designation of authority varying the sentence.
(*f*) Order to be set out in full.
(*g*) Enter date on which *original* sentence was signed.
(*h*) Signature of prescribed officer—See Rule 153.

FORM E.

Warrant for use when a sentence of rigorous imprisonment is reduced by superior authority or when one of transportation is reduced to one of rigorous imprisonment. (Indian Army Act, section 109).

To the Superintendent

of the (*a*) *Prison.*

Whereas (*Number, Rank, Name*) (*late*) of the Regiment is confined in the (*a*) prison under a warrant issued by (*b*) in pursuance of a sentence of (*c*) passed upon him by a (*d*) Court-Martial held at on , and whereas (*e*) has, in the exercise of the powers conferred upon him by the Indian Army

Act, passed the following order regarding the aforesaid sentence ; that is to say :—

(*f*) _____

This is to require and authorise you to keep the said (*Name*) in your custody, together with this warrant, and there to carry into execution the punishment of Rigorous Imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such Rigorous Imprisonment will reckon from the (*g*).

Given under my hand at this the day of , 19 .

Signature (*h*).

(*a*) Enter name of civil prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) Enter original sentence (If this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus :— "2 years' rigorous imprisonment reduced by Confirming Officer to 1 year ").

(*d*) General, District, Summary General or Summary.

(*e*) Name and designation of authority varying the sentence.

(*f*) Order to be set out in full.

(*g*) Enter date on which *original* sentence was signed.

(*h*) Signature of prescribed officer—See Rule 153.

FORM F.

Warrant for use when prisoner is to be delivered into military custody. (*Indian Army Act, section 109.*)

To the Superintendent
of the (*a*) *Prison,*

Whereas (*Number, Rank, Name*) (late) of the Regiment is confined in the (*a*) prison under a warrant issued by (*b*) in pursuance of a sentence of (*c*) passed upon him by a (*d*) Court-Martial held at on ; and whereas (*e*) has in the exercise of the powers conferred upon him by the Indian Army Act passed the following order regarding the aforesaid sentence, that is to say :—

(*f*)-

This is to require and authorise you to forthwith deliver the said (*Name*) to the officer or non-commissioned officer bringing this warrant.

Given under my hand at this the day of , 19 .

Signature (*g*).

(*a*) Enter name of civil prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentences should be entered thus :—
"2 years' rigorous imprisonment reduced by Confirming Officer to 1 year").

(*d*) General, District, Summary General or Summary.

(*e*) Name and designation of authority issuing order.

(*f*) Order to be set out in full.

(*g*) Signature of prescribed officer—See Rule 153.

PART III.

MISCELLANEOUS ENACTMENTS A STATUTORY RULES.

ACT No. XLV OF 1860.

The Indian Penal Code.[1]

* * * * * *

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter[2] entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision or illustration.

Illustrations.

(*a*) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception[3] which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b*) A, a Police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception[4] which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Sense of expression once explained.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man." "Woman."

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

---

[1] In order to economise space the punishment assigned to each offence has in every case been omitted from the following extracts from the Indian Penal Code. For these punishments the table annexed to Chapter VI in Part I of this Manual should be consulted.

[2] Chapter IV, *infra*.

[3] In s. 82, *infra*.

[4] In s. 76, *infra*.

"Person." **11.** The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Public." **12.** The word "public" includes any class of the public or any community.

"Queen." **13.** The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servant of the Queen." **14.** The words "servant of the Queen" denote all officers or servants continued, appointed or employed in India by or under the authority of the * * * Statute 21 & 22 Victoria, Chapter 106,[5] entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

"British India." **15.** The words "British India" denote the territories which are or may become vested in Her Majesty by the said Statute 21 & 22 Victoria, Chapter 106,[5] entitled "An Act for the better government of India."

"Government of India." **16.** The words "Government of India" denote the Governor General of India in Council, or, during the absence of the Governor General of India from his Council, the President in Council, or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

"Government." **17.** The word "Government" denotes the person or persons authorized by law to administer executive Government in any part of British India.

"Presidency. **18.** The word "Presidency" denotes the territories subject to the Government of a Presidency.

"Judge" **19.** The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations

(*a*) A Collector exercising jurisdiction in a suit under Act X of 1859 is a Judge.

(*b*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

(*c*) A member of panchayat which has power, under Regulation VI, 1816, of the Madras Code, to try and determine suits, is a Judge.

(*d*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Court of *Justice*." **20.** The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

[5] For "the Government of India Act, 1858" (21 & 22 Vict., c. 106), *see* the ion of statutes relating to India.

Illustration.

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits is a Court of Justice.

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :— "Public servant."

First.—Every Covenanted servant of the Queen;

Second.—Every Commissioned Officer in the Military or Naval Forces of the Queen while serving under the Government of India or any Government;

Third.—Every Judge;

Fourth.— * * * * * *

22. The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. "Moveable property."

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled. "Wrongful gain."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. "Wrongful loss."

A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property. Gaining wrongfully. Losing wrongfully.

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly." "Dishonestly."

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise. "Fraudulently."

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise. "Reason to believe."

27. When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code. Property in possession of wife, clerk or servant.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised. "Counterfeit."

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter. "Document."

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

"Valuable security."

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

"A will."

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act." "Omission."

33. The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

Acts done by several persons in furtherance of

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

When such an act is criminal by reason of its being done with a criminal

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence. Effect caused partly by act and partly by omission.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Co-operation by doing one of several acts constituting an offence.

Illustrations.

(*a*) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(*b*) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. Persons concerned in criminal act may be guilty of different offences.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. "Voluntarily."

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act: yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40. Except in the chapter and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code. "Offence."

In Chapter IV and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter[6] defined:

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

"Special law." **41.** A "special law" is a law applicable to a particular subject.

"Local law." **42.** A "local law" is a law applicable only to a particular part of British India.

"Illegal." **43.** The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Legally bound to do."

"Injury." **44.** The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

"Life." **45.** The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death." **46.** The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal." **47.** The word "animal" denotes any living creature, other than a human being.

"Vessel." **48.** The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

"Year." "Month." **49.** Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Section." **50.** The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

"Oath." **51.** The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good Faith." **52.** Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

"Punishments." **53.** The punishments to which offenders are liable under the provisions of this Code are,—

First.—Death;

Secondly.—Transportation;

Thirdly.— * * * * * * ;

[6] In ss. 41, 42.

Fourthly.—Imprisonment,[7] which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour.

(2) Simple.

Fifthly.—Forfeiture of property;

Sixthly.—Fine.

* * * * * * *

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment transportation for life shall be reckoned as equivalent to transportation for twenty years.

Transportation instead of imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offenedr, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property except for the benefit of Government until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and, whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government subject to such provision for his family and dependants as the Government may think fit to allow during such period.

---

[7] This definition of "imprisonment" applies in the case of all Acts of the Governor General in Council made after the 3rd January, 1868, and of all Regulations under the Government of India Act, 1870 (33 Vict., c. 3), s. 1, made after the 14th January 1887—*see* the General Clauses Act, 1897—X of 1897), ss. 3 (26) and 4 (1) and (2) [General Acts, Vol. IV].

Amount of fine.

[9]63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Imprisonment for non-payment of fine.

[9]64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Limit to imprisonment for non-payment of fine when imprisonment and fine awardable.

[9]65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Description of imprisonment for non-payment of fine.

[9]66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Imprisonment for non-payment of fine, when offence punishable with fine only.

[9]67. If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

* * * * * * *

Limit of punishment of offence made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations.

(*a*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating,

---

[8] The provisions of ss. 63 to 70 apply to all fines imposed under the authority of any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary—*see* the General Clauses Act, 1897 (X of 1897) [General Acts, Vol. IV].

As to the application of ss. 64 to 67 to offences under special or local laws, *see* s. 40, *supra*.

[9] *See* the note to s. 63.

and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*) But if while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

* * * * * * *

Enhanced punishment for certain offences.

75. Whoever, having been convicted,—

(*a*) by a Court in British India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or

(*b*) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor General in Council or of any Local Government, of an offence which would, if committed in British India, have been punishable under these Chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of these Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

CHAPTER IV.[10]

General Exceptions.

Act done by a person bound, or by mistake of fact believing himself bound by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations.

(*a*) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(*b*) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act done pursuant to the judgment or order of Court.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

[10] As to the application of Ch. IV to offences under special or local laws, *see* s. 40, *supra*.

Act done by a person justified, or by mistake of fact believing himself justified by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Accident in doing a lawful act.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration.

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Act likely to cause harm, but done without criminal intent and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a*) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(*b*) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Act of a child under seven years of age.

82. Nothing is an offence[11] which is done by a child under seven years of age.

Act of a child above seven and under twelve of immature understanding.

83. Nothing is an offence[11] which is done by a child above seven years of age and under twelve, who has not attained suffi-

[11] *See*, however, the Indian Railways Act, 1890 (IX of 1890), s. 130 [*see* the reprint of the Act as modified up to 1st June, 1905], as to offences committed by children against certain provisions of that Act. *See* also s. 6, illustration (*a*), above.

cient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Act of a person of unsound mind.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Act not intended and not known to be likely to cause death or grievous hurt done by consent.

[12]87. Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death done by consent in good faith for person's benefit.

[12]88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit[13] it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

[12]89. Nothing which is done in good faith for the benefit[13] of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause, to that person: Provided—

Provisos.

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

---

[12] For exception to ss. 87, 88 and 89, *see* s. 91, *infra*.

[13] Pecuniary benefit is not "benefit" within the meaning of this section—*see* s. 92, expl., *infra*.

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87 and 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit[14] it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

Provisos.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause

[14] Pecuniary benefit is not 'benefit" within the meaning of this section—*see* expl. at end of this section.

death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b*) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit A's ball gives Z a mortal wound. A has committed no offence.

(*c*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housetop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Right of private defence against the act of a person of unsound mind, etc.

98. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a*) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

When the right of private defence of the body extends to causing death.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such right extends to causing any harm other than death.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of property extends to causing death.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm

104. If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief or criminal trespass, not of any of the

other than death.

descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against deadly assault when there is risk of harm to innocent person.

106. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V.[15]

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing, or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

---

[15] The definition of "abet" here given applies in the case of all Acts of the Governor General in Council, and Regulations under "the Government of India Act, 1870" (33 Vict., c. 3, s. 1, made after the 14th January, 1887—*see* the General Clauses Act, 1897 (X of 1897), ss. 3 (1) and 4 (2) [General Acts, Vol. IV].

As to the application of ss. 109, 110, 112, 114 to 117 to offences under special or local laws, *see* s. 40, *supra*.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B, has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

Abetment in British India of offences outside it.

108A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

Illustration.

A, in British India, instigates D, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

Punishment of abetment if person abetted does act with different intention from that of abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Liability of abettor when one act abetted and different act done.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Proviso.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(*a*) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b*) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Abettor when liable to cumulative punishment for act abetted and for act done.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Abettor present when offence is committed.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

CHAPTER VI.

Of Offences against the State.

Waging or attempting to wage war, or abetting waging of war, against the Queen.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with * * * * * *

Illustrations.

(*a*) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(*b*) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

Conspiracy to commit offences punishable by section 121.

121A. Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of

criminal force, the Government of India or any Local Government shall be punished with * * * * *

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Collecting arms, etc., with intention of waging war against the Queen.

122. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with

Concealing with intent to facilitate design to wage war.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with * * * * * *

Sedition.

124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Government established by law in British India, shall be punished with * * * *

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.[16]

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.[17]

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier or sailor from his allegiance or his duty, shall be punished with * * * * * .

Explanation.—In this section the words "officer" and "soldier" include any person subject to the Articles of War,[18] for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869.[19]

---

[16] The other offences dealt with in Chapter VI of the Indian Penal Code, and imported into Indian military law by section 42 of the I. A. A., are unlikely to engage the attention of a court-martial or are otherwise provided for in the Indian Army Act. They have therefore not been reproduced.

[17] Also the Indian Marine Service—s. 138A, *infra*.

[18] *See* now the Army Act (44 & 45 Vict., c. 58) [Collection of Statutes relating to India, as continued and amended by subsequent annual Army Acts.]

[19] Now the Indian Army Act.

* * * * * * *

Harbouring deserter.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier or sailor, in the Army or Navy of the Queen, has deserted, harbours such officer, soldier or sailor, shall be punished with * * * .

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

Application of foregoing sections to the Indian Marine Service.

138A. The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen.

Persons subject to Articles of War.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this chapter.

Wearing garb or carrying token used by soldiers.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with * * * .

CHAPTER VIII.[20]

Of Offences against the Public Tranquillity.

Unlawful assembly.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

[20] As to the application of s. 141 to offences under special or local laws, *see* s. 40, *supra*.

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being member of unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Rioting.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Affray.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

* * * * * * *

Non-attendance in obedience to an order from public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with

Illustrations.

(*a*) A being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A being legally bound to appear before a Zilla Judge, as a witness, in obedience to a summons issued by that Zilla Judge, intentionally ommits to appear. A has comitted the offence defined in this section.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with * * * . Omission to produce document to public servant by person legally bound to produce it.

Illustration.

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with * * * * . Refusing oath or affirmation when duly required by public servant to make it.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with * * * * . Refusing to answer public servant authorised to question.

CHAPTER XI.[21]

Of false Evidence and Offences against Public Justice.

191. Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Giving false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

---

[21] As to the application of ss. 194 and 195 to offences under special or local laws, *see* s. 40, *supra*.

(*d*) A being bound by an oath to state the truth states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(*e*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which he is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

Fabricating false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(*a*) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with * * * * .

Explanation 1.—A trial before a Court-martial is a judicial proceeding.

Using evidence known to be false.

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Intentional insult or interruption to public servant sitting in judicial proceeding.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with * * * *

CHAPTER XVI.

Of Offences affecting the Human Body.

Of Offences affecting Life.

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a*) A lays sticks and turf over a pit, with the intention thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(*b*) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c*) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Murder.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death; or

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

4thly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(*c*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d*) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos[22] :—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(*a*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

[22] As to the application of these provisos in the case of causing hurt on provocation, *see* s. 335, *expl.*, *infra*.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

301. If a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause. Culpable homicide causing death of person other than person whose death was intended.

Attempt to murder.

307. Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act caused death, he would be guilty of murder, shall be punished with * * * * * .

Illustrations.

(*a*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b*) A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(*d*) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with * * * * .

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Of Hurt.[22]

Hurt.

319. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Voluntarily causing hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

[22] As to the application of ss. 327—331 to offences under special or local laws, *see* s. 40, *supra*.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt." Voluntarily causing grievous hurt.

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument, which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with * * * * . Voluntarily causing hurt by dangerous weapons or means.

* * * * * * *

334. Whoever voluntarily causes hurt on grave and sudden provocation,[24] if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with * * * * . Voluntarily causing hurt on provocation.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with * * * * . Voluntarily causing grievous hurt on provocation.

Explanation.—The last two sections are subject to the same provisos as exception 1, section 300.

* * * * * * *

Of Wrongful Restraint and Wrongful Confinement.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. Wrongful restraint.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

---

[24] As to provocation, *see* s. 335, *expl.*

Wrongful confinement.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations.

(*a*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*) A places men with firearms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Of Criminal Force and Assault.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact, with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(*c*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here, A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force

to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(*h*) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely, that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*) A takes up a stick, saying to Z, "I will give you a beating." Here though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Punishment for assault or criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with * * * .

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Assault or criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with * * * * * .

Explanation.—The last section is subject to the same explanation as section 352.

Of Rape.

Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under twelve years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under twelve years of age, is not rape.

Of Unnatural Offences.

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with * * * * .

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII.[85]

Of Offences against Property.

Of Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Theft

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

[85] As to enhanced punishment for second conviction for certain offences under this chapter, *see* s. 75.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o*) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Of Extortion.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion."

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

Of Robbery and Dacoity.

Robbery.

390. In all robbery there is either theft or extortion.

When theft is robbery.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b*) A meets Z on the high-road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. He has therefore committed robbery.

(*c*) A meets Z and Z's child on the high-road A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

Dacoity.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

* * * * * * *

Of Criminal Misappropriation of Property.

Dishonest misappropriation of property.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with * * * .

Illustrations.

(*a*) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft: but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustrations.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(*a*) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b*) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him

to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Of Criminal Breach of Trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust." Criminal breach of trust.

Illustrations.

(*a*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with direction to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d*) But if A, in the last illustration, not dishonestly but in good faith, believing that it would be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e*) A, a Revenue-officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Of the receiving of Stolen Property.

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property," whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Of Cheating.

Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*) A, by executing to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to re-pay it. A cheats.

(*g*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Cheating by personation.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Of Mischief.

Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Of Criminal Trespass.[36]

Criminal trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Lurking house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

House-breaking.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

[36] As to the application of ss. 441 and 445 to offences under special or local laws, *see* s. 40, *supra*.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house, or building occupied with a house and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by puting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night." House-breaking by night.

CHAPTER XVIII.

Of Offences relating to Documents and to Trade or Property Marks.

463. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Forgery.

464. A person is said to make a false document— Making a false document.

First.—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was

made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations.

(*a*) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d*) A leaves with B, his agent, a cheque on a banker, signed by A without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g*) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order" and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter

to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k*) A without B's authority writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b*) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(*d*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

* * * * * * *

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of Adultery.

another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, * * * * . In such case the wife shall not be punishable as an abettor.

Enticing or taking away or detaining with criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with * * * .

CHAPTER XXI.

OF DEFAMATION.

Defamation.

499. Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a*) A says—"Z is an honest man; he never stole B's watch": intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(*b*) A is asked who stole B's watch A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(*c*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Imputation of truth which public good requires to be made or published.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further. Public conduct of public servants.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character so far as his character appears in that conduct, and no further. Conduct of any person touching any public question.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. Publication of reports of proceedings of Courts.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further. Merits of case decided in Court or conduct of witnesses and others concerned.

Illustrations.

(*a*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further. Merits of public performance.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a*) A person who publishes a book, submits that book to the judgment of the public.

(*b*) A person who makes a speech in public, submits that speech to the judgment of the public.

(*c*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d*) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(*e*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorised person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interests.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations.

(*a*) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Caution intended for good of person to whom conveyed or for public good.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

CHAPTER XXII.

Of Criminal Intimidation, Insult and Annoyance.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

CHAPTER XXIII.

Of Attempts to Commit Offences.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with * * * * .

Illustrations.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

ACT No. I OF 1872.

The Indian Evidence Act, 1872.

Preamble. WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows :—

PART I.

Relevancy of Facts.

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called the Indian Evidence Act, 1872.

Extent. It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-martial,[27] but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator;

Commencement of Act. and it shall come into force on the first day of September, 1872.

Repeal of enactments. **2.** On and from that day the following laws shall be repealed :—

(1) all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;

(2) all such rules, laws and regulations as have acquired the force of law under the 25th section of the Indian Councils Act, 1861, in so far as they relate to any matter herein provided for; and

24 and 25 Vict., c. 67.

(3) the enactments mentioned in the schedule[28] hereto to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Interpretation-clause. **3.** In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

"Court." "Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

"Fact." "Fact" means and includes—

(1) anything, state of things, or relation of things capable of being perceived by the senses;

---

[27] But see the Army Act (44 and 45 Vict., c. 58), s. 127, which is as follows :—

"A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law or ordinance of any Legislature whatsoever, other than the Parliament of the United Kingdom.

[28] Not reproduced.

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That a man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation, is a fact.

"Relevant." One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue." The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts; the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue:—

that A caused B's death;

that A intended to cause B's death;

that A had received grave and sudden provocation from B;

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

"Document." "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document:

Words printed, lithographed or photographed are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document.

"Evidence." "Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of *fact under inquiry:*

such statements are called oral evidence:

(2) all documents produced for the inspection of the Court: such documents are called documentary evidence.

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

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

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

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it: "May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved: "Shall presume."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. "Conclusive proof."

CHAPTER II.

Of the Relevancy of Facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others. Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This *section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.*

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are the occasion, cause or effect of facts in issue.

7. Facts which are occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(*b*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d*) The question is whether a certain document is the will of A.

The facts, that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e*) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(*g*) The question is whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(*h*) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter are relevant.

(*i*) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

(*k*) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring,

as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*) The question is whether A committed a crime at Calcutta on a certain day.

The fact, that on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) the question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount, are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant :—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence :

(*b*) particular instances in which the right, or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father,

a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body, or bodily feeling.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b*) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(*c*) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d*) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*) A is charged with shooting at P with intent to kill him. In order to show A's intent the fact of A's having previously shot at P may be proved.

(*j*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(*m*) The question is, what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Facts bearing on question whether act was accidental or intentional.

15. When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place are relevant.

(*b*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission by party to proceeding or his agent;

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits suing or sued in a representative character are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter;

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived.

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability. Admissions by persons whose position must be proved as against party to suit.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions. Admission by persons expressly referred to by party to suit.

Illustration.

The question is whether a horse sold by A to B is sound.

A says to B—"Go and ask C. C knows all about it." C's statement is an admission.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases :— Proof of admissions against persons making them, and by or on their behalf.

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b*) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (*2*).

(*c*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(*d*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding *illustration*.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882. X of 1882.

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant. Confession made after removal of impression caused by inducement, threat or promise, relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. Consideration of proved confession affecting person making it and others jointly under trial for same offence.

Explanation.—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained. Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:— Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

(*1*) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(*2*) When the statement was made by such person in the ordinary course of business and in particular when it consists of any entry or memorandum made by him in books kept in the or is made in course of business;

ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker;

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(6) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (a);

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

or is made by several persons and expresses feelings relevant to matter in question.

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether A, who is dead, was the father of B.
A statement by A that B was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m*) The question is, whether, and when A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record, made in performance of duty.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

This section applies also to any Act of the Lieutenant-Governor in Council of the North-Western Provinces and Oudh, the Punjab or Burma.

Relevancy of statements as to any law contained in law-books.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

Previous judgments relevant to bar a second suit or trial.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Relevancy of certain judgments in probate, etc., jurisdiction.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, etc., other than those mentioned in sections 40 to 42, relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations.

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting, when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the hand-writing of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, etc., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code. IV of 1869. XLV of 1860.

Illustrations.

(*a*) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

In civil cases character to prove conduct imputed irrelevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Previous bad character not relevant, except in reply.

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Character as affecting damages.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but, except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

On proof.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

57. The Court shall take judicial notice of the following facts :— Facts of which Court must take judicial notice.

(*1*) all laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India :

(*2*) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(*3*) Articles of War for Her Majesty's Army or Navy :

(*4*) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, or any other law for the time being relating thereto.

24 & 25 Vict., c. 67.

Explanation.—The word "Parliament" in clauses (*2*) and (*4*) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland;

(2) the Parliament of Great Britain;

(3) the Parliament of England;

(4) the Parliament of Scotland; and

(5) the Parliament of Ireland :

(*5*) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(*6*) all seals of which English Courts take judicial notice : the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council : the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(*7*) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India or in the official Gazette of any Local Government :

(*8*) the existence, title and national flag of every State or Sovereign recognized by the British Crown :

(*9*) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette :

(*10*) the territories under the dominion of the British Crown :

(*11*) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons :

(*12*) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(*13*) the rule of the road on land or at sea.

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings :

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

Of Oral Evidence.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

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

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

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

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

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable :

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

Of Documentary Evidence.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. *Primary evidence means the document itself produced for the inspection of the Court.*

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained;[29]

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(*a*) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

[29] *See* section 76, *infra*.

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*) when the original is of such a nature as not to be easily moveable;

(*e*) when the original is a public document within the meaning of section 74;

(*f*) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;[30]

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

[30] *Cf.* the Bankers' Books Evidence Act, 1891 (XVIII of 1891), s. 4, General Acts, Vol. IV, Ed. 1909, p. 350.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

Public Documents.

Public documents.

74. The following documents are public documents :—

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country;

(2) public records kept in British India of private documents.

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificates shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government;

(2) the proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer :

(4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council :

(5) the proceedings of a municipal body in British India,—

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6) public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the

legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the

of laws and reports of decisions.

Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of Foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place. X of 1897.

Presumption as to books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, etc., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(*b*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be

admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso (*1*).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (*2*).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (*3*).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (*4*).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (*5*).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (*6*).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(*c*) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as the provision was inserted in it by mistake. A may prove that such mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500." B may prove the verbal warranty.

(*h*) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(*i*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(*j*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500.

Evidence cannot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighás." A has an estate at Rampur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(*a*) A agrees to sell to B, for Rs. 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhan or Haidarábád in Sind was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters, etc.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B, "all my models." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

PART III.

Production and effect of evidence.

CHAPTER VII.

Of the Burden of Proof.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

(*a*) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

XLV of 1860.

Illustrations.

(*a*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments. XLV of 1860.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days, after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince or Ruler,[31] shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification. Proof of cession of territory.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Court may presume existence of certain facts.

Illustrations.

The Court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(*c*) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;

(*e*) that judicial and official acts have been regularly performed ;

(*f*) that the common course of business has been followed in particular

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(*h*) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(*i*) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

as to *illustration* (*a*)— a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

as to *illustration* (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

as to *illustration* (*b*)—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

as to *illustration* (*c*)— A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

as to *illustration* (*d*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course ;

as to *illustration* (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances ;

as to *illustration* (*f*)—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

[31] *See*, for example, Gazette of India, 1873, Pt. I, p. 2.

as to *illustration* (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

as to *illustration* (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

as to *illustration* (*i*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant;

and of licensee of person in possession.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (*1*).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (*2*).—If a bailee delivers the goods bailed to a person other than the bailor he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

OF WITNESSES.

Who may testify.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by

tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the Superior Court.

(*c*) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

125. No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of public

Professional communication.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

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

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*) A, a client, says to B, an attorney— "I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*) A, a client, says to B, an attorney— 'I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, etc.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Privilege not waived by volunteering evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal advisers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness,

in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Production of title-deeds of witness, not a party.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of documents which another person, having possession, could refuse to produce.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Witness not excused from answering on ground that answer will criminate.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Accomplice.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.

Of the Examination of Witnesses.

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second

fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.

The re-examination shall be directly to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted *B*.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

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

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

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

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

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

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

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a*) A barrister is instructed by an attorney or vakil that an important witness is a dákáit. This is a reasonable ground for asking the witness whether he is a dákáit.

(*b*) A pleader is informed by a person in Court that an important witness is a dákáit; the informant on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dákáit.

(*c*) A witness, of whom nothing whatever is known, is asked at random whether he is a dákáit. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dákáit.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no

specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document. In document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon. Right of adverse party as to writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. Production of documents.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code. Translation of documents. r of 1860.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so. Giving as evidence, of document called for and produced on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court. Using, as evidence, of document production of which was refused on notice.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Judge's power to put questions or order production.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any *document which such witness would be entitled to refuse to answer* or produce under sections 121 to 131, both inclusive, if the question

were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI.

Of Improper Admission and Rejection of Evidence.

No new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

ACT No. IV OF 1888.

The Indian Reserve Forces Act, 1888.

An Act to regulate Her Majesty's Indian Reserve Forces.

WHEREAS it is expedient to provide for the government, discipline and regulation of Her Majesty's Indian Reserve Forces; It is hereby enacted as follows :—

Title and commencement.

1. (*1*) This Act may be called the Indian Reserve Forces Act, 1888; and

(*2*) It shall come into force on such day as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf.

Division of Reserve Forces into Active and Garrison Reserves.

2. The Indian Reserve Forces shall consist of the Active Reserve and the Garrison Reserve.

Locality of service of Reserves.

3. (*1*) A person belonging to the Active Reserve shall be liable to serve beyond the limits of British India as well as within those limits.

(*2*) A person belonging to the Garrison Reserve shall not be liable without his consent to serve beyond the limits of British India.

Power to make rules for regulation of Reserve Forces.

4. The Governor General in Council may make rules and orders for the government, discipline and regulation of the Indian Reserve Forces.

Liability of Reserve Forces to military law.

5. Subject to the provision of section 3 with respect to persons belonging to the Garrison Reserve, and to such rules and orders as may be made under section 4, a person belonging to the Indian Reserve Forces shall, as an officer or soldier, as the case may be, be subject to military law in the same manner and to the same extent as a person belonging to Her Majesty's Indian Forces.

Punishment of certain offences by persons belonging to Reserve Forces.

6. (*1*) If a person belonging to the Indian Reserve Forces—

(*a*) when required by or in pursuance of any rule or order under this Act to attend at any place fails without reasonable excuse to attend in accordance with such requirement, or

(*b*) fails without reasonable excuse to comply with any such rule or order, or

(*c*) fraudulently obtains any pay or other sum contrary to any such rule or order,

he shall be liable—

(i) on conviction by a Court-martial, to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the Indian Articles of War empowered to award, or

V of 1869.

(ii) on conviction by a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year.

(2) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other.

Effect of Act on persons already in the Reserves.

7. Nothing in this Act or in any rule or order thereunder shall make any person transferred to the Indian Reserve Forces before the commencement of this Act subject, without his consent, to any of the provisions of this Act.

ACT No. XV OF 1889.

Indian Official Secrets Act, 1889.

(As amended by Act No. V of 1904.)

An Act to prevent the disclosure of official documents and information.

WHEREAS it is expedient to prevent the disclosure of official documents and information; It is hereby enacted as follows :—

Title, extent and application

1. (*1*) This Act may be called the Indian Official Secrets Act, 1889; and

(*2*) It extends to the whole of British India, and applies—

(*a*) to all subjects of His Majesty within the dominions of Princes and States in India in alliance with His Majesty, and

(*b*) to all Native Indian subjects of His Majesty without and beyond British India.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) any reference to a place belonging to His Majesty includes a place belonging to any department of the Government, whether the place is or is not actually vested in His Majesty :

(2) expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model or information itself or the substance or effect thereof only be communicated :

(3) " document " includes part of a document :

(4) " model " includes design, pattern and specimen :

(5) " sketch " includes any photograph or other mode of representation of any place or thing :

(6) " office under His Majesty " includes any office or employment in or under any department of the Government : and

(7) " civil affairs " means affairs—

(*a*) affecting the relations of His Majesty's Government or of the Governor General in Council with any foreign State, or

(*b*) affecting the relations of the Governor General in Council with any Native State in India, or relating to the public debt or the fiscal arrangements of the Government of India or any other important matters of State, where these affairs are of such a confidential nature that the public interest would suffer by their disclosure.

Disclosure of information.

3. (*1*) (*a*) Where a person for the purpose of wrongfully obtaining information—

(i) enters or is in any part of a place belonging to His Majesty, being a fortress, arsenal, factory, dockyard, camp, ship, or other like place, in which part he is not entitled to be, or

(ii) when lawfully or unlawfully in any such place as aforesaid or in any office belonging to His Majesty, either obtains or attempts to obtain any document, sketch, plan, model or knowledge of any naval, military or civil affair of His Majesty which he is not entitled to obtain or any copy of any such document, sketch, plan, or model, or takes or attempts to take without lawful authority any sketch or plan, or

(iii) when outside any fortress, arsenal, factory, dockyard or camp belonging to His Majesty, takes or attempts to take without authority given by or on behalf of His Majesty any sketch or plan of that fortress, arsenal, factory, dockyard or camp, or

(*b*) where a person knowingly having possession of, or control over, any such document, sketch, plan, model or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the public interest, to be communicated at that time, or

(*c*) where a person after having been entrusted in confidence by some officer under His Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the naval, military or civil affairs of His Majesty, wilfully and in breach of such confidence communicates the same when in the public interest it ought not to be communicated,

he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(*2*) Where a person commits any act specified in clauses (i), (ii) and (iii) of sub-section (*1*), sub-head (*a*), without lawful authority or permission (the proof of which authority or permission shall be upon him) the Court may presume that he has committed such act for the purpose of wrongfully obtaining information; and

(*3*) Where a person having possession of any document, sketch, plan, model or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to His Majesty, or to the naval, military or civil affairs of His Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the public interest, to be communicated at that time, he shall be liable to the same punishment as if he committed an offence under the foregoing provisions of this section.

(*4*) Where a person commits any act declared by this section to be an offence, he shall, if he intended to communicate to a foreign State any information, document, sketch, plan, model or knowledge obtained or taken by him, or entrusted to him as aforesaid, or if he communicates the same to any agent of a foreign State, be punished with transportation for life or for any term not less than five years, or with imprisonment for a term which may extend to two years.

Breach of official trust

4. (*1*) Where a person, by means of his holding or having held an office under His Majesty, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan, or model, or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model or information to any person to whom the same ought not, in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust.

(*2*) A person guilty of a breach of official trust shall—

(*a*) if the communication was made or attempted to be made to a foreign State, be punished with transportation for life or for any term not less than five years, or with imprisonment for a term which may extend to two years, and

(*b*) in any other case be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(*3*) This section shall apply to a person holding a contract with any department of the Government, or with the holder of any office under His Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract, who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were respectively holders of an office under His Majesty.

Certain offences under Act declared cognizable.

5. (*1*) Notwithstanding anything in the Code of Criminal Procedure, 1898, every offence against this Act committed in relation to any fortress, arsenal, factory, dockyard, camp, or ship belonging to His Majesty, or in relation to the naval or military affairs of His Majesty, shall, for the purposes of the said Code, be deemed to be cognizable :—

Provided that a person accused of any such offence shall not be released on bail unless on the order of a Magistrate of the first class.

(*2*) Every other offence against this Act shall be non-cognizable.

Procedure after arrest on charge of certain offences punishable under Act.

6. (*1*) Any person, being a public servant as defined in the Indian Penal Code, may arrest any person who in his view commits any of the offences described in section 5, sub-section (*1*), and any such person, or any police-officer who has arrested any person on a charge of any such offence, and any police-officer to whom any person arrested on any such charge has been made over, shall take or send him before the officer for the time being in command or charge of the fortress, arsenal, factory, dockyard, camp, or ship, or of the nearest military station or before a Magistrate of the first class.

(*2*) Where any person has been taken or sent before the commanding or other officer in accordance with sub-section (*1*), such officer may, if he thinks fit, discharge such person, but, if he does not discharge him, shall without unnecessary delay, take or send him to the nearest police-station or to any Magistrate of the first class.

(*3*) Where any person has been taken or sent to a police-station or to a Magistrate under sub-section (*2*). the provisions of the Code

of Criminal Procedure, 1898, shall, save as otherwise provided by section 7, apply to him as though he had been taken to such police-station or Magistrate without being taken or sent before the commanding or other officer. V of 1898.

Restriction on trial of offences.

7. (*1*) No Magistrate of the second class shall have jurisdiction to try any person for an offence against this Act.

(*2*) No Court shall proceed to the trial of any person for an offence against this Act, except with consent of the Local Government or the Governor General in Council.

The Code of Criminal Procedure, 1898.

A.—Classes of Criminal Courts.

Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code[32] for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

I.—Courts of Session :
II.—Presidency Magistrates :
III.—Magistrates of the first class :
IV.—Magistrates of the second class :
V.—Magistrates of the third class.

[Unlawful] assembly to disperse on command of Magistrate or police-officer.

127. (*1*) Any Magistrate or officer in charge of a police-station may command any unlawful assembly,[33] or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(*2*) This section applies also to the police in the town of Calcutta.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

XX of 1869.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. (*1*) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

XX of 1869.

[32] *e.g.* Courts-martial.
[33] See I. P. C., section 141, for definition of an unlawful assembly.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of commissioned military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this Chapter.

132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and—

(*a*) no Magistrate or police officer acting under this Chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.

Illustrations.

(*a*) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(*b*) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

When a person is charged with one offence he can be convicted of another.

[34]**237.** (*1*) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

[34] Sections 237 and 238 are applicable to trials by Court-martial on charges under sections 41 and 42 of the I. A. A. See I. A. A., section 86 (*1*).

(*2*) When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

When offence proved included in offence charged.

[25]**238.** (*1*) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(*2*) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(*3*) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) A is charged, under section 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

391. * * * * * *

(*3*) No accused person shall be sentenced to whipping in addition to imprisonment, when the term of imprisonment to which he is sentenced is less than three months.

Mode of inflicting punishment [of whipping].

392. (*1*) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as the Local Government directs.

Limit of number of stripes.

(*2*) In no case shall such punishment exceed thirty stripes and in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.

Not to be executed by instalments. Exemptions.

393. No sentence of whipping shall be executed by instalments : and none of the following persons shall be punishable with whipping, namely :—

(*a*) females;

(*b*) males sentenced to death or to transportation or to penal servitude, or to imprisonment for more than five years;

[25] *See* footnote 34 on preceding page.

(c) males whom the Court considers to be more than forty-five years of age.

Whipping not to be inflicted if offender not in fit state of health.

394. (*1*) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Stay of execution.

(*2*) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Procedure in cases mentioned in section 195.

476. (*1*) When any Civil, Criminal[36] or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195[37] and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

(*2*) Such Magistrate shall thereupon proceed according to law, and as if upon complaint made and recorded under section 200, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

[36] A Court-martial is a Criminal Court. *See* section 6.

[37] Not reproduced. The offences (so far as they concern Courts-martial) are enumerated in the notes to Rule 136.

ACT No. II OF 1901.

The Indian Tolls (Army) Act, 1901.

An Act to amend the law relating to the exemption from tolls of persons and property belonging to the Army.

WHEREAS certain officers, soldiers and other persons, and certain animals, baggage and carriages belonging or attached to the Army, are exempted by section 143 of the Army Act from payment of certain duties or tolls;

44 and 4 Vict., c. 58.

And whereas similar exemptions are made by various enactments of the Indian legislatures, but these exemptions are not co-extensive with those made by the said Army Act;

And whereas it is expedient to remove the inconsistency now existing between the said Army Act and the said enactments, and to exempt certain other persons and property belonging to the Army from payment of certain tolls;

And whereas it is declared by section 169 of the said Army Act that "it shall be lawful for the Governor General of India . . . to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor General . . . . . to be better adapted to the pecuniary means of the inhabitants; and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act," and it is expedient to alter in the manner hereinafter appearing the fine imposed by section 143 of the said Army Act;

It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Tolls (Army) Act, 1901.

(*2*) It extends to the whole of British India, inclusive of British Baluchistan, the Santhál Parganas and the Pargana of Spiti; and

(*3*) It shall come into force on the first day of April, 1901.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "ferry" includes every bridge and other thing which is a ferry within the meaning of any enactment authorizing the levy of tolls on ferries, but does not include any ferry or other thing which is included in the definition of "railway" in section 3 of the Indian Railways Act, 1890 :

IX of 1890.

(*b*) the expression "His Majesty's Regular Forces" has the meaning assigned to it by section 190, clause (*3*), of the Army Act, and includes the Indian Reserve Forces when subject to military law :

44 and 45 Vict., c. 58.

(*c*) "horse" includes a mule and any beast of whatever description which is used for burden or draught or for carrying persons :

(*d*) the expression "Indian Reserve Forces" means the forces constituted by the Indian Reserve Forces Act, 1888, and includes persons holding commissions in the Indian Army Reserve of officers when called out in any military capacity :

IV of 1888.

(*e*) " landing-place " includes a pier, wharf, quay, jetty and a stage, whether fixed or floating :

(*f*) the expression " local corps " means the Hyderabad Contingent, the Central India Horse, the Malwa Bhil Corps, the Bhopal Battalion, the Deoli Irregular Force, the Erinpura Irregular Force, the Meywar Bhil Corps, the Merwara Battalion and the Escort of the Resident in Nepal, and includes any other corps which may be notified by the Governor General in Council in this behalf by order published in the Gazette of India :

(*g*) " public authority " means the Government or a local authority; and, so far as regards tolls levied by a railway company under section 4 of the Indian Railways Act, 1879, or section 51 of the Indian Railways Act, 1890, includes such a railway company : and 42 and 43 Vict., c. 41. IX of 1890.

(*h*) " tolls " includes duties dues, rates, rents, fees and charges, but do not include customs-duties levied under the Indian Tariff Act, 1894, octroi-duties or town-duties on the import of goods, or fares paid for the conveyance of passengers on a tramway. VIII of 1894.

Exemptions from tolls.

3. The following persons and property, namely :—

(*a*) all officers and soldiers of—

(i) His Majesty's Regular Forces,
(ii) any local corps, or
(iii) Imperial Service Troops,
when on duty or on the march,

(*b*) all members of a corps of Volunteers when on duty or when proceeding to or returning from duty,

(*c*) all officers and soldiers of the Indian Reserve Forces when proceeding from their place of residence on being called out for training or service or when proceeding back to their place of residence after such training or service,

(*d*) all grass-cutters when employed in the service of—

(i) His Majesty's Regular Forces,
(ii) any local corps,
(iii) Imperial Service Troops, or
(iv) any corps of Volunteers,

(*e*) all other authorized followers of—

(i) His Majesty's Regular Forces,
(ii) any local corps,
(iii) Imperial Service Troops, or
(iv) any corps of Volunteers,

when they accompany any body of such Forces, Troops or Volunteers or any members of such corps on the march, or when they are otherwise moving under the orders of military authority,

(*f*) all members of the families of officers, soldiers or authorized followers of—

(i) His Majesty's Regular Forces, or
(ii) any local corps,

when accompanying any body of troops, or any officer, soldier or authorized follower thereof on duty or on the march,

(*g*) all prisoners under military escort,

(*h*) the horses and baggage, and the persons (if any) employed in carrying the baggage, of any persons exempted under any of the foregoing clauses, when such horses, baggage or persons accompany the persons so exempted under the circumstances mentioned in those clauses respectively,

(*i*) all carriages and horses belonging to His Majesty or employed in His Majesty's military service and all persons in charge of or accompanying the same, when conveying any such persons as hereinbefore in this section mentioned, or when conveying baggage or stores, or when returning unladen from conveying such persons, baggage or stores,

(*j*) all carriages and horses, when moving under the orders of military authority for the purpose of being employed in His Majesty's military service,

(*k*) all animals accompanying any body of troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops, and

(*l*) all persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses respectively,

shall be exempted from payment of any tolls—

(i) on embarking or disembarking, or on being shipped or landed, from or upon any landing-place, or

(ii) in passing along or over any turnpike or other road or bridge, or

(iii) on being carried by means of any ferry,

otherwise demandable by virtue of any Act, Ordinance, Regulation, order or direction of any legislature or other public authority in *British India*:

Provided that nothing in this section shall exempt any boats, barges or other vessels employed in conveying the said persons or property along any canal from payment of tolls in like manner as other boats, barges and vessels.

Tolls on vessels transporting troops and baggage, etc., of troops embarked or disembarked.

4. (*1*) No tolls shall be leviable by any local authority in respect of—

(*a*) any vessel employed by the Government solely for the transport of troops, or

(*b*) the horses, baggage or other effects of any troops embarking or disembarking at any port, or

(*c*) carriages belonging to His Majesty or employed in His Majesty's military service embarking or disembarking at any port.

(*2*) In respect of all such vessels or troops, their families, their horses, baggage and their effects, or any such carriages as aforesaid, the local authority concerned shall, in addition to its duties in the embarking and disembarking of the same, perform and supply all such reasonable services and accommodation as may, from time to time, be required by the Government, and shall receive payment

for all such services and accommodation on such terms and for such periods as may, from time to time, be determined by the Government in consultation with such local authority.

Penalty.

5. Any person who demands and receives any toll in contravention of the provisions of section 3 or section 4, shall be punishable with fine which may extend to fifty rupees.

Compensation.

6. (*1*) If any owner or lessee, or any company, railway administration or local authority claims compensation for any loss alleged to have been incurred owing to the operation of this Act, the claim shall be submitted to the Local Government.

(*2*) On receiving any such claim, the Local Government, subject to the control of the Governor General in Council, shall pass such order thereon as justice requires, and shall give all necessary directions for the purpose of ascertaining the facts of the case and of assessing the compensation, if any, to be paid.

Rules.

7. (*1*) The Governor General in Council, and the Local Government with the previous sanction of the Governor General in Council, may make rules to carry out the purposes and objects of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, the Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may make rules providing for the form of passes to be given to persons or bodies of persons or in respect of property entitled to exemption from the payment of tolls under this Act.

(*3*) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

(*4*) All rules made under this section shall be published in the Gazette of India or in the local official Gazette, and, on such publication, shall have effect as if enacted by this Act.

Repeals.

8. The enactments specified in the schedule[38] are hereby repealed to the extent mentioned in the fourth column thereof.

---

[38] Not reproduced.

RULES UNDER THE INDIAN TOLLS (ARMY) ACT, 1901.

No. 1093.[a]—In exercise of the powers conferred by section 7, sub-sections (*1*) and (*2*) of the Indian Tolls (Army) Act, 1901 (II of 1901), the Governor General in Council is pleased to make the following rules, namely :—

Rules.

1. Save as hereinafter otherwise provided in rule 2, where exemption from the payment of tolls is claimed under the Indian Tolls (Army) Act, 1901 (II of 1901), in respect of any person or body of persons or any property, a pass, in the form annexed, shall be presented on the demand of the person authorised to demand the tolls.

2. (*1*) No passes shall be required in the case of—

(*a*) officers and soldiers of—

(i) His Majesty's Regular Forces,

(ii) any local corps, or

(iii) Imperial Service Troops,

in uniform when on duty or on the march;

(*b*) members of a corps of Volunteers in uniform when on duty or when proceeding to or returning from duty;

(*c*) officers and soldiers of the Indian Reserve Forces in uniform when proceeding from their place of residence on being called out for training or service or when proceeding back to their place of residence after such training or service;

(*d*) grass-cutters and other authorized followers of—

(i) His Majesty's Regular Forces,

(ii) any local corps,

(iii) Imperial Service Troops, or

(iv) any corps of Volunteers,

when they accompany any body of such Forces, Troops or Volunteers or any members of such corps on the march;

(*e*) members of the families of officers, soldiers, or authorised followers of—

(i) His Majesty's Regular Forces, or

(ii) any local corps,

when accompanying any body of troops, on duty or on the march;

[a] Gazette of India 13th November 1903 (Military Department).

(*f*) prisoners under military escort in uniform;

(*g*) the horses and baggage, and the persons (if any) employed in carrying the baggage, of any persons specified in any of the foregoing clauses, when such horses, baggage or persons accompany the persons so specified under the circumstances mentioned in those clauses, respectively;

(*h*) carriages and horses belonging to His Majesty or employed in His Majesty's military service and all persons in charge of or accompanying the same, when conveying any such persons as hereinbefore in this rule mentioned, or when conveying baggage or stores;

(*i*) animals accompanying any body of troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops; or

(*j*) persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses respectively.

(*2*) No passes shall be required in the case of officers of His Majesty's Regular Forces or of any local corps or of any Imperial Service Troops, when travelling on duty, though not in uniform:

Provided that the officer so travelling shall furnish in writing to the person authorized to demand toll his name, rank and the nature of the duty on which he is engaged.

3. (*1*) Save as hereinafter provided in sub-rule (*2*) every pass shall be signed by the Commanding Officer of the regiment, corps, or detachment concerned, or by a station staff officer.

(*2*) In the case of members of a corps of volunteers, or of officers and soldiers of the Indian Reserve Forces, every pass shall be signed, in a Presidency-town, by the Commissioner of Police, and, elsewhere, by the District Magistrate, or by such officer as the District Magistrate may authorize in this behalf.

FORM OF PASS.

[*Issued under the Indian Tolls (Army) Act, 1901 (II of 1901).*]

This pass is issued subject to the rules on the reverse in respect of the persons and property specified in the annexed schedule, and exempt from the payment of tolls on the occasion of—

Embarking or being shipped at——————

Disembarking or being landed at——————

Proceeding from——————to——————

It will remain in force from up to the——————190

Schedule.

Number.	Name of Corps.	REMARKS.
PART I.		
PERSONS.		
Officers		
Soldiers		
Members of Volunteer Corps .		
Grass-cutters employed in service of troops or volunteers.		
Authorized followers of troops or volunteers.		
Members of families of officers, soldiers or authorized followers.		
Persons in charge of horses, carriages, slaughter animals and baggage.		
Prisoners		
PART II.		
PROPERTY.		
Horses as defined in the Act*		
Carriages		
Slaughter animals . . .		

* "Horse" includes a mule and any beast of whatever description which is used for burden or draught or for carrying persons. Section 2, clause (*c*).

(Sd.)

Commanding Officer of
Station Staff Officer at
District Magistrate at
Officer authorized by District Magistrate at
Commissioner of Police at

Place——————.
Date——————.

Endorsement.

[Here enter rules 1 to 3.]

ACT No. IV OF 1909.

The Whipping Act, 1909.

An Act to consolidate and amend the law relating to the punishment of whipping.

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Whipping Act, 1909; and

(*2*) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas.

Whipping added to punishments described in Act XLV of 1860.

XLV 1860

2. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to the punishment of whipping.

Offences punishable with whipping in lieu of other punishment.

3. Whoever commits any of the following offences, namely :—

(*a*) theft, as defined in section 378 of the Indian Penal Code other than theft by a clerk or servant of property in possession of his master;

(*b*) theft in a building, tent or vessel, as defined in section 380 of the said Code;

(*c*) theft after preparation for causing death or hurt, as defined in section 382 of the said Code;

(*d*) lurking house-trespass or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section;

(*e*) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section;

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code.

Offences punishable with whipping in lieu of or in addition to other punishment.

4. Whoever—

XLV 1860.

(*a*) abets, commits or attempts to commit, rape, as defined in section 375 of the Indian Penal Code;

(*b*) compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code;

(*c*) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of the said Code;

(*d*) commits dacoity as defined in section 391 of the said Code;

may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence, abetment or attempt be liable under the said Code.

Juvenile offenders when punishable with whipping.

5. Any juvenile offender who abets, commits or attempts to commit,—

(*a*) any offence punishable under the Indian Penal Code, except offences specified in Chapter VI and in sections 153A and 505 of that Code and offences punishable with death, or

(*b*) any offence punishable under any other law with imprisonment, which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf,

may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.

Explanation.—In this section the expression "juvenile offender" means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

Special provision as to punishment with whipping in frontier districts.

6. Whenever any Local Government has, by notification in the official Gazette, declared the provisions of this section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who in such district or tract of country after such notification as aforesaid commits any offence punishable under the Indian Penal Code with imprisonment for three years or upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

Amendment of section 392, Act V, 1898.

7. To section 392, sub-section (*2*), of the Code of Criminal Procedure, 1898, the words "and in the case of a person under sixteen years of age, it shall not exceed fifteen stripes" shall be added. V of 1898.

Repeals.

8. The enactments mentioned in the schedule[40] are hereby repealed to the extent specified in the fourth column thereof.

[40] Not reproduced.

PART IV.

NOTIFICATIONS AND WARRANTS ISSUED UNDER THE INDIAN ARMY ACT.

NOTIFICATIONS.

No. I.—COMMENCEMENT OF THE ACT.

(*Army Department Notification No. 909, dated 3rd November 1911.*)

In exercise of the powers conferred by section 1, sub-section (*2*), of the Indian Army Act, 1911 (VIII of 1911), the Governor General in Council is pleased to appoint the 1st January 1912 as the date on which the said Act shall come into force.

No. II.—FRONTIER POSTS.

(*Army Department Notification No. 910, dated 3rd November 1911.*)

In pursuance of section 2, sub-section (*1*), clause (*c*), and of section 22, sub-section (*1*) of the Indian Army Act, 1911 (VIII of 1911), the Governor General in Council is pleased to specify the following places to be frontier posts for the purposes of the said sections :—

1st (*Peshawar*) *Division.*

Shab-kadr.
Abazai.
Jamrud.
Dargai.
Malakand.
Chakdara.
Chitral.
Drosh.
Mada Glash.

4th (*Quetta*) *Division.*

Sibi.
The Fort of Pishin.
Fort Sandeman.
New Chaman.
Murgha.
Mir Ali Khel.
Gumbaz.
Manzai.
Robat.

8th (Lucknow) Division.

Baksa Duar.
Sadiya.
Manipur.
Kohima.
Gantok.
Gyantse.
Yatung.

Derajat Brigade.

Jandola.
Zam.
Drazinda.
Tank Post.
Jatta.

Kohat Brigade.

Fort Lockhart.
Hangu.
Thal.

No. III.—Indian Army Act Rules.

(*Army Department Notification No. 911, dated 3rd November 1911.*)

In exercise of the powers conferred by section 113 of the Indian Army Act, 1911 (VIII of 1911), the Governor General in Council is pleased to make the following Rules for the purpose of carrying into effect the provisions of the said Act:—

All notifications issued under the Indian Articles of War (Act V of 1869) are cancelled, with effect from the date on which the Indian Army Act, 1911 (VIII of 1911), is brought into force.

[*Then follow the Rules as given in Part II of this Manual, but without notes.*]

WARRANTS.

A-2.*

Warrant for convening and confirming General Courts-Martial under the Indian Army Act.

To

The OFFICER, NOT BEING UNDER THE RANK OF A FIELD OFFICER, COMMANDING THE†_____

In pursuance of the provisions of the Indian Army Act, I do hereby empower you, or the Officer on whom your command

* Warrants in India are issued in two series, A-1, B-1, etc., and A-2, B-2, etc., the former confer powers under the (British) Army Act, the latter under the Indian Army Act.

† This warrant is issued by the Commander-in-Chief in India to officers commanding armies, divisions and independent brigades in India and to officers commanding colonial garrisons where Indian troops are stationed. In the case of colonial garrisons, the third paragraph of the warrant is omitted.

may devolve during your absence, not under the rank of Field Officer, from time to time, as occasion may require, to convene General Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command who is subject to Indian Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court-Martial.

And I do hereby empower you, or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer, to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

Provided always that if by the sentence of any General Court-Martial a Commissioned Officer has been sentenced to suffer Death, Transportation or Imprisonment, or to be dismissed from the Service, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, withhold confirmation and transmit the proceedings to me.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at———this————day of———— 19 .

-General,
Commander-in-Chief in India.

Military Secretary.

B-2.

Warrant for convening and confirming District Courts-Martial under the Indian Army Act.

To

THE OFFICER, NOT BEING UNDER THE RANK OF A FIELD OFFICER, COMMANDING THE* ———— BRIGADE.

Whereas I have power to convene General Courts-Martial under the Indian Army Act, and whereas under that Act, any Officer having power to convene General Courts-Martial may empower any Officer to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Indian Military Law.

* This warrant is issued to ordinary brigade commanders in India by the officer commanding the division concerned. Where the headquarters of more than one brigade are situated at the same station a similar warrant is held by the officer commanding the station as a whole.

By virtue of the said Act I do hereby empower you, or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer, from time to time, as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Indian Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

And I do hereby empower you, or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer, to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at———this———day of———— 19 .

(Signature of Officer having power to convene General Courts-Martial.)

(Signature of Staff Officer.)

C-2.

Warrant for convening and confirming District Courts-Martial under the Indian Army Act.

To

THE OFFICER, NOT BEING UNDER THE RANK OF A FIELD OFFICER, COMMANDING AT*————.

Whereas I have power to convene General Courts-Martial under the Indian Army Act, and whereas under that Act, any Officer having power to convene General Courts-Martial may empower any Officer to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Indian Military Law.

By virtue of the said Act I do hereby empower you, or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer, from time to time, as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made

* This warrant is issued to officers commanding at important stations, by the officer commanding the division concerned.

thereunder, of any person under your command, who is subject to Indian Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

And I do hereby empower you, or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer, to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

Provided always that in the case of any District Court-Martial held for the trial of a Warrant Officer, as also in the case of any other District Court-Martial in which you shall think fit so to do, you shall withhold confirmation and transmit the proceedings to me the Officer Commanding the ——— Brigade.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at———this————day of———— 19 .

(*Signature of Officer having power to convene General Courts-Martial.*)

(*Signature of Staff Officer.*)

D-2.

Warrant for convening District Courts-Martial under the Indian Army Act.

To

THE OFFICER, NOT BEING UNDER THE RANK OF A CAPTAIN, COMMANDING AT*————————.

Whereas I have power to convene General Courts-Martial under the Indian Army Act, and whereas under that Act, any Officer having power to convene General Courts-Martial may empower any Officer to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Indian Military Law.

By virtue of the said Act I do hereby empower you, or the Officer on whom your command may devolve during your absence, not under the rank of Captain, from time to time, as occasion may require, to convene District Courts-Martial for

* This warrant is issued to officers commanding at small stations, by the officer commanding the division concerned.

the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Indian Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

Provided always that the power granted in this Warrant is only to be exercised in respect of accused persons whose trial has been ordered from Army Head-Quarters or by

the Officer Commanding the Brigade.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at———this————day of————— 19 .

(Signature of Officer having power to convene General Courts-Martial.)

(Signature of Staff Officer.)

INDEX.

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Abandoning garrison, etc., and punishment for . . 111, 112, *254*
Abetment.
Definition of 125
Of offences under Indian Penal Code . . *72, 266,* 336-339, 340
Of offences under Indian Army Act and punishment for . 125, *266*
Absence without leave.
Camp from, after retreat-beating 116, 117, *258*
Cantonment or lines from, after tattoo . . . 116, 117, *258*
Conviction for, on charge of attempting to desert . . 143, *204*
„ „ on charge of desertion 143, *204*
Court of Inquiry on 156, *247*
"Day" what constitutes a 132, 133
Duty from, for 60 days 156, *247*
Forms of charges *257, 258*
Offence of 116, 117, *258*
Particular service to avoid, is desertion . . . 117
Penal deductions of pay and allowances for . . 131, 132, 133
Person two miles or upwards from camp, without proper authority 116, 117, *258*
Reference by accused to Government Officer on trial for . 145
Remission of deductions from pay and allowances for, by C. O. 133, *250*
Accident.
In doing a lawful act, not an offence 330
Accomplice.
Evidence of 34, 51, 407
Accoutrements.
Exemptions of, from attachment 154
Accusation.
False, making 121, 122, *262*
Accused.
Absence of, trial cannot proceed in *216*
Address by, at court-martial . . 23, 24, 26, *200, 201, 205, 229, 237*
Admission by 34, 45
Amenability of, to jurisdiction of court . . 16, 23, *188, 195, 196*
„ „ to military law *188*
„ „ to trial *195, 196, 197, 198*
Appearance of, at general or district court-martial . 23, *188, 189*
„ „ at summary court-martial 19, *226*
Arraignment of . . . 19, 23, 135, *194, 213, 227, 243, 288*
„ of, at summary court-martial . . *227, 302, 303*
„ of, at summary general court-martial . . *243*
„ of, officer not to be added to court after . . *217*
„ of, persons who usually carry out . . . *194*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Accused—*contd.*
Cannot object to court collectively *189*
„ object to Judge Advocate, Prosecutor or Superintending Officer *189*
Challenge of members of court by **139, 140,** *189, 190, 242, 243, 287, 288*
Character . . . 20, **43, 44, 145, 146,** *200, 201, 205, 206, 229, 230*
„ of, evidence as to, at Summary Court-Martial **43, 146,** *229*
Character of, evidence as to, when admissible . **43, 145, 146,** 388
„ of, to be considered by Convening Officer . . 21
„ of, witnesses in favour of, when to be called . . *205, 229*
Charge (*q. v.*)
Commanding Officer of, disqualified from serving on court-martial *187*
Confession by, Involuntary 35
„ „ Voluntary 35
Confinement or arrest of, pending trial by court-martial . 17
Counsel for *222, 223*
„ to, cannot object *224*
Court-martial, class of, by which tried 17
Court-martial, Members, right to list of *182, 183*
Cross-examination of prosecutor by . . . . . *200* [*205, 243*
„ of witnesses by . **16, 20, 23, 26, 38, 142,** *176, 199*
„ of witnesses by, at taking of summary of evidence *176, 178*
Custody of, at court-martial 23
Defence by, latitude allowed . . . *24, 201, 212, 213, 229*
„ by, preparation of *182-185*
„ when accused calls witnesses to facts of case . . **24,** *201*
„ when no witnesses to facts are called by . *24, 200, 201*
Duty of Prosecutor to **23,** *201, 211, 212*
Evidence, cannot give *201, 229*
„ must justify trial of 21
„ on murder trial as to disposition of, inadmissible . 33
Examination of witness by *235, 236*
Friend of, accommodation to be provided at court-martial for 23
„ at court-martial . . . **22, 23, 102,** *201, 222, 231*
Identification of *205, 206*
Illness of, at court-martial, procedure on . . . **135,** *216, 217*
Insanity, by reason of, unfit to be tried, Court to find the fact specially *194, 237, 237, 238*
Judge-Advocate, opinion of, entitled to 225
Legal Adviser of, at court-martial . . **22, 23,** *182, 201, 222, 231*
May claim separate trial on each charge *213, 215*
Mistake in name or description of *194, 196, 227*
Notice to, of charge before arraignment *182, 183*
Objection by, to charge *183, 194, 227, 289*
„ to Interpreter by *219, 226, 288*
Objections to members of court-martial **23, 139, 140,** *186, 189, 190, 218, 219, 242, 243, 287, 288*
„ to members of summary general court-martial . *242*
Objection to Shorthand writer by *219*
Opportunity for preparation of defence to be allowed . . *182*
Plea, General, "Guilty" or "Not Guilty," of . . *196, 197, 228*
„ in bar of trial by **40,** *195, 196, 197, 198, 228*
„ in bar of trial by, form of *289, 290*
„ of "Guilty" by . . **19, 20, 23, 45,** *196, 197, 198, 199, 243*

[References to I.A.A. are in thick type, those to Rules in italics.]

Accused—*contd.*
Plea of "Guilty," by, at summary court-martial, form of proceedings on *303*
" Guilty " by, form of proceedings on, ... *290, 291*
" Guilty " by, procedure on, . . . *198, 199, 228, 229*
" Not Guilty " by, . . 20, 23, *196, 197, 199, 200, 201, 243*
" Not Guilty " by, at summary court-martial, form of proceedings on . . . . . *303—305*
" Not Guilty " by, procedure on . . 20, 23, *199-201, 229*
" Not Guilty " by, form of proceedings on . *291—296*
to jurisdiction of Court, by . . . *195, 196, 228, 243*
„ „ jurisdiction of Court by, form of *289*
Preparation of defence by 22, *182-185*
Presence during investigation by C. O. . . . 16, *176, 177*
Presumed to be innocent until proved guilty 24
Previous conviction, etc, of how to be proved . . . *206*
Proceedings of court-martial to be in presence of . *216, 231, 244*
Proof, Burden of (*See* Evidence) . . . .
„ Burden of, when it lies on 49, 50, 65
Questions by, to witnesses at taking of Summary of Evidence *178*
Reference by, to Government Officer on trial for desertion, absence without leave, etc. 145
Release of 21, 51, *185, 195, 234*
„ of, without prejudice to rearrest *234*
Remand, for trial by court-martial . . 17, 18, 21, *176, 178, 179*
„ of, for trial by court-martial, summary of evidence to be made out in every case of *177*
Re-trial of 136
„ of, on loss of proceedings *238*
Right of, to claim separate trial on each charge . . . *213, 215*
„ of, to claim trial by British Officers 134, *179*
„ of, to consult Judge Advocate on questions of law . *182*
„ of, to forward interrogatories in writing in case in which a commission is issued . . . 142, 143
„ of, to list of members of court-martial . . . *182, 183*
Several, to be tried separately, procedure at trial . . . *219*
„ trial of, by summary court-martial . . *227*
„ trial of, by summary general court-martial . . *242*
Statement by, at investigation before C. O. *176*
„ by, at summary general court-martial . . . *243*
„ by, at taking of summary of evidence . 16, *177, 178, 186*
„ by, before summary court-martial . . . 20
„ by, before Commanding Officer, admissibility of, at trial 36
„ by, defended by Counsel or Officer, rules as to . *224*
„ by, in mitigation of punishment . 20, 23, *198, 199, 229*
„ by, in mitigation of punishment, form of . . *290, 291*
„ by, in reference to the charge . . . *198, 199, 229*
„ by, not on oath, at court-martial 51
„ of, in summary of evidence to be read to the court as evidence *186*
Summary of evidence to be taken down in presence of . 16, *176-178*
„ „ „ to be given copy of, in complicated case 17, *179*
Swearing of court to try several *218, 219*
Trial (*q.v.*)
Warning of, for trial by court-martial . . 19, 22, *182, 183*
Where to be tried 136

Acquittal.
Civil court by, minor punishment cannot be awarded after . 18

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Acquittal—*contd.*
Court-martial by, no reflection on convening officer . . 24
Court-martial or criminal court by, bars, second trial for same offence (*See* also **Trial**) . . . **136**, *197*, *198*
Finding of, may be reversed by court on revision . . . 25, *208*
„ of, requires confirmation under Indian Military Law 24, 146
Form of *203*
Honourable, Finding of, when correct *203*
Procedure on *205*, *230*
Subsidiary order in case of, form of *311*
Active Service.
Corporal punishment for offences on . 60, 126, 127, 129, 130
Counsel at courts-martial on, restrictions as to . . . *222*
Court-martial, summary general, rules as to . . 25, 26, 134
Definition of 104, 105
Evidence of prosecutor on, how to be given . . . *200*
Failure to rejoin when corps is ordered on, . . 116, 117, *258*
Offences, civil, on 59, 118, 125, 126, 127, 129, 130
Officer Commanding Forces in the field can reduce N. C. O. on *250*
Persons subject to I. A. A. on 101
Power of Provost Marshal to inflict corporal punishment on 10, 110
Punishment of certain Native followers on . . . 109, 110
Reduction of N. C. O. on *250*
Summary general courts-martial on, officers empowered to convene 134
Adjournment (*See* **Court Martial**).
Admissions and Confessions (*See* also **Evidence**) . . . 34-37
Adultery 72, 363, 364
Affairs of State.
Definition of 141
Affirmations (*See* **Oath or Affirmation**).
Affray.
Committing an 72, 342
Alarm.
Intentionally creating, in time of peace 113, *265*
„ „ in time of war . . . 111, 112, *255*
Allowance.
Obtaining, by false statement 122, *262*
Allowances (*See* **Pay and Allowances**).
Amending Act, 1891.
Repeal of portions relating to I. A. W. 157
Ammunition.
Dishonest misappropriation of, ... 117, 118, *258*
Furnishing false return of, ... 122, *263*
Making away with, losing by neglect or wilfully injuring 121, *261*, *262*
Animal.
Exemption of, from attachment 154
Illtreating, killing or making away with 121, *261*
Annoyance.
Offence of 367
Appeal.
Sentence of transportation, etc., against, period within which to be made *172*
Apprehension.
Resistance to 72, 73

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Arms.
Casting away, in presence of an enemy . . . 111, 112, *254*
Collecting, with intention of waging war against the Queen . 340
Collective responsibility for loss of 9, 10, 109, *245*
Dishonest misappropriation of 117, *258*
Exemption of, from attachment 154
Furnishing false return of, and punishment for . . . 122, *263*
Making away with, losing by neglect or wilfully injuring 121, *261*, *262*

Army.
Definition of 104

Army Act.
Offences in relation to courts-martial by persons subject to 123, *240*, *241*

Army and Navy.
Offences relating to 73, 340, 341

Army Regulations, India, Volume I.
Penal deductions shown in 132
Persons in military custody subsisted under regulations, in . 132

Army Regulations, India, Volume II.
Fines awardable as minor punishments specified in . . . 132
Minor punishments specified in 9, 18, 109, 132

Arraignment.
Accused of 19, 23, 135, *194*, *213*, *227*, *243*
„ of, at summary court-martial *227*
„ of, at summary general court-martial . . . *243*
„ of, form of *288-290*, *302*, *303*
„ of, officer not to be added to court after . . . *217*
„ of, persons who usually carry out *194*
Charge, accused to be informed of, before *182*, *183*
Meaning of *182*, *183*
Officer cannot be added to court after *217*
Separate, where two persons are tried together for same offence *194*, *227*

Arrest.
Civil or Revenue process under, members, etc., of court-martial exempt from 153
Close, meaning of 15
Debt for, exemption of persons subject to I. A. A. from . 153, 154
Deserter of 155, 156
Military Authorities, by, of person subject to I. A. A. . 156
„ custody (*q. v.*).
N. C. O. (*q. v.*).
Offender in close, not to bear arms except by order of C. O. . 15
„ in close, not to perform military duty . . . 15
Officer (*q. v.*).
Open, meaning of 15
Persons in possession of any cash stores, etc. 15
Persons subject to Military Law as N. Os., W. Os. and N. C. Os. may be placed in 14, 15
Procedure after, on charge of certain offences under Indian Official Secrets Act, 1889 . . . . . 419, 420
Rules as to 14, 15, 17
Warrant Officers (*q. v.*)

Articles of War, Indian 2

Assault.
Definition of 66, 67, 113, 351
Difference between, and "use of criminal force" . . 67, 114
Example of 114

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Assault—*contd.*
Indecent 68
Offences of . . . . . 350—352
Private defence against deadly, right of 336
Superior officer, on 114, *256*
Assault and Criminal Force 73, 74
Assembly.
Unlawful (*see* **Unlawful Assembly**).
Assisting the Enemy 111, 112, *254*
Attachment.
Property exempted from 154
Attempts to commit offences 74, 367
Attestation (*see* also "**Enrolment**").
Affirmation or oath at, form of . . . . . *169—171*
„ or oath to be administered on . . . 106, *169—171*
Attested person can, as a rule, only be summarily discharged by higher military authorities 106
Attested persons only are eligible for non-commissioned rank 8, 104, 106
Definition 8
Entry in enrolment paper of 106
Mode of, and officer before whom it shall take place 106, *170, 171*
Non-combatants to be attested *169*
Oath or affirmation on, how administered . . . *170, 171*
Persons to whom restricted 8, 106, *169*
Privileges conferred by *8*, 106
Separate attestation document not required 8
Attested Person.
Dismissal or discharge of, when requiring approval . . *248*
Attesting Officers 106, *170*
Attorney.
Power of, exempt from fees 88

B

Band.
Dishonest receipt of property of 118, *259*
Theft of property of 118, *259*
Wilfully injuring property of 121, *262*
Bazar.
Appearing without authority armed in, ... 124, *265*
Body.
Right of private defence of, and property 334
Breach of Trust (*See* **Criminal Breach of Trust**)
Bribe.
Taking, for procuring promotion 124, *265*
Brigade.
Definition of 104
British India.
Civil offences committed outside, how to be dealt with . 118, 125, 126
Meaning of term 126, 322
Offences in relation to courts-martial by civilian when court is outside, procedure on *242*
Offences punishable by whipping under law of . . . 129, 130
Table of places in and out of 126
British Officer.
Accused, right of, to claim trial by 134, *179*
Definition of 103
Summary courts-martial can only be held by . . . 13

[*References to I.A.A. are in thick type, those to Rules in italics.*]

C

Camp.
Absence from, after retreat beating **116, 117,** *258*
Appearing without authority armed in . . . **124,** *265*
Being without authority two miles distant from . **116, 117,** *258*
Using criminal force to persons bringing supplies to . **111, 113,** *255*
Cantonment.
Absence from, after tattoo **116, 117,** *258*
Appearing without authority armed in . . . **124,** *265*
Carriage.
Exacting, without proper authority **120, 121,** *261*
Casting away arms in presence of an enemy . . **111, 112,** *254*
Cat.
Regulation, Description of *245*
Causing hurt **118, 119,** *260, 266*
Voluntarily, intent is essence of offence of . . . **119**
Certificate.
Discharge **108,** *171*
Discharge, how to be furnished to person dismissed or discharged *171*
Challenge of Members of Court (*see* **Courts-martial,** Challenge).
Character.
Bad, of accused irrelevant unless evidence of good character has been given **43, 388**
Bad, previous conviction as evidence of **43**
Effect of evidence as to **43, 44**
Evidence as to, at trial **43, 388**
„ as to, court always to take . . . *205*
„ as to, how to be given, on conviction . . . *205, 206*
„ of, after conviction . **43, 145, 146,** *205, 206, 229, 230, 243*
Good, of accused always relevant **43, 388**
Includes, "reputation" and "disposition" . . . **43**
Witness in favour of accused, when to be called . . *205, 229*
Charge.
Accused may claim separate trial on each charge . . *213, 215*
„ must be present during investigation of . . *176, 177*
„ must understand **19,** *182, 183*
Address by accused in reference to **23**
Alternative, accused not to be allowed to plead "guilty" to lesser charge in *199*
Alternative, confirmation of finding on *209, 210*
„ conviction on one only *199*
„ Finding of "Not Guilty" when to be recorded . *203, 204*
„ when usually to be framed . . . **144**
Amendment of *186, 194, 195, 227, 228*
„ of, at summary court-martial . . . *227, 228*
Charge sheet, amendment of *194, 195*
„ „ attached to proceedings *227*
„ „ commencement of, form of *253*
„ „ commencement of, ... *180, 253*
„ „ contents of *180, 181*
„ „ copy of, to be given to accused before arraignment *182, 183*
„ „ court, laying before *286*
„ „ disposal of, by convening officer . **17, 18,** *155, 186*
„ „ may contain one charge or several charges . *179*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Charge—*contd.*

Charge sheet, order for trial inscribed by convening officer on 18, 22, *227*
„ „ person charged, description of *180*
„ „ procedure when charges contained in more than one . . . . . 23, *213—215*
„ „ repeated instances of same description of offence may be included in the same . . . *215*
„ „ separate, charges when to be contained in . *213, 214, 215*
„ „ „ offences of different descriptions should be included in *215*
„ „ „ order of trial in case of . . . *213, 215*
„ „ „ procedure in case of . . *213, 214, 231*
„ „ signing of *288*
„ „ statement in, showing that person is subject to Military Law *180*
„ „ to be in English *220*
„ „ „ signed by C. O. of accused . . . *312*
„ „ „ read and explained to accused, before trial *182, 183*
„ „ to whom sent by convening officer . 17, 18, *185, 186*
„ „ validity of *181, 182*
„ „ when to be forwarded with application for court-martial 17, 18, 21
„ „ where to be inserted in proceedings . . . *313*
Civil offence, for, essence of offence to be expressed . . *181*
„ „ how to be framed *266*
Contents of *180*
Convening officer, responsibility of, for correctness of . . 17
Damage, particulars of, to be stated in *180, 181*
Desertion, for, time important element in 117
Dismissal of, by C. O. 16, *176*
Disposal of, by C. O. . . . *176, 177, 178, 179*
Each, to state one offence only *180*
Forms of . . . . . *63, 180, 253—267*
note as to use of *268, 269*
Framing of . . . . . 60, 62, *179—182, 242*
Good and bad, examples of *181*
How to be disposed of, if C. O. considers it should be proceeded with . . . . . *176—178, 179*
Illustrations of . . . . . *267, 270—284*
Indian Official Secrets Act, under, procedure on arrest for . 419, 420
Informality or defect in, to be pointed out by Judge Advocate *225*
Insubordinate language, for, should specify conduct or language alleged to be insubordinate 115
Intoxication if committed on duty to be specified in particulars of 119
Investigation of, before trial, Commanding Officer's duties in relation to . . . . . 15, 16, *175—179*
Investigation of, against person subject to I. A. A. by proper military authority 156, *175, 176*
"Making away with," for, when to be preferred . . . 121
Meaning of *179*
Minor offences, for, when may be dropped 22, *215*
Misappropriation, each instance of, to be in separate . . 118

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Charge—*concld.*
Mistake in name or description of person charged . . *181, 182*
Objection to, by accused *183, 194, 227*
„ „ by accused, form of *289*
Offence, if not civil offence, to be stated in words of the Act . *180, 181*
„ one only to be stated in each *180*
Officer who investigated, disqualified from serving on court-martial *187*
One sentence in respect of all 20, *213, 215, 230*
Particulars of facts, statement in, of, in respect of which deductions may be awarded *180, 181*
Particulars, statement of, in *180, 181*
Preliminary investigation of, by Double Company, etc., Commander 15
Revision of, by convening officer 17
Separate, each instance of misappropriation to be in . . 118
Separate plea to each *194, 227*
Specific offence should be alleged in 28, *180*
Statement by accused in reference to *198, 199, 229*
Substance of, to be proved 29, *181*
Summary general court-martial, at, how to be framed . . *242*
Time or place of offence when material to 29
Validity of, inquiry by court into *188*
What must be proved in 29
Cheating. 69, 74, 358, 359
Child.
Act done in good faith for benefit of, by consent of guardian, not an offence 331, 332
Act of, under seven years, not an offence 330
Civil Authorities.
Arrest by, of person subject to I. A. A. 156
Persons included in term 156
Priority of hearing by, of cases in which native officers or soldiers are concerned 154, 155
Steps by, to capture deserter 155, 156
Civil Court.
Conviction by, bars retrial under military law . . . 40, 136
„ of soldier by, evidence of, before Court-Martial . *205, 206*
Civilians.
Offences in relation to court-martial by, and manner of dealing with . . . . . 123, *240—242*
Civil Offence (*See* **also Offences**).
Charges for, how to be framed *266*
Definition of 104
Civil Power.
Duties in aid of 87, 88
Offenders when to be dealt with by 118
Civil prison.
Meaning of 149
Transmission of military convicts and prisoners to . 14, 148, 149
Warrant for setting aside or varying sentence, when to be forwarded to officer in charge of 149, 150
Warrant of commitment when person is sentenced to imprisonment to be undergone in *315*
Clothing.
Dishonest misappropriation of 117, 118, 258
Exemption of, from attachment 154

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Clothing—*contd.*
Furnishing false return of, and punishment for . . . 122
Making away with, losing or injuring 121, *261*, *252*
Code of Criminal Procedure, 1898 421-424
Command.
Illegal, disobedience of 88
Lawful, disobedience of 114, *256*
Lawful, meaning of 114
Commander-in-Chief in India.
Authority to dismiss native officer 9, 106
Deductions from pay and allowances, remission of, by . . *250*
Functions might be exercised by some civil official, in regard to certain forces 6
Minor punishments legislated for under authority of . . 9
Power of, to order assembly of summary general court-martial in time of peace 25, 134
Power to convene general courts-martial . . . 12, 133
Remission of deductions from pay and allowances by . . *250*
Commanding Officer.
Accused, of, disqualified from serving on court-martial . . *187*
Accused, of, summoning of witnesses by 140, 141
Acting N. C. O. may be ordered to revert to his permanent grade by 108
Adjournment for taking down summary of evidence 16, *176*, *177*, *178*
Application by, for general or district court-martial . . 21, *177*
„ by, to civil authorities for arrest of offender . . 156
„ by, to try accused by S. C. M. *18*, *177*
Caution as to expressing opinion as to accused person's guilt . 16
Charge, dismissal of, by 16, *176*
„ how to be disposed of by, after investigation . . *176-179*
„ procedure on investigation of . . 16, *176-178*, *179*
Consideration of summary of evidence by . . . 17, *178*, *179*
Convict of, dismissal to be carried out on day of promulgation of sentence, by *172*
Corps, of, imprisonment that can be awarded on a summary court-martial, by 20, 138. *249*
„ of, power of, when sitting on summary court-martial 20, 138, *249*
„ or department, of, summary court-martial by . . 138
Definition of 13, 103
Detachment, of, powers of, when sitting on summary court-martial 20, 138, *249*
Discharge of followers by 106
Dismissal of convict by 9, 107, 108, *171*, *172*
Disposal of case by, delay not to exceed one day . . . *177*
Duty of, as to investigation of charge for offence. . . *175*, *176*
„ of, to refer to superior authority in certain cases 16, 18, 137, 138, *176*, *177*, *178*, *179*
„ of, to see that list of members of court is furnished to accused *182*, *183*
Duty of, required by magistrate to disperse assembly . . 421, 422
„ on reading of summary of evidence . . . 17, *178*, *179*
Imprisonment by, to be awarded in days *178*
Investigation of charge for offence by *175*, *176*
Medical officer not, of patient or sick attendant . . . 19
Minor punishment, persons who can be awarded, by . . 18, 109
Non-combatant, restrictions on, for S. C. M., removed . . 19
Offence, any can be legally tried by, with proper sanction . 19
Patient or sick attendant, of, when corps not in station . . 19
Persons subject to Military Law, of, ... 102

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Commanding Officer—*contd.*
Power of, ... 18, *175-179*
Power of, to discharge unattested person **106**
Punishment can be diminished but not increased by, before its completion *179*
Punishment of certain native followers by 109, 110
„ summary award by *179*
Reduction of acting N.-C. O. by 9, 108
Reference by, to superior military authority 16, 18, 137, 138, *176, 177, 178, 179*
Remand of accused by 17, 18, 21, *178, 179*
Remission of deductions from pay and allowances by, in case of man absent without leave 133, *250*
Statement by accused before, admissibility of, at trial . . 36
Summary award of, no appeal from *179*
„ „ punishment by *179*
„ court-martial, for purposes of, ... 19
„ „ duty of, to refer to superior authority in certain cases . . *176*
„ „ remand of accused for trial by . . 18, *176, 177, 178.179*
„ „ should usually take interpreter's oath at 19
„ „ to try accused by, application by . 18, *177*
Summary disposal of charge by *176-178, 179*
„ power of 18
To give information of desertion to civil authorities . . 155, 156

Commission.
Application to Judge Advocate-General (or deputy) for issue of 141, 142, 143
Considerations for courts-martial, with regard to taking evidence on 143
Disposal of, and deposition thereunder, by Judge Advocate-General (or deputy) 142
Evidence by, taking of, when to be resorted to . . . 143
„ on, how taken 142
Execution and return of, adjournment of trial for . 142
Meaning of 142
Persons to whom issued 141, 142
„ who may issue *234*
Return of, to Judge Advocate-General (or deputy) with deposition of witness 142
"Return" of, evidence of facts stated in them . . . 40, 142
Rules as to taking evidence of witness by 141-143

Communication.
Good faith in, not an offence 383
Official, protection of 141

Commutation (*See* **Punishments, Finding and Sentence, etc.**)

Complainant.
Should never be examined on commission 143

Complaint.
Statement, and, difference between 31, 32
Superior or other officer against 153

Confessions (*See* **also Evidence.**)
Court of Inquiry, at, inadmissible before court-martial . . 52, 247
Fraud, etc., obtained by, admissibility of 35, 381

Confessions and Admissions (*See* **also Evidence**) . 34—37, 378—381

[*References to I A.A. are in thick type, those to Rules in italics.*]

Confidential Reports, etc.
Privilege of 52
Confinement (*See* **also Wrongful restraint.**)
Accused of, pending trial by court-martial 17
Soldier in military custody is put in 14, 15
Solitary, limit of 150
„ periods of 130, 131
Confinement to Lines.
Court cannot sentence prisoner to *230*
Confirmation.
Acquittal, finding of, requires 24, 146
Authorities who can interfere with sentence after . . 25, 148
Finding, of, after plea to jurisdiction *196*
„ and sentence of . . . . . 24, 146—148, *207—210*
„ of, on alternative charge *209, 210*
„ or sentence of general and district court-martial invalid without 13, 146
„ and sentence of summary court-martial do not require 147
„ and sentence, summary general court-martial, of . 146
Form of *300, 301*
Proceedings, summary general court-martial, of, form of . *309*
Promulgation of *208*
Refusal of, when rule 42(B) not complied with . . . *199*
Sentence, informal or excessive *210*
Substitution of valid for invalid sentence after . . . 147
Transmission of proceedings of court-martial for . . 25, *205, 207*
Confirming Authority.
Cannot amend wholly illegal sentence *210*
District courts-martial, in case of 13, 146
General courts-martial, in case of 12, 13, 146
Plea to jurisdiction duty in case of *196*
Sentence. Powers to vary informal or excessive . . . *210*
Variation of excessive sentence by *210*
Confirming Officer.
Confirmation to be refused by, when rule 42(B) not complied with *199*
Court-martial can be ordered to take additional evidence on revision by 25, 147, *207, 208*
Irregular proceedings, rules as to confirmation of, by . . *239*
Mitigation, commutation or remission of punishment by (*See* **also under Punishment**) 25, 146, 147
Power of, to mitigate, remit or commute sentences 146, *208, 209, 210*
Procedure when member of court becomes *222*
Proceedings of general or district courts-martial can be sent back once for revision by 25, 147
Reference by court to, prior to finding *202, 203*
Conspiracy.
Evidence as to 32, 374, 375
To commit offences punishable under section 121, I. P. C. . 339, 340
Convening Officer.
Acquittal of accused, no reflection on 24
Amendment of charge by *194-195*
Annulment of proceedings by, when provisions of section 92 not complied with 145
Application for court-martial, consideration of, by . 18, 19, 21, *185*
Charge, informality or defect in, Judge Advocate to inform . 225
„ sheet, disposal of, by 17, 18, *185, 186*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Convening Officer—*contd.*
Considerations to be borne in mind by 21. 22
"Convening Order" by 22
Convening Order, members and officials of court appointed or detailed by 22
Court-martial, may delay assembling 17
„ members of, appointed or detailed by . . *185*
Disqualified from serving on court-martial *187*
Duty of 17, 18, 21, *185, 186, 233, 234*
„ before convening general or district court-martial . *185*
„ to summon witnesses 140, 141, *233*
General, district, and summary general court-martial, for 13, 133, 134
Intention of, not to influence court 24
Judge-Advocate when to be appointed by 139
New trial ordered by 145, *194, 195*
Prosecutor appointed by *188, 189*
Reasons for adjournment to be reported to 23
Reference by, to Superior Authority 21, *185*
Release accused, power to *185*
Responsibility for correctness of charges of 17
Revision of charges by 17
Summoning witnesses and production of documents by order of 140, 141, *233*

Convening Order.
Summary general court-martial, for, form of *308*
To be annexed to the proceedings *185*
To be read on assembly of court *187*
To state if larger number of officers is not available for court-martial 134

Convict.
Dismissal of 9, 107, 108, *171, 172*
Dismissal of, by C. O., when to be carried out in case of court-martial sentence *171, 172*
Dismissal of, by C. O., when to be carried out in case of sentence of Criminal Court *171, 172*
Dismissal of, how to be carried out *171, 172*

Conviction.
Civil Court, by, bars retrial under military law 40, 136
„ „ by, evidence of, while accused was a civilian, not to be taken *206*
Confession of accomplice alone, at joint trial will not justify . 34
Evidence as to character, etc., how to be given on . . . *205, 206*
„ of character after 43, 145, 146, *205, 206, 229, 230, 243*
On unsupported testimony of accomplice legal . . 51, 407
One offence, of, permissible on charge of another . 29, 143, 144, *204*
Previous, as evidence of bad character 43
„ evidence of, after conviction at summary court-martial 43, *230*, 146
Previous, proof of, at court-martial . 40, 43, 145, 146, *200, 205, 206, 230, 237, 243*, 410
„ how to be proved *206*
„ witness to prove, when to be called *237*
Procedure on . . . . . *205, 206, 297—299*
Proceedings on, form of . . . . . *297—301*
Responsibility of court for unjust *225*

Corporal punishment (*See* **also Punishment**).
Instrument of 150
Sentence of, form of *299*, 306
Subsidiary order in case of sentence of, form of . . . *311*

[References to I.A.A. are in thick type, those to Rules in italics.]

Corps.
Bodies which are *248, 249*
Commanding Officer of, power of, on S. C. M. . . . 20, *249*
Definition of 104
Department, or, every person enrolled under I. A. A. must belong to some *169*
Deserter to be tried in original 117
Corresponding with enemy 111, 112, *254*
Counsel.
Defence, for *222, 223*
Examination of witnesses by *223, 224*
General rules as to *222, 223, 224*
Number of, not restricted *222*
Prosecution, for *222, 223*
„ , for, opening address should always be made by . *223*
Prosecutor or accused, for, to have same rights as prosecutor or accused *223*
Qualifications of *224*
Requirements for the appearance of *223*
Rules as to, at general and district courts-martial . *182* 222, 223
Countersign.
Watchword, included in 112
Court of Inquiry.
Confession at, inadmissible as evidence at Court-Martial 52, 36, 37, *247*
Copy of record of declaration; admissible on trial for desertion 156
Declaration by, on illegal absence 156. *247*
Evidence at, when to be taken on oath or affirmation . . *246*
„ , false, before 36, 37, 52, *247*
Illegal absence of person subject to I. A. A., on . . . 156, *247*
„ „ of person subject to I. A. A., on, oath or affirmation to be administered at 156, *247*
Loss of rifles, etc, on *245*
„ „ „ to record an opinion *245*
Members of, disqualified from serving on court-martial . . *187*
„ „ not sworn *246*
„ „ when to make declaration . . . *246, 247*
Number of officers required *246*
Prisoner of war, on, evidence to be on oath or affirmation . *246*
Prisoner of war, on, members of, to make declaration . . *246*
Proceedings inadmissible at C. M. 36, *247*
„ of, admissible as evidence on trial of person for giving false evidence before Court of Inquiry . . . *247*
Proceedings of, forwarding of *247*
„ of, privilege of 52
Procedure of, under section 126 . . . . 156, *247*
Reassembly of *246, 247*
Regulations for, other than under section 126 . . *245—247*
Who may assemble *245*
Court of Justice.
Act done pursuant to judgment or order of, not an offence . 329
Offences relating to 74
Courts-Martial—
Accused to be warned for trial by . . . 19, 22, *182, 183*
Acquittal or conviction by, bars retrial for same offence 136, *197, 198*
Address by accused at . 23, 24, 26, *200, 201, 205, 229, 237*
Adjournment, accused, illness of 135, *216, 217*
„ „ to prepare his defence . . *182, 183, 216*
„ addition to, alteration in, or omission from charge, for *194, 195*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Courts-Martial—*contd.*
Adjournment, before examination of witnesses . . . *194, 195*
„ convening or confirming officer, for reference to . *216*
„ Deputy Judge Advocate General's opinion, for . *216*
„ for fresh members to be appointed when full number detailed not available . . . *186*
„ for insufficient number of officers . . . *186, 188*
„ for procuring witnesses *233*
„ form of *292*
„ Judge Advocate, absence of *216*
„ „ „ to prepare his summing up . *216*
„ military exigencies, for, ... *216, 217*
„ of, for execution and return of commission . 142
„ on death, illness, etc., of Judge Advocate . . *224*
„ place and time, to what allowed . . . *216*
„ prosecutor to prepare his reply . . . *216*
„ reasons for . . . 23, *186, 203, 216, 217, 231 232, 233, 234, 244*
„ superintending officer, absence of . . . *216*
„ to view any place *216*
„ when plea in bar of trial is allowed . . *197*
„ when special plea to jurisdiction allowed *195, 196*
„ witnesses, attendance of, for *216*
Annulment of proceedings of, when provisions of section 92 not complied with 145
Application for sanction to hold summary, documents to accompany 18, 21, *177*
„ usually to be disposed of at once . . 17
Arraignment of accused (*See* **Arraignment, Accused**, etc).
Assembly of 19, 22, 25, 26, *185*
„ , order for, to whom to be sent . . . *185*
Books on Military law to be before *211*
Cases where convening or sanctioning officer may delay assembling or sanctioning a court-martial 17
Censure on individuals by, caution as to *221*
Challenge of members by accused **139, 140,** *189, 190, 242, 243, 287, 288*
Charge (*q v*)
Civil offence committed in British India when to be tried by 125
Civil offences, when triable by 59, 60
Clearing the court *231*
Closing of court *215, 216*
Commanding Officer, person punished by, cannot be tried for same offence by 18
Composition of **134, 135,** *187*
Conduct of proceedings *211*
Confirmation (*See* also under **Confirmation** above, **Confirming officer** and Confirming **Authority**) 13, 20, 24, 25, 26, **146—148,** *207—210, 500, 501, 509*
Confirmation proceedings of summary, do not require . . 20, 147
Constitution of **11, 12, 22, 25, 134, 135,** *187, 188*
Contempt of Court, by civilian . . . **123,** *240, 241, 242*
„ „ „ by person subject to I. A. A., **122, 123,** *240, 241*
Contempt of court, by person subject to Army Act, **123,** *240, 241*
Convening of (*See* also **Convening Officer, etc.**) **12, 13, 21, 22, 26, 133,** *134, 185, 186*
Convening order to be annexed to proceedings . . . *185*
„ „ „ „ read on assembly of *187*

[References to I.A.A. are in thick type, those to Rules in italics.]

Courts-Martial—*contd.*
Convening order to state if larger number of officers is not available for 134
Conviction (*q. v.*)
Corporal punishment, by sentence of . . 11, 60, 126, 129, 130
Court of Inquiry proceedings, cannot call for 52
Custody of accused at 23
Definition of 104
Dissolution of 135
District . . . . . 11, 12, 13, 17 21, 22, 23, 24, 25, 60, 133, 134, 137, 139, 146, *177*, *185—225*, *286—301*
„ accused may address court twice on plea of "Guilty" 23
„ application for 21, *177*
„ composition of 22, 134, *187*
„ confirmation necessary for validity of all findings and sentences of 13, 146
„ convening of 134, *185*, *186*
„ counsel at, rules as to *222*, *223*, *224*
„ disqualifications of members of . . 22, *186*, *187*, *188*
„ finding or sentence of, invalid without confirmation 146
„ form of assembly for *285*
„ Judge Advocate may attend 139
„ members of, to be all British officers or all native officers 22, 134
„ more than legal minimum, not usually required at . *185*
„ powers of 13, 60, 137
„ proceedings of, form of . . . . *286—301*
„ „ „ may be sent back once for revision by confirming officer . . . 25, 147
„ „ „ revision of . 25, 147, *207*, *208*, *299*, *300*
„ restrictions on warrants for convening . . . 133
„ senior Member to sit as President at . . . 139
Duty of, to sit from day to day *216*
Exclusion of person interrupting proceedings of . . *211*, *240*, *242*
False evidence before, considerations for court before instituting proceedings against witness for *240*
False statement before 123, *264*
Finding and sentence (*q. v.*)
Finding of acquittal may be reversed on revision by . . 25, *208*
General . . . . . 6, 11, 12, 13, 17, 21, 22, 23, 24, 25, 133, 134, 137, 139, 146, *177*, *185—225*, *286—301*
„ accused may address court twice on plea of "Guilty" 23
„ application for 21, *177*
„ composition of 22, 134, *187*
„ confirmation necessary for validity of all findings and sentences of 13, 146
„ convening of 12, 13, 21, 22, 133, *185*, *186*
„ counsel at, rules as to *182*, *222*, *223*, *224*
„ disqualifications of members of . . 22, *186*, *187*, *188*
„ finding or sentence of, invalid without confirmation . 13, 146
„ form of assembly, for *285*
„ functions might be exercised by civil court or official, in certain irregular forces . . . . .

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Courts-Martial—*contd.*
General, Judge Advocate at 22, 25, 139
„ „ to attend every 139
„ members of, to be all British officers or all native officers 22, 134
„ not to be dissolved unless reduced below five members 135
„ powers of 13, 137
„ proceedings of, form of . . . . . *286—301*
„ „ of, may be sent back once for revision by confirming officer . . . 25, 147
„ „ of, revision of . . . 25, 147, *207, 208*
„ restrictions on warrants for convening . . . 133
„ senior member to sit as President . . . 139
„ should usually be composed of more than legal minimum *185*
Hours of sitting *217*
Illness of accused at, procedure on 135, *216, 217*
Imperial Service Troops, on, ... 91
Inquiry by, as to amenability of accused and validity of charge *188*
Inquiry by, as to legal constitution *187, 188*
Insult to 123, *263*
Interpreter at, appointed or detailed by convening officer . *185, 219*
„ oath to, at . . . 19, *193, 194, 219, 243*
„ to be detailed at nearly all *185*
Interruption of proceedings of, procedure on . . *211, 240—242*
Judge Advocate (*q. v.*)
Judicial notice by 44, 45, 144, 145, 389, 390
Jurisdiction 13, 16, 23, 70, 71, 136, 137, *188, 195, 196*
Kinds of 133
Legal constitution of *187, 188*
Limitation of powers 11, 60
Members of, absence of, effect of *216, 217*
„ administration of oath by *194*
„ appointed by "Convening Order" . . . 22
„ appointed or detailed by convening officer . . *185*
„ cannot confirm finding and sentence . . . *222*
„ challenge of, by accused 139, 140, *189, 190, 242, 243*
„ charge sheet when to be forwarded to senior member 17, 18, *185, 186*
„ disqualifications for acting as 22, 123, *186, 187, 188, 241*
„ disqualified from trying witness who has given false evidence before them *241*
„ eligibility of 22, *186, 187, 188*
„ exempted from arrest under civil or revenue process 153
„ fresh, cannot be appointed after commencement of trial *186*
„ general or district, to be all British officers or all native officers 22, 134
„ illness of, procedure on *216*
„ list to be given to accused *182, 183*
„ not to be influenced by case being sent for trial 21, 22
„ not to confirm proceedings *210*
„ oath or affirmation to, administration of . . 23, 26, 140, *190—192, 218, 219, 243*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Courts-martial—*contd.*
Members of, objection by accused to 23, **139, 140,** *186. 189, 190, 218, 219, 242, 243*
„ opinions of, absolute majority required . . *217*
„ opinions of, by whom to be taken . . . *218*
„ opinions of, how taken *217, 218*
„ „ not to be disclosed . . . *218*
„ „ (*See* also **Votes** below).
„ „ to be taken separately on each charge *218*
„ „ on finding, to be taken separately . *202*
„ responsibility of, for unjust conviction . . *225*
„ seating of 22, *211*
„ swearing of, to try several accused . . *218, 219*
„ swearing or affirming of 23, 26, **140,** *190-192, 218, 219, 243*
„ votes, equality of, as to finding or sentence, procedure on **140**
„ votes, every decision of court-martial to be passed by absolute majority of . . . **140,** *217*
„ witness, competent for defence only . . 51, 52, *233*
Memoranda for guidance of *312, 313*
Oath or affirmation at, persons to administer . . *194*
„ to interpreter at, form of, ... *193. 194*
„ to Judge Advocate at **140,** *192*
„ to members at summary general *243*
„ to officer attending for the purpose of instruction, form of *192, 193*
„ to president and members, form of *190-192*
„ to shorthand writer at *193*
„ to superintending officer at **140,** *192 243*
„ to witnesses at **140,** *234, 235, 243*
Offences in relation to . . . **122, 123,** *239-242, 263, 264*
„ „ by civilians, and persons subject to A.A. and method of dealing with . **123,** *242*
„ „ by civilian, procedure on . . **123,** *240–242*
„ „ by civilian, when Court is outside British India, procedure on *242*
Offences in relation to, by person subject to A. A., procedure on *240, 241*
Offences in relation to, by person subject to Indian Army Act **122, 123,** *240, 241*
Officers in waiting at, appointed by convening officer . . 22, *185*
„ „ challenge of *189, 190*
„ „ serving of 22, *242*
„ „ vacancies filled by *189, 190*
„ who may set aside proceedings of summary . . **147**
Officer who investigated charge disqualified from sitting on . *187*
Open, sitting usually to be *216, 231*
Opinions of members of, how taken *217, 218*
Penal deductions by order of **131, 132**
Person acquitted or convicted by, cannot be subjected to minor punishment **18**
Persons attending, privileges of **153**
Plea at (See **Plea**).
Plea in bar of trial at . . **40,** *195, 196, 197, 198, 228, 289, 290*
Powers of **13, 25, 137, 138**
Power of, over address by prosecutor and accused . . *211, 212, 213*
President (*See* "**President of Court Martial.**")
„ exempted from arrest under civil or revenue process **153**

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Courts-martial—*contd.*
President, senior member sits as 12, 22, 139
„ of, oath to, administration of . . . 140, *190—192*
Privileges of persons attending 153
Procedure 13, 22, 23, 24, 25, 139-144, *200, 201*
„ by, when witness has to be examined on commission 143
„ irregular, responsibility for *239*
„ „ validity of, when no injustice is done . *239*
„ on illness of accused 135, *216, 217*
„ on plea of guilty . 19, 20, 23, 45, *196, 197, 198, 199, 228, 229*
„ „ „ of "not guilty" . . 20, *199, 200, 201, 229*
„ on revision . . . 25, 147, *207, 208. 299, 300*
„ when accused calls no witnesses to facts of case 24, *200, 201*
„ when accused calls witnesses to facts of case . . 24, *201*
„ when member becomes confirming officer . . *222*
Proceedings, absence of material witness may invalidate . *234*
„ adjournment before conclusion of trial, to be entered in *216, 217*
„ annulment of, by convening officer when section 92 is not complied with . . 145
„ authentication of *207, 231*
„ before sentence at summary, form of . . *305*
„ commission, return thereto, and deposition to form part of 142
„ copy of, payment for *238*
„ „ right of person tried to . . . *233*
„ corrections not allowed to be made after promulgation, in *221*
„ custody and inspection of *221, 222*
„ forms of . . . . . *286—313*
„ how to be transmitted *222*
„ information or advice by Judge Advocate, may be entered in *225*
„ inspection of *221, 222*
„ interpreter when responsible for accuracy of . *220*
„ interruption of, procedure on . . . *211*
„ Judge Advocate or Superintending officer to conduct, when court composed of native officers *211*
„ loss of *238, 239*
„ not to be confirmed by a member . . . *210*
„ officer responsible for accuracy of . . . *220, 221*
„ officer who can set aside 20, 21, 147
„ preservation of, period of *238*
„ president to conduct, when court composed of British officers *211*
„ prosecutor not to confirm *210*
„ questions to be entered whether answered or not 53
„ record on, of transactions *220, 221*
„ record to be in English language . . . *220*
„ responsibility of officer conducting . . . *211*
„ review of *232*
„ revision of . . . 25, 26, 147, *207, 208, 299, 300*
„ „ of, form of *299, 300*
„ setting aside of *20, 21, 147*

[References to I.A.A. are in thick type, those to Rules in italics.]

Courts-martial—*contd.*
Proceedings, signing of . . . 25, *205*, *207*, *208*, *222*, *231*, *237*
„ summary, of, form of . . . . *302—306*
„ „ not open to revision . . . 20, 147
„ „ of evidence to be attached to . . *228*, *229*
„ to be in presence of accused . . . *216*, *231*, *244*
„ to be in open court *216*, *231*
„ transmission of . 20, 25, 26, 147, *205*, *207*, *208*, *222*, *232*, *244*
„ transmission of, for confirmation . . 25, *205*, *207*
Prosecutor (*q. v.*)
Punishments, awardable by . . . . . 11, 60, 127—131
„ by, restrictions as to 60, 126, 127
„ by, scale of 127, 128
„ for contempt of 123
„ for giving false evidence before . . . 123
„ for omitting to attend before . . . 123
„ for refusing to answer question . . . 123
„ for refusing to be sworn or make affirmation . 123
„ for refusing to produce book or document . 123
„ lower than maximum, power of court to award . 128, 129
Questions to be determined at every trial 27
Re-assembly of, for revision 147, *207*, *208*
Reference by, to confirming authority when in doubt as to whether facts proved constitute the offence . . . *208*
Reference by, to confirming officer prior to finding . . *202*, *208*
„ to Government officer on trial for desertion, absence without leave, etc. 145
Regimental, abolished 11, 12
Remand for trial by, procedure 17, 18, 21, *178*, *179*
Reservist can be tried for any military offence . . . 89
Restrictions on warrants for convening general or district . 133
Revision of proceedings of . 20, 25, 26, 147, *207*, *208*, *299*, *300*
„ „ (*See* **Revision**).
Sentence (*See* "**Finding and Sentence**") . . . 138, *226—232*
Setting aside proceedings of summary 147
Sitting in closed court . . . *215*, *216*
„ period of *217*
Solitary confinement by order of . . . 130, 131
Statement, false, before . . . 123, *264*
Substitution of valid for invalid sentence . . . 14, 21, 148
Summary . . . 11, 12, 13, 16, 17, 18, 19, 20, 21, 43, 133, 135, 138, 139, *176*, *177*, *226—232*
„ accused cannot object to Court at . . . *226*
„ accused must be amenable to jurisdiction of 16, 23, *188*, *195*
„ accused cannot object to interpreter at . . . *226*
„ adjournment of *229*, *230*
„ application by C. O. for sanction to try accused by 18, *177*
„ approval of superior officer when required before carrying into effect sentence of . . . 147
„ arraignment of accused at *227*, *302*, *303*
„ assembly of *226*
„ by officer commanding corps or department . 20, 138, *249*
„ can only be held by a British officer . . 13
„ character of accused, evidence as to, at . . 43, 146, *229*
„ clearing of court *230*, *231*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Courts-martial—*contd.*
Summary, commanding officers should usually take interpreter's oath at 19, *226*
„ "court" is "officer holding the trial" . . . *227*
„ court need not be closed for finding . . . *230*
„ evidence at, when to be translated . . . *226*
„ „ of character, etc., at . . 43, 146, *229, 230*
„ form of proceedings of . . . *302—306*
„ held by junior officers in time of peace . . 13, 147
„ held by non-combatant commanding officer . . 19
„ history and origin of 12, 135
„ interpreter at 19, *226*
„ limits of imprisonment that may be awarded by . 20, 138
„ oath by court at 19, *226*
„ „ by interpreter at, form of *226, 227*
„ „ or affirmation at form of *226, 227*
„ offence against officer holding, should not ordinarily be tried by himself 138, *241*
„ offences triable by 138, *177*
„ officer holding the trial 19, 135
„ „ holding trial may take interpreter's oath at . 19, *226*
„ order for trial by 18, *176, 178*
„ persons triable by 137, 138, *176*
„ plea in bar of trial at *228*
„ powers of 13, 135, 138, 139
„ procedure where there is no summary of evidence . 20
„ proceedings of, authentication of *231*
„ „ charge sheet attached to . . *227, 313*
„ „ do not require confirmation . . 20, 147
„ „ form of . . . *302—306*
„ „ how recorded *226*
„ „ may be set aside but not merely on technical grounds . . 124, 125, 147
„ „ memorandum when to be attached to *231*
„ „ not open to revision . . . 20, 147
„ „ not to be set aside on purely technical ground . . 124, 125, 147
„ „ on plea of "guilty" at, form of *303*
„ „ „ "not guilty" form of *303—305*
„ „ preservation of *232, 238*
„ „ setting aside 147
„ „ to whom to be sent . . 20, 147, *232*
„ „ to be attended by two other officers. 19, 135
„ promulgation of sentence of *231, 232*
„ remand of accused for trial by 18, *176*
„ restrictions as to trial of offences by . 138, *176, 177, 231*
„ „ on power of C. O. to hold . . *176, 177*
„ sentences awardable by 138
„ special plea to jurisdiction of, by accused . . *228*
„ statement by accused before 20
„ summary of evidence attached to proceedings of . 20
„ swearing of, to try several accused . . . *227*
„ verdict at *230, 304, 305*
„ who can hold 13, 19, 135
„ who may be tried by 138, *176*
„ General 11, 12, 13, 25, 26, 133, 134, 135, 137, 146, *242—244*
„ „ active service, on, who may order assembly 25, 26, 134

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Courts-martial—*contd.*
Summary, General adjournment of *244*
„ „ administration of oath to members of . *243*
„ „ certificate of president as to proceedings . *309*
„ „ challenge of members by accused . . *242, 245*
„ „ charge how to be framed . . . *242*
„ „ composition of **135**
„ „ confirmation when necessary of **13, 25, 146, 147**
„ „ constitution of **25, 135**
„ „ convening of **134**, *242, 308*
„ „ „ officer also confirming officer of **26, 146**
„ „ „ order, form of . . . *308*
„ „ form for assembly and proceedings of *308, 309, 310*
„ „ may consist either of British or native officers or partly British and partly native officers . . . **135**
„ „ oath or affirmation, when to be administered at *243*
„ „ powers of **13, 25, 137**
„ „ power to assemble in time of peace restricted to Governor-General in Council and Commander-in-Chief . . . **25, 134**
„ „ proceedings after finding and sentence at *244*
„ „ „ certificate of president as to *309*
„ „ „ confirmation of, form of . *309*
„ „ „ to be in open court and presence of accused . . *244*
„ „ record of proceedings of . . . **25**, *242*
„ „ revision of proceedings **26**
„ „ senior member to sit as president at . **139**
„ „ sentence to be carried out immediately after confirmation . . . **26, 146**, *244*
„ „ superintending officer when to attend at . **135**
„ „ swearing of members of . . . **26**, *243*
„ „ trial by, of several accused persons . . *242*
„ of Evidence (*See* **Evidence**).
Superintending officer at **22, 135. 139, 140**, *243*
Swearing of interpreter and shorthand writer at **19**, *193, 194, 219, 226, 227, 243*
Time limit for commencement of trial **136**
Trial (*See* **Trial**).
„ by, no bar to subsequent trial by criminal court . . **13, 137**
View place, power of, to *216, 217*
Voting of members of **140**, *217, 218*
Warrants . . . . . **436—440**
Witness (*q. v.*)

Cowardice.
Evidence of character on charge of **43, 44**
Offence of, and punishment **111, 112**, *254*

Crimes (*See* **Offences**).
Criminal breach of trust **70, 75, 357**
Definition of **70, 357**

Criminal Court.
Acquittal or conviction by, bars retrial by Court-Martial **40, 136**, *197, 198*
Civil offences, in British India ordinarily triable by . . **59**

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Criminal Court—*concld.*
Classes of 421
Conviction of soldier, evidence of, before court-martial . *205, 206*
Definition of 104
Fine awarded by, deductions from pay in order to pay . 132
Person sentenced by, how to be dealt with **107, 108**
Power of, to require delivery of offender . . . **136, 137**
Trial by court-martial no bar to subsequent trial by . . 13, 137
Criminal force (*See* also **Assault**) . . . . 75, 350 - 352
Attempt to use, example of 114
Definition of 66, 114, 350, 351
Difference between, and "Assault" 67, 114
Using or attempting to use, to superior officer . . . **114**, *256*
„ to persons bringing supplies to camp . . **111—113**, *255*
Criminal Intimidation 75, 367
Criminal Procedure. (*See* **Code of Criminal Procedure.**)
Criminal Trespass 75, 360, 361
Cruelty **118**, *260*
Culpable Homicide. (*See also* **Homicide.**)
Attempt to commit 74, 75, 127, 348
Form of charge for *266*
Offence of . . 63, 64, 74, 75, 127, 345, 346, 347, 348
Custody.
Military, definition of 104
„ leaving before being set at liberty . . . **120**, *260*
Offences in relation to persons in, forms of charges . *260*
Persons detained in, before investigation by commanding officer, rule as to *175, 176*

D

Dacoity.
Offence and penalties 75, 355
Dangerous Acts.
Offences and Penalties 75, 76
Day.
Reckoning of, for purpose of stoppages **132, 133**
Death.
Causing, when right of private defence of body extends to . 335
Desertion punishable by 115
Majority requisite for sentence of 144
Offences punishable by **111-113, 114, 115, 120**
Punishment of, as court-martial sentence . . **127, 128, 148**
Sentence of, form of **148**, *298*
„ for murder 66
„ majority requisite for 144
„ when obligatory 66
Statement as to cause of, admissibility of 381
Subsidiary order in case of sentence of, form of . . . *311*
Debt.
Exemption from arrest for, of person subject to Indian Army Act **153, 154**
Exemption from arrest for, of person belonging to Indian Reserve Forces **153, 154**
Deceased person.
Property of, disposal of **152, 153**, *250*
Declaration.
Court of inquiry, by, on illegal absence *247*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Declaration—*cont'd.*
Dying, admissibility of, as evidence 32, 37, 38, 381
Form of, for suspension of rules *285*
Members of court of inquiry, by, on recovered prisoner of war, *246*
Decoration.
Military, forfeiture of, as court-martial sentence . . . 127, 128
Selling, pawning, destroying, or defacing 121, *262*
Deductions from pay (*See* "Pay and Allowances").
Defacing medal or decoration 121, *262*
Defamation.
Offence and penalty 76, 364-366
Defence.
Accused (*q.v.*)
Counsel for, ... *222, 223*
Form of proceedings for *293 296*
Latitude allowed to accused in 24, *201, 212, 213, 229*
Private, acts against which there is no right of . . . 334
„ extent to which right of, may be exercised . . 334, 335
„ of property, when right of, extends to causing death 335
„ right of 334-336
„ right of, against act of person of unsound mind . 334
„ when exercise of right of, extends to causing any harm other than death 335, 336
Procedure when accused calls witnesses to facts of case . . 24, *201*
„ when no witnesses to facts of case are called by accused. 24, *200, 201*
Defiling place of worship 123, 124, *265*
Definitions and Explanations of Terms.
"Abetment" 125
"Act" 324
"Active service" 104, 105
"Admission" 34
"Affairs of State" 141
"Animal" 326
"Army" 104
"Assault" 66, 67, 113, 114
"Attestation" 8
"Brigade" 104
"British India" 126, 322
"British Officer" 103
"Civil authorities" 156
"Civil offence" 59, 60, 104
"Civil Prison" 149
"Commanding Officer" 13, 103
"Conclusive proof" 371
"Confession" 34
"Corps" 104
"Counterfeit" 323
"Court," in Indian Evidence Act 369
"Court-martial" 104
"Court of Justice" 322, 323
"Criminal breach of trust" 70, 357
"Criminal Court" 104
"Criminal Force" 66, 114, 350, 351
"Death" 326
"Department" 104
"Desertion" 152
"Disproved" 28, 371

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Definitions and Explanations of Terms—*contd.*

"Disqualified" *187*
"Division" 104
"Documentary evidence" 45
"Document" 323, 324, 370
"Eligible" *187*
"Enemy" 104
"Enrolment" 8
"Evidence," in Indian Evidence Act 370, 371
"Fact," in Indian Evidence Act 369, 370
"Fact in Issue," in Indian Evidence Act 370
"Feigning" 119
"Force" 66, 350
"Good Faith" 326
"Government" 322
"Government of India" 322
"Hurt" and "grievous hurt" 66, 348
"Illegal" 326
"Imprisonment" 128
"Independent Brigade" 104
"Indian Military Law" 4
"Indian Officer" 4
Indian Official Secrets Act, in 417
"Injury" 326
"Intent to defraud" 119
"Investigating Officer" *187*
"Judge Advocate-General" 142
"Judge" 322
"Judicial notice" 144, 145
"Leading question" 54
"Life" 326
"Local Law" 326
"Making away with" 121
"Malingering" 119
"Military Custody" 104
"Military Reward" 104
"Mutiny" 114
"Native Officer" 4, 7, 103
"Native of India" 3, 4
"Negligence" 120
"Non-Commissioned Officer" 7, 103
"Notification" 104
"Not proved" 28, 371
"Oath" 326
"Offence" 104, 325, 326
"Officer" 7, 103
"Omission" 324
"On the line of march" 105
"Oral evidence" 45
"Person subject to Military Law" 112
"Prescribed" 104
"Presidency" 322
"Private documents" 48, 394
"Proper Military Authority" *167*
"Proved" 28, 371
"Public documents" 48, 393
"Public Servant" 323
"Relevant," in Indian Evidence Act 370
"Safeguard" 113

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Definitions and Explanations of Terms—*concld.*
"Sedition" 340
"Sentry Post" 112
"Shameful" 112
"Special law" 326
"Stoppages" 128
"Superior Officer" 103
"Terms used in I. A. A." 103, 104
"Valuable security" 324
"Vessel" 326
"Voluntarily causing hurt" 119
"Warrant Officer" 4, 103
"Watchword" 112
"Will" 324
"Wrongful gain" 323
"Wrongful loss" 323
"Year" and "Month" 326

Department.
Corps or, every person enrolled under I. A. A. must belong to some *169*
Definition of 104

Deserter.
Apprehended, to be delivered into military custody . . 156
Capture of 155, 156
Disposal of property of 152, *250*
Enrolment and attempting to procure enrolment of . 116, 117, *257*
Harbouring 116, 117, *257*, 341
Person subject to I A. A. when deemed to be . . . 156
Property of, disposal of 152, *250*
To be tried in original corps 117

Desertion.
Absence without leave, and, difference between . . . 115, 116
Absence without leave, conviction for, on charge of 143, *204*
Apprehension and, period between, does not reckon as service towards discharge 116
Attempted, conviction of absence without leave on charge of . 143, *204*
" " on charge of desertion, and *vice versâ* 143, *204*
Charge for, time important element in 117
Death, punishable by . . . 115
Deliberate evasion of particular service is . . . 117
Evidence of 156
Forfeiture of service for pension or gratuity on . . 116
Forms of charges *257*, *258*
Important military service, to avoid 115, 117
Intention element in offence of 115, 116, 117, *196*
Offence of 115, 116, *257*
Offender to be tried in original corps . . 117
Penal deductions of pay and allowances for every day of absence on 131, 132
Provisions as to time not reckoning towards discharge, when *in state of* *252*
Reference by accused to Government officer on trial for . 145
Trial for, copy of record of declaration of court of inquiry admissible 156

Desertion, Fraudulent Enlistment and Absence without leave.
Forms of charges for *257*, *258*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Despondency.
Spreading reports calculated to create, in time of war . . 111, 112

Destruction.
Medal or decoration, of 121, *262*

Destruction of Government property 118, *259*

Detachment.
Commanding officer of, powers of, on summary court-martial 20, *249*

Discharge.
Authorities empowered to authorize discharge of person subject to I. A. A. . . . . *172—175*
Certificate to be given to person dismissed or discharged 108, *171*
Date on which it takes effect 9, *171*
Desertion and apprehension, period between, does not reckon as service towards 116
Discharge certificate how furnished *171*
Difference between dismissal and 102
Enrolment in corps, without having obtained discharge from former corps 116, 117, *257*
How authorized 9
Illegality or irregularity in enrolment does not entitle person to claim, in certain cases 105
India, in, and out of India 108
Native officer, of, restrictions on 107
Person enrolled under I. A. A., of, not to be delayed . *170*
Table of authorities empowered to authorise . . . *173-175*
Warrant officer, of, when requiring approval . . . *248*

Discharging authorities (*See* "**Discharge**").

Discharge certificate.
Dismissal or discharge to take effect on day on which it is furnished *171, 244, 245*
How to be furnished to person dismissed or discharged . . *171*

Discipline (*See* **Military Discipline**).

Disclosures of Information.
Offences and penalties 76, 418

Disease.
Feigning, producing or aggravating . . . 118, 119, *259, 260*

Disgraceful conduct.
Forms of charges for . . . . . *258—260*
Offences and penalties 117, 119
Dishonest misappropriation (*See* also **Movable property**) 69, 70, 81, 117. 118, *258*, 356, 357
Dishonest receipt of property, etc. 70, 118, *259*

Dismissal.
Attested person, of, when requiring approval . . . *248*
Certificate to be given on dismissal and discharge . . . 108, *171*
Convict, of (*See* also **Convict**) . . 9, 107, 108, *171, 172*
Date on which it takes effect . . . 128, *171, 172, 244, 245*
Discharge certificate how furnished on *171*
Difference between discharge and 102
Forfeiture of arrears of pay and allowances on . . . 127, 128
Loss of any pension or gratuity involved by 9. 102
Native officer, of, by Governor-General in Council, Commander-in-Chief in India, or court-martial 9, 106
Officer commanding army, division, brigade, by 107
Person sentenced to, may be stopped all arrears of pay and allowances 127, 128

Dismissal—*contd.*
Person subject to I. A. A., of, when to be carried out by Commanding Officer *171*
Postponement of, in case of person, against whom charge is pending *172*
Punishment of, as court-martial sentence 127, 128
Sentence of, form of *298, 306*
Subsidiary order in case of, form of *311*
Warrant officer, of, when requiring approval . . . *248*
Disobedience to lawful command.
Offence of 114, *256*
Disqualified.
Meaning of *187*
District Court-Martial (*See* **Courts-Martial**).
Disturbance.
Fair or market, of, neglecting to make reparation for . 123, 124, *264*
Division.
Definition of 104
Officers who may exercise powers of officer commanding a . *248*
Documents.
Account book, entries in, relevant evidence . . . 39
All, attached to proceedings to be signed by president or superintending officer *313*
Attestation of 47, 393
Authorship may be proved by circumstantial evidence . . 42
Certified copies usually to be attached to proceedings of courts-martial instead of originals *207*
Contents of, may not be proved by oral evidence . . . 45, 46
Contents of, oral evidence of, when relevant . . . 47
Contract, grant, etc., rule as to 49
Copies of . . . . . 40, 46—48, 49, 394, 395
Definition of 370
Enrolment, use of, as evidence of answers made on enrolment 8 122, 145
Evidence of . . . . . 27, 39, 40, 41, 42, 46—49, 54, 140, 141, 390—397
False, making . . . . . 361—363
False, offences in relation to . . 121, 122, *262*, *263*, 361—363
Forwarded with application for court-martial . . 18, 21, *177*
Must be produced to the court by a witness . . . 54
Offences in relation to . . . . . 361—363
Person producing, must be sworn *312*
Presumptions as to 49, 395, 396, 397
Primary evidence of 46, 390, 391
Private, definition of 48, 394
„ secondary evidence of . . . . 46, 47, 48, 390—392
Production of, by order of "Convening officer" "President," "Judge Advocate" or "C. O. of accused" . 140, 141
„ in charge of postal or telegraph authorities . 141
„ rules as to notice for 392
Provisions as to extracts and copies of certain . . . 48, 49
Public, copies of, when admissible . . . 47, 48, 49, 394
„ definition of 48, 393
„ hearsay evidence, application of rule of, to . . 39
„ *omission to produce to public servant, by person legally bound to produce it* *243*
„ *records, entries in, admissible as evidence* . 39, 40, 384
Refreshing memory by 54, 58, 412, 413
Refusal to produce 123
Rules as to notice to produce 392

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Documents—*contd.*
Secondary evidence of 46, 47, 48, 390, 391, 392
" " of, when given 47, 48, 391, 392
Witness refreshing memory by 54, 58, 412, 413
Double-Company, etc., Commander.
Preliminary investigation into case of alleged offender by 15
Drunkenness.
Confession, when in state of, admissibility of . . . 35
Duty.
Absence from, counts as "day of absence" . . . 132, 133
" for 60 days 156, *247*
Dying declarations as evidence 32, 37, 38, 381

E

Eligible.
Meaning of *187*
Enactments.
Repeal of 157
Enemy.
Assisting the 111, 112, *254*
Casting away arms in presence of 111, 112, *254*
Corresponding with 111, 112, *254*
Definition of 104, 112
Harbouring an 111, 112, *254*
Offences in relation to 111, 112, 113
Persons included in term 112
Releasing or suffering to escape 120, *260*
Enrolling officers.
Duty of, after enrolment *168, 169*
In case of direct enrolment into reserve of corps . . . *169*
Procedure before 105
To forward enrolment paper to officer in charge of Long Roll of Corps *168, 169*
Who are *168, 169*
Enrolment.
Classes to be enrolled 105
"Conditions of Service" embodied in questions in form of enrolment 105
Conditions of service in enrolment paper can only be changed with consent of person concerned 8
Corps, in, without having obtained discharge from former corps 116, 117, *257*
Definition of 8
Deserter, of 116, 117, *257*
Difference between, under I. A. W. and I. A. A. . . . 8
Direct, into reserve of corps, officers who can effect . . *169*
Duty of enrolling officer, after enrolment *168, 169*
Enrolled person who has not been attested can always be discharged by commanding officer 106
Enrolment paper admissible as evidence of facts stated in it 8, 122, 145
False answer on 122, *252, 263*
For general service *8*
Form of, contents of each 252
" five in number *168, 252*
" provisions as to time when in state of desertion not reckoning towards discharge, in *252*
" published as I. A. Forms *252*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Enrolment—*contd.*
Fraudulent, can be committed by person who belongs to a corps and enrolls himself again in same corps . . **117**
Fraudulent enrolment, enrolment on which to serve on conviction of **117**
Fraudulent, forfeiture of service towards pension or gratuity on conviction **117**
Fraudulent, forms of charges *257, 258*
„ offender may be tried either in his original corps or in his present corps **117**
„ offender should usually be tried in corps in which he is to be retained **117**
Illegality or irregularity in, does not entitle person to claim discharge in certain cases **105**
Officers authorized to enrol *168, 169*
Persons subject to Indian Army Act, by virtue of . **4, 7, 101**
Presumption of, in certain cases **105**
Procedure before enrolling officer **105**
Punishment for false answer on **105, 122,** *252*
Reserve of corps, into, officers who can effect . . . *169*
Taking gratification for procuring **124,** *265*
Transfer of person enrolled under I. A. A. *169*
Without having been discharged from former corps or department **116, 117,** *257*
Enrolment and Attestation . . . . **105, 106,** *168—170*
Enrolment Paper.
Evidence of enrolment and of facts stated in it . . **8, 40, 122, 145**
Signing of, by enrolling officer and person enrolled . . **105**
To be forwarded to officer in charge of Long Roll of Corps . *168, 169*
Equipment.
Dishonest misappropriation of **117,** *258*
Exemption of, from attachment **154**
Furnishing false return of, and punishment for . . . **122,** *263*
Making away with, losing by neglect or wilfully injuring **121,** *261, 262*
Evidence.
Accomplice, of **34, 35, 51, 407**
„ , of should be corroborated **51**
Account book, entries in, relevant **39, 384**
Accused, admissions by **34, 45**
Accused cannot give, on oath or affirmation . . . *201, 229*
Additional, may be taken by court-martial on revision **25, 147,** *207, 208*
Admissibility of . . . . **27, 29—44, 53, 141, 142, 143,** *247*
„ of, judge to decide as to **407, 409**
„ of, when court is in doubt, rule as to . . . **59**
Admissions . . . . . **378—381**
„ definition of **34, 378**
„ may generally be proved against persons making them, but not in their favour . . **34, 379, 380**
„ plea of "guilty", commonest form of . . **45**
„ rules as to **34, 45**
Alibi **32**
Before court-martial which is dissolved, may be used at subsequent trial of accused **38, 39**
Before magistrate, use of, at court-martial **39**
Burden of Proof (*See* **Proof** below)
Business, course of, relevancy of facts showing . . . **33, 378**
„ statements made in ordinary course of . **37, 38, 381, 382**
„ „ „ „ comparison with English law **38**

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Evidence—*contd.*
Character, as to, after conviction 43, 145, 146, *205, 206, 229, 230, 243*
„ „ court always to take *205*
„ „ effect of 43, 44
„ „ how to be given on conviction . . . *205, 206*
„ of accused, as to 20, 43, 44, 145, 146, *200, 201, 205, 206, 229, 230,* 388
„ as to at summary court-martial . . . 43, 146, *229*
„ „ when admissible . . . 43, 145, 146, 388
Circumstantial 27, 30, 42
„ authorship of document may be proved by . 42
„ considerations for court before finding prisoner guilty on 30
Commission on, method of taking 142
„ taking of, on, when to be resorted to . . 143
„ on, taking of 141-143
„ (*q. v.*) (*See* also "**Courts-Martial**" witness, etc.)
Complaint and statement, difference between . . . 31, 32
„ how far admissible 31
„ must be made to some one in authority . . 32
„ of, made shortly after alleged crime, when to be given 31
Conduct, relevancy of facts showing previous or subsequent 372—374
Confession, accomplice, by 34, 35, 381
„ accomplice, by, rules as to 34, 381
„ at court of inquiry inadmissible before court-martial 52, *247*
„ definition of 34
„ fraud, etc., obtained by, admissibility of . . 35, 381
„ general rule as to 34
„ involuntary, facts discovered through, when admissible as 36, 380
involuntary, under threat, etc. 35, 380
made after removal of impression caused by inducement, threat, etc., relevant . . . 381
made at court of inquiry . . . 36, 37, 52, *247*
made on oath in previous proceedings, admissibility of 36, 37
must be voluntary 35, 36
police officer, to 36, 380
police officer, while in custody of . . . 36, 380
secrecy, under promise of 35, 381
when in state of drunkenness 35
when not deemed to be voluntary . . . 35
whole confession must be given in . . . 36
Considerations for guidance of courts-martial with regard to taking evidence by commission 143
Conspiracy, in case of 32, 374, 375
Conspirator, things said or done by, in reference to the common purpose 374
Conviction, previous, of, and general character, when to be taken 145, 146, *205, 206*
Copy of record of declaration of court of inquiry admissible on trial for desertion 156
Court may presume the existence of certain facts . . . 403, 404
Court of inquiry (*q. v.*)
Court of inquiry, by, when to be taken on oath or affirmation by *246, 247*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Evidence—*contd.*
Court to record sufficient, to enable it to determine sentence . 19, 20, *228, 229*
Deaf and dumb person, of 51
Death, statement as to cause of, admissibility of . . . 381
Definition of 370, 371
„ "Disproved" 28, 371
„ "Not proved" 28, 371
„ "Proved" 28, 371
Desertion, of 156
Direct 27, 45, 46, 390
Disposition, tending to show, not admissible . . . 33, 44
Distinction between a "statement" and a "complaint" . 31, 32
Documentary, exclusion of oral by 397-400
„ meaning of 27, 45
„ rule as to . . . . . 46, 390—397
„ who may read at trial *200*
Document, authorship of, how proved 42
Documents (*q. v.*).
Dying declaration, admissibility of 32, 37, 38, 381
„ declarations, comparison with English law . . . 38
Enrolment paper, evidence of facts stated in it . . . 40
Estoppel 404
Exclusion of 27, 29, 37, 57
„ of oral, by documentary 397-400
Expert, rule as to 40, 46, 386, 387
Explanatory and introductory facts, relevancy of . . . 32, 374
Facts bearing on question whether act was accidental or intentional, relevancy of 377, 378
Facts forming part of one transaction, relevancy of . 30, 31, 372
"Facts in issue" 29, 30, 53, 371, 372
"Facts in issue" and "relevant facts," but no others may be given in 29, 30, 371
"Facts in issue," facts which are the occasion, cause or effect of, relevancy of 372
Facts not otherwise relevant, when relevant 375
Facts of a public nature, statement as to, relevancy of . . 384
Facts showing state of mind or body, relevancy of . 32, 376, 377
Facts which are the occasion, cause or effect of "facts in issue," relevancy of 372
False, as to belief, is perjury 42, 123
„ before court of inquiry 36, 37, 62, *247*
„ considerations for courts-martial before instituting proceedings against witness for *240*
„ giving or fabricating, offences of . . 77, 123, 343, 344
Finger prints, of, by expert 40
For prosecution, taken first on plea of "not guilty" . . 20, 23
General rule as to, before courts-martial 144
Government officer, written reply of, as evidence on trial for desertion, absence without leave, etc. 145
Hand-writing, as to 40, 41, 42, 387
„ method of proving authorship of anonymous letter by 42
„ proof of, by comparison 41, 42
„ who may give opinion regarding 41
"Hearsay," admissible in certain cases 37
„ application to public documents . . . 39
„ definition of 37
„ reasons for exclusion of 37

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Evidence—*contd.*
How to be taken down *220, 231*
Improperly, received or rejected 58, 59, 414
Inadmissible as to accused person's disposition on charge of murder 33, 44
Inconsistent facts, relevancy of 32
Indian Evidence Act, arrangement of 29
Indirect 27, 30
Intention, as to . . . 33, 44, 64, 65, 112, *180, 181,* 377, 378
„ knowledge, etc., as to 33, 43, 44, 64, 65
Interest, statement against, relevancy of 382
Judge to decide as to admissibility of 407, 408
Judgment of court of law, relevancy of . . . 40, 385, 386
Judicial inquiries, in, to be on oath or affirmation . . . 27
„ notice . . . . . 44, 45, 144, 145, 388—390
King's Evidence 51
Law, statements as to, contained in law books, relevancy of . 384
Maps, charts, plans, statements in, relevancy of . . . 384
Mind or body, facts showing existence of state of, relevancy of 376, 377
Motive, etc., relevancy of facts showing . . . 31, 372—374
Nature of 27
Notes of, witness may not read 58
Oath or affirmation on, accused cannot give *201, 229*
Opinion as to conduct 43
„ as to existence of right or custom, relevancy of . 387
„ examples of expert 40, 41
„ handwriting, as to, when relevant 387
„ not generally admissible as 40
„ of convening officer, of, at summary general court-martial *244*
„ relationship as to, when relevant 387, 388
„ relevancy of . . . . . 40—43, 386—388
„ rule as to expert 40, 46, 386, 387, 390
„ when admissible as evidence . . . 40, 41, 42, 43, 46
Oral 45, 46, 145, 390
„ as to contents of documents, when relevant . . . 380
„ exclusion of, by documentary . . . . 397—400
„ meaning of 27, 45
Plea in bar of trial, in support of *197*
Preparation, relevancy of facts showing . . . 31, 372—374
Presumption as to signatures 145
„ „ the existence of certain facts, by court . . 403, 404
Previous convictions and general character, of, on conviction by court-martial . 43, 145, 146, *205, 206, 229, 230, 243*
„ convictions, of, at summary court-martial . . 146, *230*
„ conviction, of, produced by prosecutor . . . *200, 201*
„ conviction of, to show bad character . . . 43
„ inquiry, at, admissibility of 38
Primary, of documents 46, 390, 391
„ of documents, meaning of 46, 390, 391
Proof, burden of . . . . . 24, 49, 50, 65, 400—404
„ „ „ as to particular fact 401
„ „ „ generally lies on prosecution . . 24, 49, 65
„ „ „ in trial for murder 65
„ „ „ lies on person asserting a fact . 49, 400, 401
„ „ „ presumptions by court, as to events likely to have happened 50

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Evidence—*contd.*
Proof, burden of proving case of accused comes within exceptions 401, 402
" " " proving death of person known to have been alive within 30 years 402
" " " proving fact especially within knowledge . 402
" " " proving fact to be proved to make evidence admissible 401
" " " proving that person is alive who has not been heard of for seven years 402
" " " shifting 50
" " " when on accused 49, 50, 65
" facts admitted do not require 390
" facts not requiring . . . . . 44, 45, 388—390
Prosecution for, summing up of, by prosecutor . . 24, *200, 201*
Prosecutor, by, special rules as to *200*
" " when to be given *199, 200*
Provisions as to extracts and copies of certain documents . 48, 49
Provocation, of (*See* **Provocation**).
Public records, entries in, admissible as . . . 39, 40, 384
Rape, caution as to evidence in cases of 67
Reasons for exclusion of certain classes of 28, 37
Rebutting *205*
Refreshing memory 54, 58, 412, 413
Regimental books, extracts from as 40, 145
Relationship, opinion as to, when relevant 387, 388
"Relevancy" . . . . . 27, 29—44, 53, 369—388
"Return" of commission made 40, 142
Revision, on, fresh evidence can be taken . . 25, 147, *207, 208*
Rules of, contained in Indian Evidence Act applied to courts-martial under Indian Army Act 26, 144
Secondary of documents 46, 47, 48, 390, 391, 392
Signatures, presumption as to 145
Special plea, to jurisdiction of court, in support of . . *195, 196*
Statement (*See* also **Accused** and Hearsay above)
" against interest, relevancy of 382
" and complaint, difference between . . . 31, 32
" as to any law contained in law books, relevancy of 384
" as to facts of a public nature, relevancy of . . 384
" by person incapable of giving evidence, admissibility of 38
" by a person who cannot be called as a witness 37—39, 381-383
" by person who is dead or cannot be found relevancy of 381
" made by accused before commanding officer, admissibility of 36
" when relevant 32, 37
Sufficient to be taken to determine sentence . . *198, 229*
Summary court-martial, at, when to be translated . *226*
" general court-martial, at, how taken . . 26, *243*
" " " at, need not be recorded *243*
of, attached to proceedings on plea of "guilty" 20, 23, *196, 198, 228, 229*
" calling of witnesses whose evidence is not in . *232, 179*
" copy to be given to accused in complicated case 17, *233*
" cross examination of witnesses by accused at taking of *176, 178*
" destroyed on plea of "not guilty" . . *186*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Evidence—*concld.*
Summary of, discrepancy between evidence at court-martial and 39, *186*
,, ,, disposal of by convening officer . 17, 18, *185, 186*
,, ,, how far admissible 39, 56, *186*
,, ,, laid before court *286*
,, ,, may be admitted as evidence of facts recorded by it when prisoner has pleaded guilty . . 39
,, ,, mode of taking 16, 17, *176, 178*
,, ,, not required when accused is tried by summary court-martial without reference to superior authority *177*
,, ,, officer who should be detailed to take down . *178*
,, ,, officer who took down, disqualified from serving on court-martial *187*
,, ,, president or superintending officer alone, usually to refer to *186*
,, ,, required when commanding officer refers case to superior authority 16, 18, 21
,, ,, should correspond with evidence given before commanding officer 17
,, ,, should justify trial of accused by court-martial . 21
,, ,, statement of accused in, to be read to court as evidence *186*
,, ,, to be considered by commanding officer 17, *178, 179*
,, ,, to be enclosed with proceedings on plea of "Not guilty." *313*
,, ,, to be forwarded with application for sanction to try accused by court-martial . 17, 18, 21, *177*
,, ,, to be in English language *177*
,, ,, to be laid before courts-martial . . . *178, 179*
,, ,, to be read by court on plea of "Guilty" by accused 19, 20, *198, 221, 228*
,, ,, to be taken down in presence of accused 16, *176—178*
,, ,, use of 17, 39, 56, *186*
,, ,, use of, at trial, to show that witness has contradicted himself, etc. *186*
,, ,, ,, of, in cross-examination, . . . 56
,, ,, ,, of, where accused pleads "guilty" . *186, 228, 229*
,, ,, vernacular documents attached to, to be accompanied by translation *179*
Summing up of evidence for prosecution . . . 24, *200, 201*
To be kept distinct when accused is charged with several offences *179*
Translation of 19, *220, 226*
When to be translated *220*
Witness may not read 58
,, privilege of (*See* also Witness) . 52, 53, 405, 406, 407
Exaction of carriage, porterage or provisions . . 120, 121, *261*
Experts.
Evidence by 40, 41, 42, 46, 386, 387
Extortion.
Offences of 76, 77, 120, 121, 261, 350, 355
When robbery 355

Failure to appear at parade 116, 117, *258*
Failure to rejoin 116, 117, *258*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Fair.
Disturbance of 123, 124, *264*
False accusation.
Making 121, 122, *262*
False alarm.
Intentionally occasioning, in time of peace . . . 113, *256*
" " " of war . . . 111, 112, *255*
False answer on enrolment 122, *252, 263*
False documents (*See* **Documents**).
False Evidence (*See also* **Evidence**).
Court of inquiry, before, proceedings of court of inquiry admissible on trial for 36, 37, 52, *247*
Offence of giving or fabricating . . . 77, 123, 343, 344
False return or report.
Furnishing 122, *263*
False Statement.
Affecting character 122, *262*
Court-martial, before 123, *264*
Obtaining pension, etc., by 122, *262*
Offences in relation to 121, 122, *262, 263*
Feigning disease or infirmity 118, 119, *259*
Field.
Plunder of, in time of peace 121, *261*
Field work.
Refusing to superintend or assist in 115, *257*
Finding and Sentence.
Confirmation and confirming authority (*g. v.*)
" and revision of (*See* also **Confirmation and Revision**) . . . . . 146—148
Finding, acquittal, of, difference between under I. A. A. and A. A. *205*
Finding, acquittal, of, form of *203*
" " may be reversed by court on revision 25, *208*
" " " sent back once for revision . 25
" " not valid until confirmed . . . *205*
" " requires confirmation . . . 24, 146
" " procedure on *205, 230*
" alternative charges, on *203, 204*
" confirmation of . . 13, 24, 25, 146—148, *207—210*
" " , on alternative charges . . . *209, 210*
" consideration of, by court-martial . 24, 28, *202, 243*
" consideration of, by summary general court-martial . *243*
" deliberation on, to be in closed court . . . *203*
" forms and record of . . . . *202—204, 230*
" forms of *202, 203, 230, 296, 297*
" forms of, at summary court-martial . . . *304, 305*
" "Guilty," of, forms of *296*
" "Guilty," of, when facts in charge are only proved in part *203*
" "Guilty," procedure on finding of . 20, 24, 25, *205, 206, 213, 215, 230*
" "Guilty" to be recorded on plea of "Guilty" . *196*
" honourable acquittal, of, when correct . . . *203*
" "Insanity," of, form of *297*
" "Not guilty," of, form of *296*
" "Not guilty," of, person turning King's evidence . 51
" "Not guilty," procedure on *205, 230*
" opinion of members of court to be taken separately on each charge *202*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Finding and Sentence - *contd.*
Finding procedure on finding of "not guilty" . 20, *205*, *213*, *215*
„ „ on illness of accused prior to . . . 135
„ promulgation of *208*
„ reference by court to confirming officer prior to . *202*, *203*
„ revision of 147, *207*, *208*
„ „ not allowed when sentence alone sent back *208*
„ special, admissible on charge for disgraceful conduct 118
„ „ finding instead of "not guilty" 29, *202*, *203*, *204* *230*
„ „ form of *203*, *297*
„ „ insanity, of, ... *194*, *227*, *237*, *235*
„ „ „ of, form of *297*
„ „ „ of, procedure when not confirmed . *237*
„ „ „ of, procedure when confirmed . *237*, *238*
„ „ „ of, to be dated and signed by president *237*
„ „ when facts differ materially from facts alleged 29, *202*, *203*
„ summary court-martial need not be closed for . *230*
„ votes procedure on equality of, by members of court 140
Members of court or prosecutor not to confirm . . . *210*
Proceedings after, at summary general court-martial . . *244*
Revision (*q. v.*)
Revision, sentence can be increased on *208*
Sentence, accused may be relieved from consequences of illegal 21
„ authorities who can interfere with, after confirmation 25, 148
„ awardable by S. C. M. 138
„ commutation of 150
„ commutation of sentence of corporal punishment . 130
„ confirmation of . . 13, 24, 25, 146—148, *207*—*210*
„ „ of, notwithstanding informal or excessive *210*
„ confirming authority cannot amend wholly illegal . *210*
„ death, majority requisite for sentence of . . 144
„ „ of, form of 148, *298*
„ „ when obligatory 66
„ „ of subsidiary order in case of . . . *311*
„ dismissal, of, date on which it takes effect . . 128
244, *245*
„ entering of, on proceedings *207*
„ evidence as to character and service of accused taken before 20, *230*, *243*
„ excessive, who can reduce 20, 21, *210*
„ execution of . . . . . 14, 148—150, *244*, *245*
„ forfeiture of seniority of rank, effect of . . 128
„ form of *298*, *299*
„ form of, at summary court-martial . . . *305*
„ how awarded and where detailed . 20, *206*, *207*, *213*, *215*
„ how to be recorded *207*, *231*
„ illegal, may be treated as a nullity . . . 21, *210*
„ imprisonment, of, when to be treated as "simple" . 128
„ involving dismissal *20*
„ mitigation of (*See* **also Punishment**) . 150, *208*, *209*, *210*
„ mitigation, remission and commutation of, by confirming officer 25, 146, 147
„ mitigation of, on partial confirmation . . . *208*, *209*
„ murder, for 66, 81

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Finding and Sentence—*concld.*
Sentence, must be authorised by I. A. A. ***207, 230***
„ must be signed by president ***207***
„ of summary court-martial to be carried out at once 20, **147, *231***
„ one in respect of all charges . . 20, ***213, 215, 230***
„ opinion as to, every member must give . . ***217***
„ opinions as to, method of taking ***217, 218***
„ proceedings before, at summary court-martial, form of ***305***
„ promulgation of ***208, 231, 232***
„ promulgation to be deferred in certain circumstances ***232***
„ remission of **150**
„ revision of **147, *207, 208***
„ sufficient evidence to be taken on plea of "Guilty" to enable court to determine ***198, 229***
„ summary court-martial, at, form of . . . ***305, 306***
„ summary court-martial, of, promulgation to be deferred in certain cases ***232***
„ summary court-martial of, promulgation of . . ***231, 232***
„ summary court-martial of, reduction of . . **147**
„ summary general court-martial at . . . ***243***
„ summary general court-martial of, carried out at once, when not exceeding that awardable by D. C .M. **25, 146**
„ transportation or imprisonment, of, commencement of **148, *207***
„ valid may be substituted for invalid by higher military authorities **14, 21, 148**
„ votes, equality of, by members of court, procedure on **140**

Fines.
Collective, losses of arms, for, amount of . . . **10, 109, *245***
Minor punishments, as, ... **132**

Finger prints.
Evidence of, by experts 40

Followers.
Civilian; punishment of **10, 109**
Discharge of, by commanding officer **106**
Exemption from tolls, of 426
Native, punishment of, in certain cases . . . **109, 110**

Food and Drink.
Offences relating to 77

Force (*See* also Criminal Force and Assault).
Definition of **66, 350**

Forfeiture.
Arrears of pay and allowances, etc., of, on dismissal . . **127, 128**
Military decoration or reward, of, as court-martial sentence . **127, 128, *299, 306***
Pay and allowances, of, does not compensate injured party . **128**
Restoration of forfeited service **116, 117, 150**
Seniority of rank, of, as court-martial sentence . . . **127, 128**
„ „ by sentence of S. C. M., form of . . ***306***
„ „ *effect of* **128**
„ „ subsidiary order in case of, form of . **311**
„ „ sentence of, forms of **299, *306***

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Forfeiture—*contd.*
Service of, for promotion, pension, etc., as court-martial sentence 127, *299*, *306*
„ pension or gratuity, on desertion . . 116
Forfeiture of Seniority of Rank.
Sentence of, by S. C. M., form of *306*
Sentence of, form of *299*, *306*
Subsidiary order in case of, form of *311*
Forgery 77, 361
Definition of 361
Forms.
Enrolment, where published *252*
In Indian Army Act Rules, deviation, etc., from, not to invalidate proceedings *67*
Notes to, etc., not to have force of rules, but should be followed *167*
Fraudulent Enrolment.
Enrolment on which to serve on conviction of 117
Forfeiture of service towards pension or gratuity on conviction of 117
Forms of charges *257*, *258*
Offence of 116, 117, *257*, *258*
Offender should usually be tried in corps in which he is to be retained 117
Person belonging to corps, who enrols himself again in same corps, commits offence of 117
Trial, corps in which to take place 117
Fraudulent Offences 118, 119, *259*
Friend of accused (*see* **Accused**).
Frontier Districts.
Special provision as to civil punishment of whipping in . *434*

G

Garden.
Plunder of, in time of peace 121, *261*
Garrison.
Abandoning, etc. 111, 112, *254*
Shamefully abandoning, person in charge, only, can commit offence of 112
Garrison Orders.
Neglect to obey 124, *265*
General Courts-Martial (*See* **Courts-Martial**).
General Orders.
Neglect to obey 124, *265*
Good Order and Military Discipline (*See* also **Military Discipline**).
Act prejudicial to 60, 124, 125, *265*
Government Officer.
Reference by accused to 145
Written reply of, effect of, on trial for desertion, absence without leave, etc. 145
Government Property.
Destruction of, or injury to 118, 121, *259*, *262*
Dishonestly receiving 118, *259*
Theft of 118, 119, *259*
Authority to dismiss native officer 9, 106

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Governor General in Council.
Penal deductions from pay and allowances may be remitted by *250*
Postponement of proceedings of court-martial, pending reference to 136, 137
Power of, to order assembly of S. G. C. M in time of peace . 25, 134
Power to legislate for whole native army restricted to . . 2
Power of, to make rules for reserve forces 415
Power of, to make rules to carry out purposes of Indian Tolls Act 428
Remission of penal deductions from pay and allowances by . *250*
Rules under I. A. A. framed by 3, 151

Gratification.
Accepting or obtaining, for procuring enrolment . . . 124, *265*

Gratuity.
Claim to, forfeited on dismissal 9, 102
Forfeiture of service for, on conviction of fraudulent enrolment 117
Forfeiture of service for, on desertion 116

Grievous Hurt.
Causing, offences of 77, 78, 348, 349
Definition of 66, 348

Guard.
Commander, refusing to receive prisoners, etc. . . . 120, *260*
Commander, releasing, etc., prisoner 120. *260*
Quitting, in time of peace 116, 117, *258*
" , in time of war 111, 113, *255*

Guilt.
Presumption of 24, 50

H

Handwriting.
Evidence of 40, 41, 42, 387
Method of proving authorship of anonymous letter by . . 42
Opinion, who may give regarding 41
Proof of, by comparison 41, 42

Harbouring a deserter 116 117, *257*, 341

Harbouring an enemy 111, 112, *254*

Harbouring and screening offenders.
Offences of 79

Harbouring an offender.
Wife or husband of offender exempt from penalty for . . 63

Hard labour.
Term not used in I. A. A. 128

Harm.
Act causing slight, not an offence 334

Homicide.
Culpable, attempt to commit 74, 75, 127, 348
" offence of . . . . 63, 64, 74, 75, 127, 345—348
" of person other than the one intended . . 65
" when not amounting to murder 64, 346, 347

Horse.
Killing, etc. 121, *261*

Hospital.
Forfeiture of pay and allowances when in, for sickness caused by offence under I. A. A. 131

[*References to I.A.A. are in thick type, those to Rules in italics.*]

House-breaking.
In time of peace 121, *261*
„ „ war . . . . . 111—113, *255*
Offences of 79, 121, 360, 361
House-trespass.
Offences of 79, 80, 360
Human body.
Offences against . . . . . 345—352
Hurt (*See* also "**Grievous Hurt.**")
Causing, offence of 80, 118, 119, *260*, 348, 349
Voluntarily causing *260*
„ „ intent, essence of offence of . . . 119
"**Hurt**" and "**Grievous Hurt.**"
Definitions of 66, 348

Ill-treatment.
Animal, of 121, *261*
Not causing reparation for 123, 124, *264*
Subordinate in rank and position, of 123, 124, *264*
Imperial Government.
Discipline and administration of Indian troops when serving under 6
Imperial Service Troops.
Command and discipline of 90, 91
Courts-martial on men of 91
Description of 90
Exemption from tolls of 88, 89, 426
Imprisonment.
Commanding officer, by, to be awarded in days . . . *178*
Commencement of sentence of 148, *207*
Court-martial sentence, as 127, 128
Dismissal when to be added to sentence of 20
Hard labour, with, term not used in I. A. A. . . . 128
Limit of, that may be awarded by S. C. M. 20
Meaning of 128
Minor punishment, as, term not to exceed 28 days . . 109
Native followers, of, for breach of good order on active service 109, 110
Non-commissioned officer, not to be awarded, as minor punishment 109
Penal deductions of pay and allowances for every day of . 131, 132
Rigorous, meaning of 128
„ period within which appeal against sentence of, must be preferred *179*
„ sentence of, by S. C. M., form of *305*
„ sentence of, form of *298*
„ subsidiary order in case of sentence of, form of . *311*
„ when to be carried out in military custody . 20, 149, *231*
Sentence of, by S. C. M. 20, *231*, *305*
„ „ commencement of 148, *207*
„ „ execution of . . . 14, 148, 149, 150, *244*, *245*
„ „ execution of, in special cases 149
„ „ form of *298*
„ „ when to be treated as simple 128
Simple to be carried out in military custody . . . 148
Terms "rigorous" and "simple" to be used in passing sentence, and not as in A. A. 128

{*References to I.A.A. are in thick type, those to Rules in italics.*}

Imprisonment—*contd.*
When to be undergone in a civil prison . . 20, 148, 149, *231*
When to be undergone in military custody . . 20, 148, 149, *231*
Indecency 118, *260*
Independent Brigade.
Definition of 104
Indian Arms Act.
Privileges of native officers, etc., under 89
Indian Army.
Included in regular forces 3
Origin of 1
Indian Army Act.
Abetment of offences under 125, *266*
Application to force raised in India by Government of India, not being part of regular army 6, 102
Authorities empowered to discharge persons subject to . *172—175*
Classes to whom applicable at all times 4, 5
" " " temporarily . . . 4, 5, 101
Every person enrolled under, must belong to some corps, etc. *169*
Exemption of arrest for debt of persons subject to . 153, 154
General exceptions of Indian Penal Code apply to . 10, 59, 61
Indian Evidence Act applies to all courts-martial held under 13, 26, 144
Other forces than the regular army, can be applied to . . 6, 102
Passed into law 3
Penal sections of, subject to general exceptions of Indian Penal Code 10, 59
Persons subject to 101
Powers restricted to officers holding commands in India or subject to Indian authorities 6
Short title, and commencement 101
Transfer of person enrolled under, rules as to . . . *169*
Indian Army Act Rules.
Contents of . . . . . *159—165*
Forms in, deviation from, not to invalidate proceedings, etc. . *167*
Governor-General in Council may make 3, 151
May provide for certain matters detailed in section 113 . 151
Notification bringing into force 151, 435
To be published in *Gazette of India* 151
Indian Army Reserve (*See* also **Reserve Forces.**)
Active, men of, available for service beyond limits of British India 89
Indian Articles of War 2
Repeal of 157
Indian Articles of War Amendment Acts.
Repeal of 157
Indian Evidence Act.
Admissibility the rule and exclusion the exception under . 59
Arrangement of 29
Courts-martial held under I. A. A., applies to . . 13, 26, 144
Definitions of "Proved," "Not Proved" and "Disproved," in 28, 371
Extent of 369
Provisions as to admissibility of opinion in 40
"Relevancy of facts," in . . . . . 369—388
Special provisions as to confessions in 34
Indian Military Law.
Definition 4
History of . . . . . 1—3
Persons subject to, by virtue of enrolment 4, 7, *101*
Persons temporarily subject to 4, 5, *101*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Indian Officer.
Definition 4
Indian Official Secrets Act, 1889 . . . . . 417—420
Definitions 417
Disclosure of information and punishments for 76, 418
Offences against 59, 60, 76, 82, 418, 419
Procedure after arrest on charge of certain offences under . 419, 420
Restriction on trial of offences 420
Title extent and application of 417
Indian Penal Code.
Abetment of offences under . . . . . 72. *266*, 336—340
Certain knowledge of, required by officers 59
Court-martial is a "criminal court," and "court of justice," for purpose of *241*
General exceptions . . . . . 329—336
apply to I. A. A. 10, 59, 61
explanations . . . . . 321—326
Punishments . . . . . 326—329
Indian Reserve Forces (*See* also **Reserve Forces**).
Person belonging to, exemption of, from arrest for debt . 153, 154
" " " of property from attachment . 154
Indian Reserve Forces Act, 1888 . . . . . 89, 415, 416
Indian Short Titles Act, 1897 157
Indian Tolls Act . . . . . 425—428
Definitions 425, 426
Forms of pass 430, 431
Powers of Governor-General in Council to make rules for . 428
Rules . . . . . 429—431
Indian Troops.
Discipline and administration of, when under Imperial Government 6
Information.
Disclosure of, offences and penalties for 76, 418
Injury.
Property, to, ... 121, *259*, *262*
Refusal to make reparation for 123, 124, *264*
Inquiry (*See* also **Court of Inquiry**).
Absence of person subject to I. A. A., on 156, *247*
Insane Person (*See* also **Insanity**).
Act done in good faith for benefit of, not an offence . . 331, 332
Insanity. (*See* **also Finding and Sentence**).
Accused, of, special finding by Court on . . . *194*, *227*, *237*
Finding of, provisions as to *237*, *238*
Special finding of, to be signed and dated by President . . *237*
Institution.
Dishonest receipt of property of 118, *259*
Injury to property of 121, *259*
Theft of property of 118, 119, *259*
Wilfully injuring property of 121, *262*
Insubordinate language (*See* **Language and Insubordination.**).
Insubordination.
Mutiny, and offences of . . . . . 113—115, *256*, *257*
Superior officer to 115, *257*
Insult.
Offence of 367
Insulting religion 123, 124, *264*
Insult intended to provoke a breach of peace 81
Insult to court-martial 123, *263*
***Insult** to public servant* *344*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Intention.
Common, of several persons to execute criminal purpose . 62
Evidence of, when admissible 33

Intent to defraud.
What constitutes 119

Interpreter.
Accused cannot object to, at summary court-martial . . *226*
Appointment of *185, 219, 226*
At summary court-martial, who can be . . . 19, *226*
Courts-martial, at, appointed or detailed by convening officer . *185*
Duties of 19
Oath or affirmation by . . . 19, *193, 194, 219, 226, 227, 243*
„ „ „ at summary general court-martial *226, 227, 243*
Objection to *219, 226, 288*
To be detailed in nearly every case *185*
When responsible for accuracy of proceedings . . . *220*

Intoxication.
Duty, not on 119, 120, *260*
„ on 119, 120, *260*
Form of charge *260*
Insubordinate and abusive language by man in state of . . 115, 120
Involuntary, responsibility of person for act done during . 331
Misconduct by intoxicated person 81
No excuse for crime 331
Opium, etc., by, may be produced 119

Investigation (*See* **Charge, Commanding Officer, etc.**)

J

Judge.
Act of, when acting judicially, not an offence . . . 329

Judge Advocate.
Accused cannot object to *189*
Advice to court, to give *225*
Appointment of 139, *188*
Charge sheet, when to be forwarded to, by convening officer . *185*
Custody of proceedings, by *221-222*
Death, illness or absence of, substitute on *224*
Disqualification for acting as *188, 224*
District court-martial may attend 139
Examination of witnesses by *235, 236*
Exemption from arrest under civil or revenue process . . 153
General court-martial must attend 139
Informality or defect in charge, to inform convening officer and court of *225*
„ or irregularity in proceedings, to inform court of *225*
New, appointment of, form of order for *222*
Oath, administration of, to 140, *192*
„ or affirmation, administration of, by . . . *194*
Opinion of, accused and prosecutor entitled to . . . *225*
„ „ to guide court *225*
Powers and duties of *225*
Presence of, at assembly of court 22
Proceedings of court-martial to be signed by 25, *205, 207, 208, 237*
„ „ „ when to be conducted by . . *211*
Right of accused to consult, on questions of law . . . *182*
Substitute on death, illness or absence of *224*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Judge Advocate—*contd.*
Summing up by ***21, 201, 216, 225, 237, 296***
„ „ rules as to ***201***
„ „ should invariably be in writing . . ***237***
Summoning of witnesses and production of documents by order of . **140, 141, *225***
When to be appointed by convening officer **139**
Witness for defence, may be called as ***233***
udge Advocate-General.
Commission to take evidence of witness issued by . . .**141—143**
Deposition of witness under commission to be sent to . . **142**
Deputy, included in term **142**
„ J. A. G., or, commission can only be issued by . . **143**
„ proceedings of S. C. M. to be sent for review through 20, ***232***
Disposal of returned commission and deposition by . . **142**
Meaning of **142**
Judicial Notice.
Matters of which, to be taken . . . **44, 45, 144, 145, 389, 390**
Meaning of, ... **144, 145**
Jurisdiction.
Amenability of accused to 16, 23, ***188, 195***
Concurrent, of criminal court and court-martial . . 70, 71, **136**
Courts-martial, of . . 13, 16, 23, 70, 71, **136**, **137**, ***188, 195, 196***
Plea to, by accused, form of ***289***
Power of criminal court having, to require delivery of offender **136, 137**
Special plea by accused to ***195, 196, 228, 243***
Justice.
Public, offences against **343, 344**

L

Language.
Insubordinate and abusive, when intoxicated . . . **115, 120**
„ charge should specify conduct or language alleged to be insubordinate **115**
Malicious, evidence of previous offences admissible on charge for **33**
Law.
Military, certain civil offences triable by . 59, 60, **125, 126, 127**
Offences punishable by ordinary, as well as by I. A. A. **117, 118, 119,** ***177***
Lawful Act.
Accident in doing, not an offence **330**
Lawful command (*See* "**Command**")
Leave (*See* **also** "**Absence,**" **Overstaying, etc.**)
Absence, of, taking bribe for procuring **124,** ***265***
Absence without **116, 117,** ***258***
„ „ conviction of, on charge for desertion or attempting to desert **143,** ***264***
„ „ "Day," what constitutes a **132, 133**
„ „ forms of charges ***257, 258***
„ „ penal deduction for every day of . . **131, 132**
„ „ remission of deductions from pay and allowances for, by C. O. . . . **133,** ***250***
Overstaying, without sufficient cause **116, 117,** ***258***
Leave of absence.
For purpose of prosecuting or defending suit . . . **154**
Legal Adviser.
Accused to be granted free communication with . . . ***182***

[References to I.A.A. are in thick type, those to Rules in italics.]

Legal Adviser—*contd.*
Communications to, privileged 53, 406, 407
Persons included in term 53
Letter.
Anonymous (*See* also **Evidence, Handwriting,** etc.) . . 42
Levies.
Discipline of, how provided for 90
Lines.
Absence from, after tattoo 116, 117, *258*
Confinement to, court cannot sentence prisoner to . . *230*
Long Roll.
Name of enrolled person to be entered in *168, 169*
Loss.
Arms, collective responsibility for 9, 10, 109, *245*
Damage, or, evidence of, to be taken during the trial . . *206*
Rifles, etc., of, court of inquiry on *245*
Stoppages of pay and allowances to make good . . 128, 131, *206*
Lunatics.
Disposal of property of 152, 153, *250*
Lurking House-trespass (*See* **House-breaking, etc.**).

M

Magistrate.
Evidence before, when may be used at court-martial . . 39
Police officer, or, to aid in apprehension of offender subject to I. A. A. 156
Making away with.
Charge for, when to be preferred 121
Meaning of 121
Malice.
Presumption of, in English law 65
Malingering. *259*
Meaning of 119
Offence of 118, 119
Market.
Disturbing 123, 124, *264*
Marriage.
Communications during, privilege of 53, 405
Offences in relation to 363, 364
Married Woman.
Enticing or taking away 364
Medal.
Selling, pawning, destroying or defacing 121, *262*
Medical Officer (*See* **Officer**).
Memoranda.
For guidance of court-martial *312, 313*
Memory.
Refreshing (*See* **Evidence**).
Mercy.
Recommendation to *207*
„ form of *299*
Mess.
Dishonest receipt of property of 118, *259*
Misappropriation of mess property, how to be dealt with . 18
Theft of property of 118, *259*
Wilfully injuring property of 121, *62*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Military authority.
Arrest by, of person subject to I. A. A. 156
Military convict.
Dismissal of 9, 107, 108, *171*, *172*
Transmission to civil prison of 14, 148, 149
Military Custody (*See* also **Custody**).
Definition of 104
Deserter when apprehended delivered into . . 156
Imprisonment when to be carried out in . 20, 148, 149, *231*
Leaving, before being set at liberty . . . 120, *260*
Meaning of 14
Non-commissioned officers in, placed under arrest . . 14, 15
Officers in, placed under arrest 14, 15
Persons in, subsistence of 132
Regulations as to taking into 156
Warrant for use when prisoner is to be delivered into . . *319*
Witness subject to I A. A. giving false evidence may be ordered into, by court *240*
Military Decoration (*See* **Decoration**).
Military Discipline.
Act prejudicial to good order and . . . 60, 124, 125, *265*
Military Duty.
Absence from, counts as day of absence 132, 133
Military Law.
Books on, to be laid before courts-martial *211*
Certain civil offences triable by . . .59, 60, 125, 126, 127
Liability of reserve forces to 415
Persons subject to, as native officers, warrant officers, and non-commissioned officers may be placed in arrest . . . 14, 15
Military Mess (*See* **Mess**).
Military Offences.
Attempts to commit, how triable by I. A. A. . . . 125
Reservist can be tried for any 89
Military Office.
Exercise of powers vested in holder of *167*
Military Police.
Discipline of, provided for by special enactment . . . 90
Military privileges in relation to Civil Courts . . . 88, 89
Military Railway Companies.
Direct enrolments into reserve of 89, 90
Military Reward (*See* also **Reward**)
Definition of 104
Forfeiture of, as court-martial sentence . . 127, 128, *299*, *306*
Military Service.
Desertion in order to avoid important 115, 117
Offences in relation to, forms of charges for . . *254—256*
Military Work.
Refusing to superintend or assist in 115, *257*
Militia.
Discipline of, how provided for 90
Minor punishments (*See* **Punishments**).
Misappropriation.
Dishonest 117, 118, *258*, 356, 357
Intent to defraud necessary for offence of 118, 119
Mess property, of, how to be dealt with 118
Separate charge required for each instance of . . . 118
Mischief.
Definition of 359, 360
Offences of 81, 359, 360

[References to I.A.A. are in thick type, those to Rules in italics.]

Mitigation (*See* **Punishments, Finding and Sentence, etc.**)
Money.
Dishonest misappropriation of 117, *258*
Furnishing false return of 122, *263*
Public, other than pay deduction from 133
Movable Property (*See* also **Property**).
Dishonest misappropriation of, offences of . . 69, 70, 81, 117, 118, *258*, 356, 357
Murder.
Attempt to 348
Culpable homicide (*q. v.*).
„ „ when 64, 345, 346
Evidence of accused's disposition on trial for . . . 33, 44
„ intention, etc., on trial for 33, 44
Form of charges for *266*
Intention important in trial for 64
Offence of 82, 127, 345, 346
Penalty for 66, 82, 127
Provocation as excuse 64, 65
Sentence of death for 66
Mutiny.
Abetment of 340
Beginning, causing, etc. 113, 114, *256*
Definition of 114
Insubordination, and, offences of . . . 113—115, *256*, *257*
Mutiny Act.
East India Company's 1

N

Native of India.
Definition of 3, 4
Native Followers.
Application of Indian Army Act to 4, 5, 101
Native Officer.
Application of I. A. A. to 101
Authorities who can dismiss 9, 106
Definition 4, 103
Discharge of, restrictions on 107
Dismissal or discharge of, certificate to be furnished to, on . *171*
District Court-Martial, cannot be tried by 13
Precedence of, rules as to *211*
Priority of hearing by courts of cases in which they are concerned 154, 155
Privileges of, under Indian Arms Act 89
Necessaries.
Exemption of, from attachment 154
Regimental, making away with, losing, injuring . . 121, *261*, *263*
Neglect.
General or garrison order, to obey 124, *265*
Negligence.
Definition of 120
Negligent Acts (*See* **Dangerous Acts**).
Non-Commissioned Officer.
Acting, cannot be summarily imprisoned or flogged by provost-marshal 7
Acting, may be ordered by C. O. to revert to permanent grade 9, 108
Arrest, rules as to 14, 15

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Non-Commissioned Officer—*contd.*
Definition 7, 103
Forfeiture of seniority of rank as court-martial sentence 127, 128, *299*, *306*
Imprisonment not to be awarded as minor punishment to . 109
Only attested persons in I. A. can become . . . 8, 104, 106
Reduction of, as court-martial sentence . . 127, 131, *299*, *306*
„ of, on active service *249*
„ summary to lower grade or ranks 9, 108
Term includes acting N. C. O. 7
Notifications.
Definition of 104
Issued under Indian Army Act . . . . . 435—436

O

Oath or Affirmation.
Accused cannot give evidence on *201*, *229*
Administration of . 23, 26, 140, *169—170*, *190—194*, *234*, *235*, *243*
Attestation on, form of . . . . . *169—170*
„ how administered *170*
„ person who can administer *170*
Attested person, by . . . . . 106, *169—170*
Courts-martial, taken by member of, as witness for defence . 51, 52
Court of inquiry, at, when to be administered . . . *246*, *247*
Evidence in support of plea to jurisdiction of court to be taken on *196*
False statement on, before court-martial, etc. . . . 123, *264*
Forms of, at courts-martial . . . . . *190—194*, *243*
„ at summary court-martial *226*, *227*
Illness or death of accused, evidence of, to be taken on. *217*
Interpreter, ... 19, *193*, *194*, *219*, *226*, *227*, *243*
Interpreter, by, at summary court-martial, form of . . *226*, *227*
„ „ „ general court-martial . . . *243*
Judge Advocate, to, at court-martial 140, *192*
Members of court-martial, to, administration of 23, 26, 140, *218*, *219*, *243*
Members of court of inquiry on illegal absence, to be administered to 156, *247*
Officer attending for instruction at court-martial . . . *192*, *193*
„ holding a summary court-martial, by 19, *226*
Persons to administer, at courts-martial *194*
President and members of court-martial, to 140, *190—192*, *218*, *219*, *243*
„ and members of court, to, forms of . . *190—192*, *243*
Refusing to be sworn or make affirmation 123
Refusing, when required by public servant to make . . 343
Summary court-martial at, officer holding trial may take interpreter's 19, *226*
„ general court-martial, at, by whom to be administered *243*
„ „ „ „ to members of . . 26, *243*
Shorthand writer *193*, *219*
Superintending office 140, *192*, *243*
Witness, ... 140, *234*, *235*, *243*
Offences (*See* also under each offence).
Abetment of . . . . . 72, 125, *266*, 336—339, 340
Accident in doing a lawful act, not an 0
Act causing slight harm not an offence 334

{*References to I.A.A. are in thick type, those to Rules in italics.*}

Offences—*contd.*
Act done by person bound, or by mistake of fact believing himself bound by law, not an offence . . 329
„ „ by person justified or believing himself justified by law, not an offence 330
„ „ during involuntary intoxication, not an offence . 331
„ „ in good faith for benefit of a person, without consent, when not an offence 332, 333
„ „ in private defence, when not an offence . . 334
„ „ pursuant to judgment or order of court, not an offence 329
Active service, on, corporal punishment for . 126, 127, 129, 130
Act of judge when acting judicially, not an offence . . 329
„ of person of unsound mind, not an offence . . . 331
„ to which a person is compelled by threats, when not an offence 333
Against officer holding a S. C. M. should not be tried by himself 138, *241*
Army and navy, relating to 73, 340, 341
Assisting in 62
Attempts to commit 74, 367
Charge (*q. v.*)
Civil . . . . . 125—127, *266*
„ active service in British India, on . . 125, 126, 129, 130
„ certain, triable by military law at all times 59, 60, 125, 126, 127
„ committed outside British India and punishment for, . 125, 126
„ „ „ „ how to be dealt with 118, 125, 126
„ committed in British India, when to be tried by court-martial 125
„ corporal punishment for, on active service 60, 126, 127, 129, 130
„ definition of 59, 60, 104
„ forms of charges *266*
„ how described when framing charge under sections 41 and 42 of I. A. A. 60
„ on active service in British India, how to be tried and punished 125, 126, 129, 130
„ punishments for, where shown . . 60, 72—86, 125, 126, 127
„ restrictions on courts-martial as to punishment for, under I. A. A. 41 126
Classification of 10
Cognate, conviction of one on charge for another . 29, 143, 144, *204*
„ Table of *204*
Commanding officer can legally try any, by summary court-martial, with proper sanction 19, 138
Committed while incapable of knowing nature of . . . 10
Common interest in 62
Communication made in good faith, when not an offence . 333
Conspiracy to commit, punishable under section 121, I. P. C. . 339
Conviction of, evidence of previous convictions and general character on . . . 43, 145, 146, *205, 206, 229, 230, 243*
Courts-martial, in relation to . 122, 123, *239—242, 263, 264*
Courts of justice, relating to 74
Criminal responsibility for offences committed by others . 62
Death, punishable by . . . . . 111—113, 114, 115, 120
Definition of 104
Enemy, in relation to 111, 112, 113
False documents and statements, in relation to, 121, 122, *262, 263*; 361—363
" Harbouring " meaning of 63
Harbouring offenders 63, 78, 79

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Offences—*concld.*
Illegal omission 61
Indian Official Secrets Act, against . . 59, 60, 76, 82, 418, 419
„ „ „ „ restrictions on trial of . 420
Innocent agent in committing 63
In relation to courts-martial, by persons subject to Army Act, and method of dealing with 123
Instigating, aiding and abetting . 62, 63, 72, 125, *266*, 336—340
Intention, in relation to (*See* **Intention**).
Investigation of *175*, *176*, *240*
Joint, persons convicted of, may be ordered to pay whole compensation for loss or damage *206*
Joint trial for same 34, *183*, *184*, *242*
Less offence, conviction for, on charge of the greater . 143, 144, *204*
Military, attempts to commit, how triable, under I. A. A. . 125
Military service, in respect of . . . 111, 112, 113, *254—256*
Military service, in respect of, forms of charges . . *254—256*
Minor, charges for, when may be dropped 22, *215*
Miscellaneous military 123, 124, 125, *264*, *265*
Persons concerned in criminal act may be guilty of different 325
Persons in custody, in relation to 120, *260*
Persons punished by commanding officer for, not to be tried by court-martial for same offence 18
Property, in relation to . . 120, 121, 259, *261*, *262*, 353 - 361
Provocation for *199*
Punishable by death . . . . . 111—115, 120
„ by ordinary law and by I. A. A. . 117, 118, 119, *177*
„ by whipping by law of British India . . . 129, 130
Responsibility for . . . . . 61—63
Same, retrial for 40, 137, *197*, *198*
State, against 84, 339, 340
Summary court-martial, against officer holding . . 137, 138, *241*
Table of . . . . . 60, 70—86
Time and place of, material in some cases 29
Triable by summary court-martial 138, *177*
Witness, etc., by, procedure of court on . . . *239—242*

Offenders.
Apprehension of 156
Juvenile, when punishable with whipping 434
Power of criminal court to require delivery of . . . 136, 137
When to be dealt with by civil power 118

Officer.
Arrest, military custody includes 14
„ rules as to 14,15
„ witness, attendance as, when under 15
Attesting 106, *170*
Cannot be tried by summary court-martial 138
Challenge of, by accused, forms of *287*, *288*
Commanding officer (*q. v.*).
Commissioned, power of, to disperse unlawful assembly . . 422
Complaint against 153
Conducting proceedings of court-martial, responsibility of . *211*
Convening (*See* **Convening Officer, Courts-Martial, Commander-in-Chief in India, etc.**).
Definition 7, 103
Disqualification of, at court-martial . . 22, 123, *186*, *187*, *188*
Eligibility of, at court-martial 22, *186*, *187*, *188*
Enrolling, list of *168*
Enrolling (*See* **Enrolling Officers, etc.**).

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Officer—*contd.*
Exemption of, from tolls when on duty . . . 88, 89, 426
Forfeiture of seniority of rank, as court-martial sentence . 127, 128, *299*, *306*
Government, reference by accused to 145
„ written reply of, as evidence on trial for desertion, absence without leave, etc. 145
Investigating, meaning of *187*
Medical officer, summary court-martial held by . . . 19
Military privileges of 88, 89
Native (*See* **Native Officer**).
Offence against officer holding summary court-martial . 137, 138, *241*
Powers under I. A. A. in case of foreign service, who may exercise 103
Reviewing, considerations to be borne in mind by, when reviewing proceedings of S. C. M. for an "Act prejudicial, etc." 124, 125
Senior, sits as president of court-martial . 12, 22, 139, *185*, *186*
Summary Court-Martial held by junior, in time of peace . 13, 147
Summary of evidence, to take down, who should be detailed . *178*
Superintending, accused cannot object to *189*
„ administration of oath or affirmation by . *194*
„ charge sheet when to be forwarded to, by convening officer *185*
„ court-martial, at, when to be appointed . 135, 139, *243*
„ custody of proceedings by *221*, *222*
„ exemption from arrest under civil or revenue process 153
„ oath, administration of, at court-martial to 140, *192*, *243*
„ presence of, at assembly of court 22
„ presence of, at summary general courts-martial 135, 139, *243*
„ proceedings of courts-martial when to be conducted by *211*
signing of proceedings by . . *205*, *207*, *208*
summary general court-martial, at, administration of oath to *243*
Superior, definition of 103
disobedience to lawful command of 114, *256*
violence to 114, *256*
Suspension from rank, etc., of, as court-martial sentence . 127
Trial (*q.v.*).
Unbecoming behaviour by 123, 124, *264*
Waiting, in, at courts-martial, appointed or detailed by convening officer 22, *185*
Warrant to convene general courts-martial to whom issued . 133
Who may exercise powers of divisional commanders . . *248*
Official Trust.
Breach of 82, 419
Opinion.
As to conduct, how far admissible 43
Experts, of, rule as to 40, 46
Handwriting, who may give opinion regarding . . . 41
Not generally admissible as evidence 40
Relevancy of . . . . . 40—43, 383—388
Orders.
Neglecting to obey 124, *265*
Subsidiary, forms of *311*

[References to I.A.A. are in thick type, those to Rules in italics.]

Overstaying leave.
Offence of 116, 117, *258*
Reference by accused to government officer on trial for . 145

P

Parade.
Failure to appear, at 116, 117, *258*
Line of march, or, quitting 116, 117, *258*
Pardons and remissions . . 25, 146, 147, 150, 151, *208—210*
Parole.
"Watchword," included in 112
Pawning.
Medal or decoration 121, *262*
Pay and Allowances.
Arrears of, forfeiture of, on dismissal 127, 128
Charge, facts in respect of which deductions may be awarded to be stated in *180, 181*
Deductions from . . . . . 11, 131—133, *206, 250*
„ absence on desertion or without leave for . 131, 132
„ amount of, allowed 132
„ for imprisonment 131, 132
„ limits of 11
„ of reservist 132
„ public money other than 133
„ sickness caused by an offence when in hospital, for 131
„ to make good loss or damage . . . 131, *206*
„ to pay fine awarded by criminal court . . 132, 133
„ under section 43, by order of court-martial . 131, 132
„ when prisoner of war 131
„ when prisoner of war, officers who may remit . *250*
„ while in custody on charge for offence . . 131
Due to deceased person, deserter or lunatic, drawing and disposal of 152, *250*
Exemption of, from attachment 154
Forfeiture of arrears of, on dismissal 127, 128
„ of, does not compensate injured party, for loss, etc. 128
Forfeiture of, when in hospital for sickness caused by an offence under I. A. A. 131
Joint offenders may each be ordered to pay whole of compensation for loss or damage *206*
Meaning of 11
Penal deductions from (*See* also **Deductions** above) . 11, 131—133, *206, 250*
„ „ Governor-General in Council may remit *250*
„ „ persons who can remit . . . *250*
„ „ remission of 133, *250*
Persons in military custody how subsisted 132
Protection of 88, 128, 132
Remission of deductions from 133, *250*
Stoppages of, amount of 128, 132
„ „ to make good loss or damage . . . 128, 131, *206*
"Day," reckoning of, for stoppages . . . 132, 133
Suspension from, as court-martial sentence . . . 127, *298*
Peace.
Insult intended to provoke breach of 81
Penal deductions (*See* also **Pay and Allowances**) . . 131—133

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Pension.
Attachment of, by civil courts, protection from . . . 88
Claim to, forfeited on dismissal 9, 102
Forfeiture of service for, as court-martial sentence . 127, *299*, *306*
„ „ on desertion 116
„ „ towards, on conviction of offence of fraudulent enrolment 117
Obtaining, by false statement 122, *262*

Perjury.
False swearing as to belief is 42, 123
Offence of, and punishment for 123

Personation.
Cheating by (*See* **Cheating**).
Personating a soldier (*See* **Army and Navy, offences relating to.**)

Plea.
Evidence in support of *195*,*196*
„ „ „ of plea to jurisdiction, to be taken on oath or affirmation *196*
General "Guilty" or "Not guilty," of . . . *196*, *197*, *228*
"Guilty," and "Not guilty," difference in procedure . . *197*
"Guilty" misapprehension of plea . . . 19, *197*, *198*, *199*
"Guilty," of, by accused, form of proceedings on . *290*, *291*, *303*
"Guilty," of, commonest form of admission . . . 45
„ „ statement that rule 42 (B) has been complied with, to be recorded on *197*
"Guilty", of, procedure on 19, 20, 23, 45, *196*, *197*, *198*, *199*, *228*, *229*, *290*, *291*
In bar of trial 40, *195*, *196*, *197*, *198*, *228*
„ „ address by prosecutor and accused in reference to *197*
„ „ by accused, form of *289*, *290*
„ „ „ evidence in support of . . . *197*
„ „ „ example of *195*, *196*
Jurisdiction of court, to *195*, *196*, *228*, *243*, *289*
„ „ at summary court-martial . . . *228*
„ „ form of *289*
"Not Guilty," of proceedings on, form of . *291—296*, *303—305*
„ „ „ summary of evidence to be enclosed with proceedings on *313*
„ „ „ withdrawal of *199*, *229*
„ „ procedure on . . . 20, 23, *199—201*, *229*
Refusal to make, procedure on *196*, *228*
Separate, by accused, to each charge *194*, *227*
Special, by accused, to jurisdiction of court . *195*, *196*, *228*, *243*
„ „ to jurisdiction of court, at summary court-martial *228*
„ to jurisdiction of court, examples of . . . *195*
Validity of, to jurisdiction of court, procedure of court when in doubt as to *195*, *196*

Plunder.
Committing, or breaking into house or other place, in time of war 111, 112, 113, *255*
Field, garden or other property, of, in time of peace . . 121, *261*
Seeking, during action 111, 113, *255*

Police.
Military, discipline of, how provided for 90
Officer of, may without warrant arrest suspected deserter . 156

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Police Officer.
Confession to 36, 380
Magistrate or, to aid in apprehension of offender subject to I. A. A. 156
Porterage.
Exacting 120, 121, *261*
Post.
Meaning of, when used with respect to an individual . . 113
Places included in term 112
Sentinel sleeping on, in time of war, etc. . . 44, 111, 112, *255*
Sentry, meaning of 112
„ sleeping on, in time of peace 113, *256*
Shamefully abandoning 111, 112, *254*
„ „ person in charge, only, can commit offence of 112
Power of Attorney.
Exempt from fees 88
Prescribed.
Definition of 104
President of Court-Martial.
Casting vote of 140
Certificate of, as to proceedings of S. G. C. M. . . . *309*
Custody of proceedings by *221, 222*
Death, retirement or absence of, procedure on . . . *217*
Duty of, on plea of "Guilty" by accused . . . *196, 197, 228*
„ to compare evidence of witness with his statement in summary of evidence *186*
Exempted from arrest under civil or revenue process . . 153
I. A. A., under, not appointed by name . . . 12, 22, 139
Oath to, administration of . . . . . 140, *190—192*
Objection by accused to 139, 140, *242*
„ to, procedure when allowed *190*
Proceedings authenticated by *207, 231*
Proceedings conducted by, when court composed of British officers *211*
„ signing and transmission of, by . 25, *205, 207, 208, 237*
Senior member to sit as, at general, district or summary general courts-martial 12, 22, 139, *185, 186*
Sentence must be signed by *207*
Summoning witnesses and production of documents by order of 140, 141, *233, 234*
Swearing of . . . . . 140, *190—192, 243*
Priority.
Of hearing by Courts of cases in which native officers and soldiers are concerned 154, 155
Prison (*see* **Imprisonment, etc.**)
Prisoner.
Refusing to receive 120, *260*
Releasing or suffering to escape 120, *260*
War, of, penal deductions for absence as 131, 132
Prisoner of War.
Court of inquiry on recovered *246*
„ „ „ „ „ to record opinion . . . *246*
Deductions from pay and allowances while, officers who may remit *250*
Prisoners Act, 1900 14
Private Defence.
Acts against which there is no right of 334
Commencement and continuance of the *right of, of property* . *336*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Private Defence—*contd.*
Deadly assault, against, right of 336
Property of, when right of, extends to causing any harm other than death 335, 336
„ „ when right of extends to causing death . . 335
Right of . . . . . 334—336
„ of, against act of person of unsound mind . . . 334
„ „ extent to which it may be exercised . . . 334, 335
„ „ when exercise of, extends to causing any harm other than death 335, 336
When right of, extends to causing death 335
Privileges.
Military in relation to Civil Courts 88, 89
Procedure (*See* **Courts-Martial**).
Proceedings of Courts-Martial (*See* **Courts-Martial**).
Promotion.
Forfeiture of service for, as court-martial sentence . 127, *299*, *306*
Taking bribe for procuring 124, *265*
Promulgation.
Charge, finding, sentence and confirmation, of . *208*, *231*, *232*, *313*
Corrections not allowed to be made in proceedings after . *221*
Form of *313*
Proper Military Authority.
Definition of *167*
Property.
Band, of, dishonest receipt of property of *259*
Criminal misappropriation of 356, 357
Deceased persons deserters and lunatics, of, disposal of . 152, 153, *250*
Dishonest receipt of property of Institution . . . 118, *259*
Exempted from attachment, of person subject to Indian Army Act 154
Government, destruction or injury of . . 118, 121, *259*, *262*
„ theft of 118, 119, *259*
Mess, misappropriation of, how to be dealt with . . . 118
Mess, of, wilfully injuring 121, *262*
Offences in relation to . . 120, 121, *259*, *261*, *262*, 353, 361
„ „ forms of charges for . . . *261*, *262*
Person belonging to Indian reserve forces, of, exemption from attachment of 154
Plundering or injury, by sentinel 118, *256*
Private defence, of 334
„ „ commencement and continuance of the right of 336
„ „ of, when it extends to causing any harm other than death 325, 336
Stolen, court cannot sentence accused to restore . . . *207*, *230*
„ receiving or retaining 70, 118, *259*, 358
Theft of . . . . . 68—70, 118, 119, 353, 354
What constitutes movable 68, 323, 353
Wilfully injuring property of band 121, *262*
Prosecution.
Burden of proof, shifting of 50
„ „ usually lies on 24, 49, 65
Case for *199*, *200*
Counsel for *222*, *223*
Every witness for, need not be called *232*
Evidence for, summing up of, by prosecutor . . 24, *200*, *201*
„ „ when taken 20, 23, *199*, *200*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Prosecution—*contd.*
Examination by accused of witnesses for 26, *243*
False evidence, for 32
Protection against, for acts done when dispersing unlawful assemblies 422
Witness in reply may be called by 24, *201*, *236*, *237*
Prosecutor
Accused cannot object to *189*
Active service, on, how to give evidence *200*
Address by 23, *199*, *200*, *201*, *212*, *237*
„ should usually be in writing *200*
Appearance of, at court-martial 23, *188*, *189*
Appointment of *188*, *189*
Charge sheet and summary of evidence, access to, by . . 18
Counsel on behalf of, rules as to *222*, *223*
„ „ to, cannot object *224*
Cross-examination of, by accused *200*
Disqualified from serving as member on court-martial . . *187*
Duty of 23, *201*, *211*, *212*
„ to see that list of members of court is furnished to accused *183*
Evidence by, special rules as to *200*
„ when to be given *199*, *200*
„ summing up of, by 24, *200*, *201*
Examination of witnesses by *235*, *236*
Judge-Advocate, opinion of, entitled to *225*
Must be subject to military law *210*
Not to confirm proceedings of courts-martial . . . *210*
Opening address by, ... *199*, *200*
„ „ always to be made in complicated case . *200*
Re-examination of witness by 23
Reply by, to address of accused 24, *201*
Right of, to forward interrogatories in writing in case in which a commission is issued 142, 143
Witness for defence, may be called as *233*
Provisions.
Criminal force to persons bringing . . . 111, 112, 113, *255*
Dishonest misappropriation of 117, *258*
Exacting 120, 121, *261*
Provocation.
Evidence of 33
Murder reduced to "culpable homicide" not amounting to murder, by 64, 65 346, 347
Plea of "Not Guilty" should be recorded when provocation is given as excuse *199*
When no excuse for murder 65, 346, 347
Provost Marshal.
Appointment of 110
Cannot summarily flog acting non-commissioned officer . 7
Corporal punishment by, not to exceed that awardable by court-martial 110
Custody of persons by 14, 15, 110
Duties and powers of 110
Impeding or refusing to assist 115, *257*
To inflict corporal punishment, limitation of power of . . 10, 110
Public Justice.
Offences against 343, 344
Public money.
Deduction from, other than pay 133

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Public servant.
Insult or interruption to 344
Non-attendance in obedience to an order from . . . 342
Omission to produce document to, by person legally bound to produce it 343
Refusing oath or affirmation, when duly required by public servant to make it 343
„ to answer 343
Public servants and courts, offences relating to (*See* also **Apprehension. Assault** and **Criminal force. False Evidence, Grievous Hurt** and **Hurt**) 83, 342, 343
Public Tranquillity.
Offences against 311, 342
Punishments (*See* **also under each offence** and under courts-martial).
Abetment, for 63, 72, 125
Civil offence, awardable for . . . . 60, 72—86, 125—127
Classification of 10, 11
Combined with another 11, 130
Commanding officer, by, may be diminished but not increased *179*
Commutation 25, 150, *208, 209, 210*, 130, 146, 147
„ confirming officer, by 25, 146, 147
„ of, after confirmation *209*
„ of, on partial confirmation *208, 209*
Corporal, and whipping, difference between 60, 130
„ combination of, with other 130
„ commutation of 130
„ courts-martial should substitute for whipping, in case of soldiers 130
„ for any offence on active service . 60, 126, 129, 130
„ for breach of good order committed by native follower on active service 109, 110
„ for theft 119, 129
„ instrument of 150
„ position of, in scale of 130
„ power of provost marshal to inflict . . . 10, 110
„ sentence by court-martial of . 11, 60, 126, 129, 130
„ sentence of, form of *299, 306*
„ subsidiary order in case of sentence of, form of . *311*
Courts-martial, by, scale of 127, 128
„ „ restriction of, as to 60, 126, 127
Excessive, confirming authority may vary sentence . . *210*
For contempt of court-martial 123
For unlawfully receiving or demanding toll 428
Indian Penal Code, under . . . . . 326—329
Lower than maximum, power of court to award . . . 128, 129
Maximum, assigned to each offence 10
Minor, fines awardable as 132
„ imprisonment not to exceed 28 days . . . 109
„ person acquitted or convicted by court-martial or criminal court cannot be subjected to . . . 18
„ persons who can be awarded 18, 109
„ who can award 9
„ where specified 9, 18, 109, 133
Mitigation of, after confirmation *209*
„ „ before confirmation 25, 146, 147
„ „ on partial confirmation *208, 209*
„ „ statement by accused in . . 20, 23, *198, 199, 229*
„ „ statement by accused in, witnesses in support of *199, 229*

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Punishments—*contd.*
Mitigation of, witnesses may be called in support of statement in *199, 229*
Mitigation or remission of . . **25, 146, 147, 150,** *208, 209, 210, 229*
Murder, for **66, 82, 127**
Native followers, of, on active service, in camp, etc. . . **109, 110**
Offender cannot be tried again after punishment . . . **136**
Only one, usually awardable **11**
Persons who can pardon or remit **150**
Powers of courts-martial as to **13, 60**
Remission of *208-210*
„ of, after confirmation *209*, **150**
„ of, confirming officer, by **25, 146, 147**
„ of, on partial confirmation *208, 209*
Scale of **127, 128**
„ position of corporal punishment in **130**
„ under Indian Penal Code 326, 327
Solitary confinement **130, 131, 150**
Statement by accused in mitigation of **20, 23,** *198, 199, 229, 290, 291*
„ „ „ „ „ of, form of . . . *290, 291*
Table of, for civil offences **72-86**
Warrant for modification of (*See* also **Warrants**) . . . **14**
Whipping (*q. v.*).
"Whipping" and "corporal punishment" difference between **60, 130**
Punjab irregular force **12**

Q

Question.
refusing to answer, punishment for **123**
Quitting Guard.
in time of peace **116, 117,** *258*
in time of war **111, 113,** *255*
Quitting Parade or line of march . . . **116, 117,** *258*

R

Rank.
Forfeiture of seniority of, as court-martial sentence **127, 128,** *299, 306*
„ „ „ effect of **128**
„ „ „ sentence of, by Summary Court-Martial, form of . . . *306*
„ „ „ sentence of, form of . . . *299, 306*
Special provision as to, in certain cases **102**
Suspension from, as court-martial sentence . . . **127,** *298*
Ranks.
Reduction to, as court-martial sentence **127, 131**
Summary reduction to **9, 108**
Rape.
Consent when valid **67**
Definition of **67, 352**
Evidence in trial for, caution as to **67**
Offence and punishment **83, 352**
Penetration necessary for offence of **67, 352**
Rash or Negligent Acts (*See* **Dangerous Acts**).

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Re-admission.
Service, to, after dismissal **151**
Receipt.
Criminal, of property dishonestly misappropriated or converted **118**, *259*
Dishonest, of stolen property **70, 118**, *259*
Receiving (*See* **Stolen Property**)
Recommendation to Mercy *207*
Form of *299*
Should be promulgated *208*
Records.
Regimental books, in, admissible as evidence . . . *205, 206*
Recruits.
Discharge, power of commanding officer to authorize . . **106**, *175*
Reduction.
N. C. O., of, as court-martial sentence . . **127, 131**, *299, 306*
Subsidiary order, in case of, form of *311*
Warrant Officer, of, as court-martial sentence . . . **127**
Refreshing memory (*See* **Evidence**)
Refusal.
To assist provost-marshal, etc. **115**, *257*
To make reparation for injuries **123, 124**, *264*
To receive prisoner, etc. **120**, *260*
To superintend or assist in field work **115**, *257*
Witness of, to attend or be sworn **122, 123**, *263*
Regimental Books.
Extract from, as evidence **40, 145**
Records in, as evidence *205, 206*
Regimental Courts-Martial.
Abolished **11, 12**
Regimental necessaries (*See* **Necessaries**).
Regulation Cat.
Description of *245*
Release of enemy **120**, *260*
Release of prisoners, etc. **120**, *260*
Release of State prisoner **120**, *260*
Religion.
Insulting **123, 124**, *265*
Religious Feelings.
Wounding **123, 124**, *265*
Remission.
Deductions from pay and allowances, of. **133**, *250*
Punishment of (*See* also **Punishment, Finding and sentence,** etc.) **25, 146, 147, 150, 151**, *208, 209, 210*
Reparation.
Refusal to make reparation for injuries . . . **123, 124**, *264*
Repeal of enactments **157**
Reports.
Confidential, privilege of witness as to **52**
Furnishing false **122**, *263*
Neglecting, refusing, etc., to make or send any . . . **122**, *263*
Reports and applications.
Superior military authority, to, how to be made . . . *167*
Rescue (*See* **Apprehension**).
Reserve Forces (*See* also **Indian Army Reserve**)
Direct enrolment into, officers who can effect . . . *169*
" " " when permitted **89, 90**
Division of, into active and garrison reserves . . . **415**

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Reserve Forces—*contd.*
Indian Army, composition of 89, 90
„ „ exemption from toll 88, 89, 426
„ „ Indian Reserve Forces Act, 1888 . . 89, 415, 416
Liability of, to military law 415
Power of Governor-General in Council to make rules for . 415

Reservist.
Cannot leave India without permission 89
Exemption from tolls when called up for training . . 89
Obligations of 89
Pay and allowances of, deductions from 132
Subject to military law at all times 89

Restoration.
Service or other advantage, of, forfeited under sentence . 116, 117, 150

Restraint (*See* also **Wrongful Restraint**) . . . 83, 349, 350

Retreat-beating.
Absence from camp after 116, 117, *258*

Return.
Furnishing false 122, *263*
Neglecting, refusing, etc., to make or send any . . . 122, *263*

Reviewing Officer.
Considerations to be borne in mind by, when reviewing summary court-martial for an "Act prejudicial, etc." . 124, 125

Revision.
Additional evidence can be taken on . . . 25, 147, *207*. *208*
Court is to consist of same officers unless unavoidably absent 147
Difference between, under I. A. A. and A. A. . . . *208*
Finding and sentence, of 147, *207*, *208*
„ of, not allowed, when sentence alone sent back . *208*
Procedure on 147, *207*, *208*
Proceedings of court-martial, form of *299*, *300*
Re-assembly of court for *208*
Sentence may be increased on *208*

Reward.
Military, forfeiture of, as court-martial sentence . . . 127, 128

Rifles.
Loss of, court of inquiry on *245*

Rigorous Imprisonment.
Appeal against sentence of, period within which to be preferred *172*
Sentence of, by summary court-martial, form of . . . *305*
„ „ „ court-martial, form of *298*
Subsidiary order in case of sentence of, form of . . *311*
Term to be used in I. A. A. instead of "with hard labour" . 128
Warrant for use when sentence of, is reduced, etc., by superior authority *317*, *318*
Warrant of commitment when prisoner is sentenced to, in a civil prison *315*

Riot.
Failure to report or make reparation for . . . 123, 124, 264

Rioting.
Offence and penalty for *83*, *342*

Robbery.
Extortion when 355
Offence and punishment for 83, 355
Theft when 359

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Roll.
Long, name of enrolled person to be entered in . . . *169*
Rules (*See* Indian Army Act Rules).

S

Safeguard.
Definition of 113
Forcing, etc. 111, 113, *255*
Sailor.
Seducing from duty 340
Sedition.
Definition 340
Punishment for 84
Seducing soldier or sailor from duty 340
Selling.
Medal or decoration 121, *262*
Sentence (*See* Finding and Sentence).
Sentry.
Plundering or injuring property 113, *256*
Post of, definition of 112
Quitting post, etc., without being relieved . . 111, 112. *255*, *256*
„ „ in time of peace 113, *256*
Sleeping on post in time of war . . . 44, 111. 112. *255*
„ „ „ in time of peace 113, *256*
Striking, forcing, etc. 113, *256*
Service (*See* also Active Service).
Active, definition of 104. 105
Conditions of, embodied in questions in enrolment form . . 105
Desertion, previous, to, reckons towards discharge . . 116
Forfeited, restoration of 116. 117, 150
Forfeiture of, for pension or gratuity on desertion . . 116
„ for promotion, pension, etc, as court-martial sentence 127
„ towards pension or gratuity on conviction of fraudulent enrolment 117
Re-admission to, after dismissal 151
„ „ order for, when necessary 150
Restoration of 150
Sexual Offences (*See* also Rape) 67, 68
Shameful Abandonment of post (*See* Abandonment of Post)
Short-hand Writer.
Oath or affirmation by, at court-martial *193*, *219*
Objection to *219*
„ „ by accused, form of *288*
Swearing of *193*, *219*
Sickness.
Forfeiture of pay and allowances for, caused by offence under I. A. A. 131
Signatures.
Presumption as to, rule 145
Sleeping on Post.
Sentry 44, 111, 112, 113, *255*, *256*
Sodomy (*See* Unnatural Offences).
Soldier.
Confinement (*q. v.*).
Exemption of, from tolls when on duty . . . 88, 89, 426

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Soldier—*cont'd.*
How to act on receipt of summons 155
Military privileges of 88, 89
Priority of hearing by courts, of cases in which they are concerned 154, 155
"Running amok" included in term "enemy" 112
Seducing from duty 340
Summons, receipt of, on, how to act 155
Wearing garb used by 341
Solitary Confinement.
Limit of 150
Periods of 130, 131
Person when to be sentenced to 130, 131
Sentence of, by court martial undesirable, unless the rigorous imprisonment is to be undergone in a civil jail . . 131
Special Finding (*See* also **Finding and Sentence**).
Admissible on charge for disgraceful conduct . . . 118
State.
Offences against the 81, 339, 340
Statement.
Complaint, and, difference between 31, 32
False, affecting character 122, *262*
„ before court-martial 123, *264*
„ obtaining pension, etc., by 122, *262*
„ offences in relation to 121, 122, *262*, *263*
Statement by Accused (*See* **Accused**).
State Prisoner.
Releasing or suffering to escape 120, *260*
Stealing (*See* **Theft**).
Stolen Property (*See* also **Theft, property,** etc.).
Court cannot sentence accused to restore *207*, *230*
Offences in relation to 84, 118
Possession of 70
Receiving 70, 118, 359, 358
Stoppages.
Always awarded to compensate for loss or damage . . 128
Amount of 128, 132
"Day," reckoning of, for purposes of 132, 133
Meaning of term 128
Pay and allowances, of, to make good loss or damage . . 128, *206*
Sentence of, form of *299*, *306*
Stores.
Furnishing false return of 122
Striking.
Sentry 113, *256*
Subordinate 123, 124, *264*
Subordinate.
Striking, ill-treating, etc. 123, 124, *264*
Subsidiary orders.
Forms of *311*
Suicide.
Attempt to commit 74, 124, *265*
Offences in relation to 84, 85, 124
Summary Courts-Martial (*See* **Courts-Martial**).
Summary Reduction.
Non-commissioned officer or acting non-commissioned officer, of, to lower grade or to the ranks 9, 108

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Summons.
Civil witness, to **140**
Form of, for witness summoned under section 84 of I. A. A. . *307*
Soldier how to act on receipt of **155**
Witness, to, ... **140, 141,** *234, 307*
„ who is amenable to military authority . . . **140**

Superintending Officer (*See* **Officer**).

Superior Authority.
Application for court-martial to 18, 21, *177*
Reference to, by commanding officer investigating the charge **16, 18, 137, 138,** *176, 177, 178, 179*
Reports and applications, how to be made *167*

Superior Officer.
Complaint against **153**
Definition of **103**
Disobedience to lawful command of **114,** *256*
Power of, to order person subject to I. A. A. into arrest . **156**
Using or attempting to use criminal force to . . **114,** *256*
Violence to **114,** *256*

Supplies.
Using criminal force to persons bringing, to camp . **111, 113,***255*

Supply and Transport Corps.
Direct enrolments into reserve of 89, 90

Suspension.
Rank, pay and allowances, from, as court-martial sentence . 127, *298*

Sword.
Carrying without proper authority 124, *265*

T

Tattoo.
Absence from cantonments or lines after . . . **116, 117.** *258*

Theft.
Corporal punishment for **119, 129**
Definition of 68, 353, 354
Difference between, and "making away with" . . . **121**
Evidence of character on charge of 43, 44
Government property of **118. 119,** *259*
Indian Army Act, under, and punishment . . . **118, 119, 129**
Offences and penalties **85, 118, 119,** *259*
Property of band of **118,** *259*
„ which can be subject of 68, 353
What constitutes 69, 353, 354
When robbery **359**

Threat.
Act to which a person is compelled by, when not an offence . **333**
To induce confession **35, 380**

Toll (*See* also **Reserve Forces, Reservist, etc.**)
Exemption of followers from **426**
„ of Imperial Service Troops from . . . **88,89 426**
„ of officers and soldiers from . . . **88, 89, 426**
„ from, of vessels transporting troops and baggage of troops **427, 428**
Persons and property exempted from . . . **88, 89, 426, 427**

Tools.
Dishonest misappropriation of **117,** *258*
Making away with, losing and injuring . . . **121,** *261 262*

[*References to I.A.A. are in thick type, those to Rules in italics*]

Town.
Appearing without authority armed in 124, *265*
Trade Marks.
Offences in relation to . . . . . 361—363
Transfer.
Person enrolled under I. A. A., of, rules as to . . . *169*
Transportation.
Commencement of sentence of 148, *207*
Dismissal by commanding officer of person sentenced to 9, 107, 108, *171, 172*
Life for, awardable for murder
Punishment of, as court-martial sentence . 127
Sentence of, commencement of . . . 148, *207*
„ execution of . . . 14, 148, 149
„ form of *298*
„ period within which appeal must be made against *172*
Subsidiary order in case of sentence of, form of . . . *311*
Warrant for use when sentence of, is reduced, etc., by superior authority, forms of *317, 318*
„ of commitment when person is sentenced to, form of *314*
Trespass.
Criminal 75, 360, 361
Reparation for, not making 123, 124, *264*
Trial.
Absence of accused, cannot proceed in *216*
Accused at joint trial, incompetent to testify against each other 51
„ warning of, for 19, 22, *182, 183*
Acquittal or conviction by criminal court bars trial 40, 136, *197, 198*
Adjournment before conclusion of, to be entered in proceedings *216, 217*
„ of, for execution and return of commission . 142
Amenability of accused to . . . . . *195—198*
Amendment of charge before *194*
Case being sent for, should not influence members of courts-martial 21, 22
„ when to be sent for 21
Claim by accused to, by British officers 134, *179*
Commanding officer to consider by what class of court-martial accused should be tried *179*
Commencement of, time for 136
Continuity of *216, 217*
Court-martial, by, application by commanding officer for 18, 21, *177*
„ by, no bar to subsequent trial by criminal court 13, 137
„ warning of accused for . . 19, 22, *182, 183*
Day to day, to be continued from *216*
Desertion, for, copy of record of declaration of court of inquiry admissible on 156
Dissolution of *185*
Invalidity of, owing to convening order *not* stating that larger number of officers not available 134
Joint, at, confession by accomplice implicating fellow accused 34
„ of several accused for one offence . . . *183, 184, 242*
Judge Advocate at, oath by 140, *192*
Limitation of 136, *177, 195-198*
Members, fresh, cannot be appointed after commencement of . *186*
Members not to be influenced by case being sent for . . 21, 22
New, ordered by convening officer on provisions of section 92 not being complied with . . . . . 145.

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Trial—*contd.*
New when court dissolved before finding **135**, *185*
Not invalidated by improper admission or rejection of evidence **58, 59, 414**
Officer, of, by summary general court-martial, finding and sentence require confirmation **146**
Order for, by S. C. M. 18, *176*, *178*
Order for, to be inscribed on charge sheet . . . 18, 22, *227*
Place of **136**
Plea in bar of, by accused, form of (*See* **Plea**) . . . *289*, *290*
President and members, at, oath by . . . . **140**, *190*—*192*
Procedure on trial of accused persons together . . . *213*
Questions to be determined at *27*
Retrial of accused on loss of proceedings *238*
Second, prohibition of *136*
Senior member to sit as president at **139**, *185*
Separate, accused's right to . . . 51, *183*, *184*, *213*, *215*
Setting aside of, warrant for use on *316*
Summary court-martial (*See* under **Courts-Martial**).
Summary general court-martial, by, of several accused persons . *242*
Superintending officer at **135, 139**
„ „ „ oath by **140**, *192*
Time limit for commencement of **136**
Use of summary of evidence at . . 17, 39, 56, *186*, *228*, *229*
Warning of accused for 19, 22. *182*, *183*
Who may be tried by S. C. M **138**, *176*
Witness at, oath by **140**, *234*, *235*, *243*
Trust.
Criminal breach of 70, 75, **357**
Official „ and punishment 82, **419**

U

Unattested Sepoys Act, 1875.
Repeal of **157**
Unbecoming behaviour.
Officer or warrant officer, by **123, 124**, *264*
Unlawful assemblies 85, 87, 341, 342, 421, 422
Dispersal of, by civil force 421
„ „ „ military force 421
Duty of officer commanding troops, required by magistrate to disperse 421, 422
Power of commissioned officers to disperse 422
Protection against prosecution for acts done when dispersing . 422
To disperse, on command of magistrate or police officer . . 421
Unnatural offences 85, **118**, *260*, 352

V

Verdict (*See* **Finding**).
Voluntarily causing hurt . . . **118, 119**, *260*, *266*, 348, 349
Definition of **119**, 348
Intent essence of offence of **119**
Volunteers.
When exempted from tolls **426**
Votes (*See* **Courts-Martial**).

{*References to I.A.A. are in thick type, those to Rules in italics.*}

W

War.
Waging, against the Queen, collecting arms with intention of 340
„ or attempting to wage, against the Queen . . 339
Warrant Officer.
Application of I. A. A. to 101
Arrest, rules as to 14, 15
Cannot be tried by summary courts-martial . . . 138
Definition 4, 103
Dismissal or discharge of, certificate to be furnished to . . *171*
Dismissal or discharge of, when requiring approval . . *248*
Forfeiture of seniority of rank, as court-martial sentence . 127, 128
Reduction of, as court-martial sentence 127
Suspension from rank, etc., of, as court-martial sentence . 127
Unbecoming behaviour by, and punishment for . . 123, 124, *264*
Warrants.
Committal, by whom to be signed *244*
„ form for 14, 149, *208*, *244*, *314*, *315*
„ when person is sentenced to rigorous imprisonment in civil prison *315*
„ when person is sentenced to transportation, . . *314*
Convening and confirming courts-martial, for, 12, 13, 133, 146, 436-440
„ or use when prisoner is to be delivered into military custody *319*
„ „ sentence of rigorous imprisonment is reduced by superior authority *317*, *318*
Release of prisoner or modification of punishment, for . 14, 149, 150, *316—319*
Restrictions on, for convening general or district courts-martial 133
Setting aside, or variation of sentence, for, . . 149, 150, *316—319*
Suspected deserter may be arrested without warrant by any police officer 156
When prisoner is pardoned or trial set aside . . . *316*
When sentence of transportation is reduced, etc., by superior authority, forms of *317*, *318*
Watchword.
Making known 111, 112, *254*
"Parole" "countersign" and "pass word" includes . . 112
Weapon (*See* also **Arms and Fines**).
Carrying offensive, and punishment for 124, *265*
Collective responsibility for loss of 9, 10, 109, *245*
Wearing garb used by soldiers 341
Weights and Measures.
Offences relating to 85
Whipping.
Corporal punishment should be substituted for, in case of soldiers 130
Limit of number of stripes 423
Mode of inflicting punishment of 423
Offences punishable by, by law of British India . . . 129, 130
„ „ „ in lieu of or in addition to other punishment 433
„ „ „ in lieu of other punishment . . 433
Persons exempted from 423, 424
Special provisions as to, in frontier districts . . . 434

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Whipping Act, 1909 . . . . . 433, 434
Offences punishable with whipping under law of British India are specified in 129, 130
Witness.
Absence of, adjournment of court *183*
„ essential, procedure on *234*
Accomplice competent as witness against his principal . . 51, 407
Accused, cannot give evidence 51
„ members of court-martial competent as witness for 51, 52
„ not bound, to give list of *233*
„ notice of intention to call, when to be given to . *233*
„ „ „ witnesses to be called to be given to . . *232, 233*
„ right to call 16, 26, *176*
„ unsworn statement by 51
„ wife of, can give evidence both for defence and prosecution 51
At previous inquiry, admissibility of evidence, when absent from trial 38
Attendance before court-martial . 140, 141, *182, 183, 216, 233, 234*
„ of, officer responsible for *233, 234*
„ procedure for securing *233, 234*
Attesting, when required to be called 47, 393
Calling of, for prosecution and defence, at summary general court-martial *245*
„ whose evidence is not in summary of evidence . *232, 233*
Challenge of members of court, at, cannot be examined on oath *189*
Character as to 24, 43, 145, 146, *198, 199, 200, 201, 205, 206*, 408
„ of accused, in favour of, when to be called . . *205*
Civil, non-attendance of, action on *234, 235*
Competency of . . . . . 50—52, 54, 404—407
„ accomplice as 51, 407
„ comparison with English law . . . 50, 51
„ wife or husband of accused in criminal trial . 405
Complainant should never be examined as, on commission . 143
Corroboration of 57
„ „ by former statements 57, 58
Court-martial, member of, competent witness for defence only 51, 52, *233*
Court of inquiry, at, oath or affirmation when to be administered to *246*
„ at, on illegal absence, oath or affirmation to be administered to *247*
Credibility of, questions affecting 56
Credit of, impeaching 44, 55, 57, 411, 412
Cross-examination of, as to previous statements in writing . 409
„ of, by accused 16, 20, 23, 26, 38, 142, *176, 199, 205, 243*
„ of, by accused, at taking of summary of evidence *176, 178*
„ of, by adverse party as to writing used to refresh memory 413
of, by prosecutor 142
„ questions lawful in 409
„ Rules as to 55, 56, 142, *236*, 408
Deaf and dumb person, not incompetent as 51, 405
Defence, examination by court of 20
Deposition of, under commission, disposal of 142

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Witness—*contd.*
Essential, absence of, court should always adjourn to enable him to attend *183*
„ procedure on absence of *234*
Evidence, may not read 58
„ of, on commission, rules as to . . . . 141—143
Examination-in-chief 54, 408
Examination of, by counsel, rules as to 223, *224*
„ of, on commission . . . . . 141—143, *183*
„ of, order of 408
„ of, points requiring attention of court during . 53, 54 [*235, 236, 243*
„ of, rules as to . 16, 20, 40, 53—58, 141, 142, 143
Exemption from arrest under civil or revenue process . . 153
Facts of case, to, procedure when accused calls . . . 24, *201*
„ „ „ „ when „ no witnesses „ 24, *200, 201*
Former statements of, may be proved to corroborate later testimony 412
Form of summons for, under section 84 of Indian Arms Act . *307*
Hostile, impeaching credit of 55
„ may be cross-examined by person calling him . . 55
„ meaning of 55
„ treatment of 54
Incompetency as, instances of 50, 405, 406
Judge advocate competent for defence only . . . *233*
Judge as, competency of 405
Judge or magistrate, when not compellable as . . . 405
Lunatic, when not incompetent as 405
Magistrate as, competency of 401
Material, absence of, may invalidate proceedings . . . *234*
Member of court-martial competent for defence only . 51, 52, *233*
Military, non-attendance of, at court-martial . . . 141
Number of, necessary to prove any fact 51, 407
Oath to, administration of, at court-martial . 140, *234, 235, 243*
Oath or affirmation to, at court of inquiry *246*
„ „ „ at court of inquiry on illegal absence . *247*
Offences by, etc., procedure of court on . . . . *239—242*
Offering insult to court-martial *263*
Officer under arrest, attendance of, as 15
Opinion of, not evidence 40
Order of examination of 408
Perjury (*q.v.*)
Persons jointly tried cannot testify against each other . . 51
Presence while not under examination *234*
Privilege of, ... 52, 53, 54, 405, 406, 407
„ as to confidential reports 52
„ as to disclosing affairs of state 405
„ as to incriminating questions 52, 407
„ as to information as to commission of offences . 405
„ as to official matters 52, 405
„ as to production of documents which another person having possession could refuse to produce 407
„ as to production or disclosure of confidential reports, etc. 52
„ communication during marriage 53, 405
„ court of inquiry proceedings 52
„ legal advisers, communications to . . 53, 406, 407

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Witness—*concld.*
Privilege of considerations of public policy 52, 405
„ procedure when claimed 53
„ professional communications 406
„ waiver of, when allowed 53
Prosecution, for, cannot serve on court-martial *187*
„ for, every witness need not be called . . . *232*
Prosecutor, competent as, for defence *233*
Questions lawful in cross-examination of 409
Question to, by accused *235, 236*
„ by court *236*
„ by his own party, how put 411
„ by judge-advocate *235, 236*
„ by officer holding the trial *235*
„ by prosecutor *235, 236*
„ be entered on proceedings whether answered or not 53
„ hostile 54, 55
„ indecent and scandalous 410
„ injurious, rules as to 56
„ leading, definition of 54, 408
„ „ rules as to 54, 55, 408, 409
„ test of what is 55
„ when not to be asked 408
„ when permitted 54, 55, 409
mode of putting *235, 236*
objection to 54, *220, 235, 236*
refusal to answer 43, 56, 410
to discover who he is, etc. 409
to impeach impartiality 411
to insult or annoy 410
to shake credit 55, 56, 409, 410
to test veracity 55, 56, 409
when improper 410
when proper 409
when to be compelled to answer 409
Recall of, by court *202, 236, 237*
Recalling of *236, 237*
Re-examination of 20, 23, 54, 58, 142, *236*, 408
Refreshing memory 54, 58, 412, 413
„ „ when witness may use copy of documents to 412
Refusal, to attend or be sworn 122, 123, *234, 235 263*
Reply, in 24, *201, 229, 236, 237*
Statements by persons who cannot be called as . 37—39, 381—383
Statement in mitigation of punishment, may be called to support *199*
Summary of evidence (*See* **Evidence**).
„ „ „ at taking of, to sign his evidence . *177*
Summoning of, by "convening officer," "president," "judge advocate," or "C. O." of accused . . . 140, 141, *225, 233*
Summons for, under section 84, I. A. A. *207*
„ form of *234*
Swearing of, at court-martial 140, *234, 235, 243*
"To facts of case," meaning of 24, *201*
When to be compelled to answer question 409
Wife or husband of accused, competency, in criminal trial . 405
Withdrawal of, when not under examination . . . *234*
Witness, questions to hostile 54, 55

[*References to I.A.A. are in thick type, those to Rules in italics.*]

Woman.
Married, enticing or taking away 364
Offences relating to 86, 352
Work (*See* **Military Work, Field Work**).
Worship.
Defiling place of **123, 124, 265**
Wounding religious feelings **123, 124, 265**
Wrongful restraint and confinement 56, 349, 350

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
8, HASTINGS STREET