RULES OF PROCEDURE, 1926

(Including amendments published up to 31st December, 1928.)

[The Rules of Procedure, 1926, were issued as S.R.O. 989/1926, and the subsequent amendments as S.R.O. 558/1927 and S.R.O. 505/1928; these, however, do not contain the notes to the Rules which are shown herein, or the Specimen Charges (pp. 715-735), and Memoranda (pp. 763-770).]

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RULES OF PROCEDURE, 1926

(Including amendments published up to 31st December, 1928)

PART I—ARREST AND TRIAL

Arrest

Report of delay of trial under Army Act, s. 45.

1. The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under Section 45 of the Army Act, shall be made by means of a letter from the commanding officer of that officer or soldier reporting the necessity to the general or other officer to whom application would be made to convene a court-martial for the trial of that officer or soldier.[1]

1. See generally as to rr. 1-8, Ch. IV, and K.R., 533, *et seq.*

This rule prescribes the manner in which the special report required by A.A. 45 is to be made. A similar report must be furnished weekly until the accused is released or a court-martial assembled; and on the receipt of every such report, the general or other officer to whom it is sent must satisfy himself as to the necessity for the continued retention of the accused in custody; K.R. 537 *(a)*. As to mode of reporting, see r. 135 (B). This special report is not required on active service.

Power of Commanding Officer

Duty of commanding officer as to investigation of charge for offence.

2. Every commanding officer[1] will take care that a person[2] under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of that person into custody is reported to him, without the charge being investigated,[3] unless investigation within that period seems to him to be impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported[4] by the commanding officer to the general or other officer to whom application would be made to convene a court-martial for the trial of the person charged.

1. See r. 129 and note. A C.O. who unnecessarily detains a person in arrest or confinement, renders himself liable to a charge under A.A. 21 (1).

2. This rule applies to officers as well as soldiers.

3. See A.A. 45 (5). This rule means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time. As to exclusion of Sunday, Good Friday, and Christmas Day see r. 135 (A).

4. The report should be made by letter (see r. 135 (B)) and should refer specifically to the case, and state the reasons justifying the detaining of the accused in custody and preventing the investigation. The absence of an important witness would justify a remand; or the accused might be ordered to return to his duty, with a distinct intimation that his case will be investigated so soon as the absent witness is available; K.R., 551.

Hearing of charge.

3.—(A) Every charge against a soldier will be heard[1] in the presence of the accused. The accused will have full liberty to cross-examine any witness against him, and to call any witnesses[2] and make any statement in his defence. On the application of the accused, he and his wife may be called as witnesses, subject to the provisions of Rule 80.[3]

(B) If the accused demands that the evidence against him be taken on oath, an oath will be administered by the investigating officer and taken by each witness in the same form and manner[4] as provided for a court-martial, or, in the case of a witness allowed before a court-martial to make a solemn declaration,[5] the like solemn declaration will be made before the investigating officer.

1. As to the mode of conducting the investigation see Ch. IV, parns. 19-29; K.R., 542-554. The Army Act and Rules do not require the investigation to be by the C.O. but make him responsible for the decision; A.A. 46 (1). The evidence is not taken in writing, and, therefore, in the case of a remand, must be taken in writing afterwards as directed by r. 4 (C).

2. Police and other civilian witnesses cannot be compelled to attend before a C.O. but they can be compelled to attend at the taking of a summary of evidence (see A.A. 125 (3) and r. 4 (H).

3. The last sentence of (A) was added after the passing of the Criminal Evidence Act, 1898. The accused had already the right under this rule to make a "statement," *i.e.*, to give unsworn evidence. If (under B)) he requires the witnesses "against" him to be sowrn, any witnesses (including his wife) called by him should also be sworn; he himself may make an unsworn statement, or (either in addition, to, or in lieu of, such a statement) may give evidence on oath. In the latter case r. 80 will apply to him.

4. See r. 82 and form on p. 763.

5. See A.A. 52 (4); r. 82 (C); and form on p. 763.

Disposal of the charge or adjournment for taking down the summary of evidence.

4.—(A) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act[1] has been committed, or if, in his discretion, he thinks that the charge ought not be be proceeded with.[2]

(B) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either—

(i) dispose of the case summarily[3]; or

(ii) refer the case to the proper superior military authority[4]; or

(iii) adjourn the case for the purpose of having the evidence reduced to writing.[5]

Provided that the commanding officer shall not dispose of a case summarily unless the accused is a soldier, or if the accused, being a soldier, has elected (under Section 46 of the Army Act) to be tried by a district court-martial.

(C)[6] Where the case is so adjourned, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing[7] in the presence of the accused before the commanding officer or such officer as he directs.

(D)[6] The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(E)[8] The evidence of each witness when taken down, as provided in (C) and (D), shall be read over to him, and shall be signed by him, or, if he cannot write his name, shall be attested by his mark and witnessed. After all the evidence against the accused has been given, the accused will be asked "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you

give will be taken down in writing, and may be given in evidence." Any statement of evidence of the accused will be taken down, but he will not be cross-examined upon it.[8]

If the accused is remanded for trial by court-martial, no evidence will be admitted at his trial of any statement which he may have made, or evidence which he may have given, at the taking of the summary of evidence before such caution was addressed to him.

(F)[6] If the commanding officer so directs, or if the accused so demands, the evidence of every such witness, whether for or against the accused, shall be taken on oath,[9] and the oath will be administered by the commanding officer, or by the officer before whom he directs the summary to be taken, in the same form and manner as provided for a court-martial,[10] or in the case of a witness allowed before a court-martial to make a solemn declaration,[11] the like declaration may be made.

(G)[6] If a person cannot be compelled to attend as a witness, or is owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing)[12] be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence: provided that, if such person can be compelled to attend, the accused may demand that he shall attend for cross-examination.

(H) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused.[13] The summons shall be in the form provided in the Second Appendix to these rules.

1. Every offence which a person subject to military law can commit is an offence under the Army Act, because it is either a military offence specified in the Act or a civil offence under s. 41.

In deciding whether a charge under A.A. 40 shall be proceeded with, the C.O. must consider whether the alleged offence is, or is not, to the prejudice of good order and military discipline; if, in his opinion, it is not, the charge must be dismissed. He must also consider whether, having regard to the limitations of time prescribed by A.A. 158 (1), and 161, the accused is liable to be proceeded against; see K.R., 548. As to the limitations of time in respect of certain civil offences see r. 36 (A) (iii) and note 4.

2. The C.O. must dismiss the charge if there is no evidence of any offence under the Army Act; he must also dismiss it if the accused has been previously acquitted or convicted of the alleged offence (see A.A. 46 (7), 47 (5), 157, and 162 (6). He may dismiss it if he considers, for example, that the evidence is doubtful or the case trivial, or, in the exercise of his discretion, for any reason, *e.g.*, the good character of the accused.

A C.O., unless further evidence is required or the case is one of difficulty, should never delay for more than one day in deciding as to the disposal of a case.

As to cases where sufficient evidence is not forthcoming at the investigation or a further offence is disclosed during the investigation, see K.R., 551, 553.

To make an entry against a man without punishment is a summary disposal and not a dismissal of the case.

3. This course will be adopted by the C.O. (subject in the case of N.C.Os. to K.R 558, 559) unless *(a)* he thinks that the case ought to be tried by court-martial, or *(b)* the accused elects to be tried by district court-martial, or *(c)* the case is one which under K.R. 547 he is bound to refer to superior authority.

In certain circumstances the C.O. is bound to deal summarily with an offence of drunkenness unless the accused elects trial by district court-martial. (See A.A. 46 (3)). Except in the circumstances mentioned in A.A. 46 (8), and as respects a warrant officer in A.A. 47 (3), a soldier has no right to claim a trial by court-martial.

4. This course will be adopted when the C.O. considers that the case should be

disposed of summarily but he cannot, under K.R., 547, so dispose of it without reference to superior authority. (See rr. 134 (A), 135 (B), and K.R., 616, 617.)

5. This course will be adopted in any case other than those mentioned in notes 3 and 4 above.

The final decision of the C.O. as to whether the case should be tried by court-martial will only be made after he has considered the evidence which has been reduced into writing, i.e., the summary of evidence. (See r. 5 (A) and note.)

6. For power to dispense with paras. (c), (d), (e), (f) and (g) see r. 104.

7. The adjourned hearing for the purpose of reducing the evidence to writing should, if possible, be held on the same day as the investigation. The C.O. may direct another officer to take down the summary of evidence, but an officer who has given material evidence at the investigation must not be appointed for the purpose.

The summary will be taken on oath if the C.O. so directs or if the accused so demands (see (f) and note 9 below).

The evidence (so far as it is relevant and admissible) of every witness at the investigation must be taken down unless the witness is absent on foreign service or some good reason renders it not reasonably practicable to call him. The evidence of witnesses who did not give evidence at the investigation may also be taken for either prosecution or defence, so long as it appears to be relevant. As provided in (d) the accused must be given full liberty to cross-examine the witnesses against him.

8. The formal caution provided for in this paragraph must be given as soon as the evidence for the prosecution is closed.

No statement or evidence by the accused can be admitted in evidence against him at his subsequent trial unless made or given after the formal caution.

If it is necessary to take an additional summary, the accused must again be formally cautioned before he makes any further statement or gives any further evidence.

The fact that the accused was duly cautioned should be recorded in the summary.

The accused may make a statement not upon oath or, if he wishes, give evidence on oath; he may call witnesses on his behalf (including his wife). The statement or evidence of the accused and the evidence of his witnesses must be taken down all hearsay and irrelevant matter being excluded. The accused must not be cross-examined.

9. The C.O. cannot direct the evidence of the accused to be taken on oath. It rests entirely with the accused whether he will give sworn evidence or not and he may do so even if the witnesses against him are not sworn.

10. See r. 82 and form on p. 763.

11. See A.A. 52 (4); r. 82 (c); and form on p. 763.

12. The certificate can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence.

The accused has a right to demand the presence of the witness (unless he is not compellable) for purposes of cross-examination; but in many cases the provisions of this paragraph will effect a saving of time and expense; *e.g.*, where a civilian witness is only required to give formal proof of a matter not really in dispute. Such witness must, however, be in attendance at the trial. As to calling at the trial of a witness whose evidence is not contained in the summary or abstract of evidence, see r. 76.

13. See A.A. 125 (3) and form of summons, p. 761. See also r. 78, note 5.

Remand of accused.

5.[1]—(A) The evidence and statement (if any) taken down in writing in pursuance of Rule 4 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer, who thereupon shall either—

(i) remand the accused for trial by court-martial; or

(ii) refer the case to the proper superior military authority; or

(iii) if he thinks it desirable, and the accused is a soldier and has not himself elected to be tried by a district court-martial, re-hear the case and dispose of it summarily.[2]

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay apply[3] to the proper

military authority to convene a court-martial. Any delay in the reference to superior military authority should not ordinarily exceed thirty-six hours.[4]

1. For power to dispense with this rule see r. 104.

2. The evidence in the summary may not correspond with that given upon the original investigation and the case may appear in a new aspect. The C.O. may, therefore, if he has jurisdiction to do so, and the accused has not elected (under A.A. 46 (8)) to be tried by district court-martial, decide to re-hear the case and, if he thinks fit, dispose of it summarily. He can dismiss the case on re-hearing it.

3. For form of application for court-martial, which must be signed by the officer in actual command of the unit to which the accused belongs, see p. 794.

See also memoranda for guidance of courts-martial, p. 763, *et seq.*

If the accused is on detached duty, the C.O. detachment is for this purpose the O.C. unit, unless his powers are restricted under K.R., 563 *(c)*.

4. As to exclusion of Sunday, etc., in reckoning time, see r. 135 (A).

Summary award of punishment by commanding officer.

6.—(A) The term of detention when awarded by a commanding officer in days shall begin on the day of the award. The term of detention when awarded by a commanding officer in hours shall begin at the hour when the soldier sentenced is received at the detention barrack or branch detention barrack, to which he is committed, or if he has not been sooner received into the detention barrack or branch detention barrack, shall begin on the day after the day of the award at the hour fixed for the commitment and release of soldiers under sentence.[1]

(B) When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase the punishment for that offence.[2]

1. C.Os. must bear in mind the regulations as to summary award of punishments; K.R. 558-568; and as to drunkenness; K.R., 574-580. See also Ch. IV, paras. 31-38.

A C.O. will award his sentence, up to seven days, in hours, but if exceeding seven days, in days; K.R., 561 *(b)* (ii). In law (in the absence of special provision) there is no division of a day, and, therefore, however late in the day a soldier under sentence is committed, his term of detention will be reckoned to begin on the first minute of the day of the award. But when the sentence is awarded in hours, the detention by virtue of this rule will not commence until the hour at which the soldier is received into the detention or branch detention barrack, or if he is not received into such barrack on the day following the date of the award, then it will commence at the hour fixed for the commitment of soldiers under sentence on the day after the day of the award. This rule will, therefore, allow a C.O. where there is no accommodation in the detention barrack, to postpone the commitment of the soldier for one day, and to keep him in the guard detention room without his term of detention beginning to run, till the usual hour of commitment on the next day after the detention is awarded, whether Sunday or not (see r. 135 (A)). If, however, he is kept longer in the guard detention room and is ultimately committed to a detention barrack, his term of detention will begin so to run, and if not committed to a detention barrack at all, the detention begins to run from the usual hour of committment on the day of the award. It must be recollected that a soldier's pay cannot be stopped after his having been awarded detention for any day on which he is in custody, before his detention begins to run under this rule.

2. The award is considered final when the accused has been removed from the presence of the C.O. The C.O. can at any time diminish the punishment before its completion, though he cannot add to it.

As to entry of C.O's award see K.R. 644, 645, 1630-1. As to revision of summary punishments see r. 10.

Procedure on charge against officer.

8.[1]—(A) Where an officer is charged with an offence under the Army Act the investigation shall, if he requires it, be held, and the evidence taken in his presence in writing, in the same manner, as nearly as circumstances admit, as is required by Rules 3 and 4 in the case of a soldier.[2]

(B) When an officer is ordered to be tried by court-martial, without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him, *gratis*, as provided in Rule 14 (B).[3]

1. For power to dispense with observance of this rule owing to military exigencies, etc., see r. 104.

2. In the case of an officer, as in that of a soldier, the charge must come before his C.O. in order that he may determine whether the charge shall be dismissed, or the case referred to superior military authority for summary disposal under A.A. 47 or trial by court-martial. By this provision the C.O. can dispense with a formal and detailed investigation unless the accused officer demands one. It does not preclude the C.O. from calling the officer before him and investigating the case as he may deem necessary. The officer can only demand formal investigation of his case by the C.O.; he has no right under this rule to demand a court of inquiry.

3. The convening officer will be responsible for the furnishing of this abstract which should not be too much in detail. It should always be delivered to the accused even though the subject matter of the charge may previously have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of its proceedings. (See r. 124A (H).)

Disposal of charge under Army Act, Section 47

Summary disposal of charge against officer or warrant officer.

9.—(A) Where an officer or warrant officer is remanded for the disposal of a charge against him by an authority empowered under Section 47 of the Army Act to deal summarily with that charge, the summary of evidence or (in the case of an officer where there is no summary of evidence) an abstract of the evidence to be adduced shall be delivered to him, *gratis*, with a copy of the charge as soon as practicable after its preparation, and in any case not less than twenty-four hours before his trial.[1]

(B) Where the authority empowered under Section 47 of the Army Act decides to deal summarily with a charge against an officer or warrant officer, he shall, unless he dismisses the charge or unless the accused has consented[2] in writing to dispense with the attendance of

the witnesses, hear the evidence in presence of the accused. The accused will have full liberty to cross-examine any witness against him and to call any witnesses and make a statement in his defence. The accused may give evidence himself and his wife may be called as a witness subject to the provisions of Rule 80.

(c) If the accused gives evidence himself or demands that the evidence against him be taken on oath, the provisions of Rule 82 shall apply save that the oath shall be administered by the authority dealing summarily with the case.

1. As to entries of awards in the regimental conduct sheets of officers and warrant officers, see K.R. 1629.

2. A certified true copy of the written consent of the officer should be attached to each copy of the regimental conduct sheet forwarded to the War Office. (K.R., 1629 *(b)*).

Revision of Summary Punishments

Revision of summary punishments.

10. If any punishment awarded by a commanding officer, or by an authority dealing summarily with a charge under Section 47 of the Army Act, appears to the Army Council, or to a superior officer as hereinafter defined, to be wholly illegal, the Army Council or such superior officer shall direct that the award be cancelled and the entry in the records of the accused be expunged.

If such punishment appears to the Army Council, or to a superior officer as hereinafter defined, to be in excess of the punishment authorized by law for the offence, the Army Council or such superior officer may vary the punishment awarded so that it shall be in excess of the punishment authorized by law, and the entry in the records of the accused shall be varied accordingly.

If such punishment appears to the Army Council, or to a superior officer as hereinafter defined, to be too severe having regard to all the circumstances of the case, the Army Council or such superior officer may remit the whole or a part of the punishment awarded, and such remission shall be entered in the records of the accused; provided that such power of remission shall be exercised by a superior officer within a period of two years only from the date of the award.[1]

In this rule the expression "superior officer" means, with respect to punishments awarded by a commanding officer, any officer superior in command to the commanding officer who awarded the punishment, and with respect to punishments awarded by an authority dealing summarily with a charge under Section 47 of the Army Act, in India the Commander-in-Chief of the Forces in India, and on active service the general or air officer commanding-in-chief in the field if of superior rank or superior relative rank to the officer who awarded the punishment.

1. Any cancellation, variation or remission by a superior officer of a punishment inflicted upon an officer under A.A. 47 will be notified to the War Office. See K.R., 1629 *(b)*.

Framing Charges

Charge-sheet and charge.

11.—(A) A charge-sheet[1] contains the whole issue or issues to be tried by a court-martial at one time.

(B) A charge[2] means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.[3]

1. The charge-sheet is usually prepared by the adjutant of the accused's unit; but r. 17 makes the convening officer responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs; if trial is ordered, the order must be added at the foot and signed by—or by a staff officer "for"—the convening officer.

For submission of certain charges of the Judge-Advocate-General, see K.R., 630.

There may be several charge-sheets—see r. 62; but the court can only deal with one charge-sheet at a time. When there are two or more charge-sheets, they must be consecutively numbered. For illustration of charge-sheet, see p. 714.

2. The "charge" here referred to is the formal written charge upon which the accused is to be tried, as distinct from the charge or complaint (mentioned in A.A. 46 (1) and rr. 3, 4 and 8) which give rise to the preliminary investigation.

3. All charges (including alternative charges) must be consecutively numbered. As to insertion of charges in separate charge-sheets, see r. 62 and notes.

Commencement and validity of charge-sheet.

12.—(A) Every charge-sheet will begin with the name and description of the person charged, and should state, in the case of an officer, his rank, and name, and corps (if any), and in the case of a soldier, his number, rank, and name, and corps (if any), and where he does not at the time of the trial belong to the regular forces, should show by the description of him, or directly by an express averment, that he is amenable to military law[1] in respect of the offence charged.

(B) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged[2], if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(C) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included, though not expressed therein.[3]

1. See illustration of charge-sheet, p. 714. As an officer or soldier of the regular forces is always subject to military law, a statement in the charge-sheet that the accused belongs to a battalion of the regular forces will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, that he is subject to military law, without expressly adding the words. But if the accused belongs to the reserves or to the Territorial Army, or to the Royal Air Force lent or attached to the Army, the charge-sheet must state, and the court must, either by evidence or from their military knowledge, be satisfied, that he was at the time of the offence subject to military law. (See, however, Reserve Forces Act, 1882, ss. 6 and 15.)

If the accused is a civilian, or if his name and position are unknown, as may happen on active service, the charge-sheet must expressly aver that he was subject to military law, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must be given of the fact that he was, for example a sutler, or a holder of a pass from the officer in command. See specimen charge-sheet No. 14, p. 717.

For persons subject to military law, see A.A. 175, 176.

2. For powers of the court to amend such a mistake, see r. 33 (A).

An accused person may be described by an assumed name if he is commonly known by that name.

3. This paragraph must not be regarded as excusing any carelessness in preparing charge-sheets. It enables a court to presume matters which, though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it.

Contents of charge.

13.—(A) Each charge[1] should state one offence only,[2] and in no case should an offence be described in the alternative[3] in the same charge.

(B) Each charge should be divided into two parts—

(i) The statement of the *offence*; and,

(ii) The statement of the *particulars* of the act, neglect, or omission constituting the offence.[4]

(C) The offence should be stated, if not a civil offence, in the words of the Army Act,[5] and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.[6]

(D) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know every act, neglect, or omission which it is intended to be proved against him as constituting the offence.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.[7]

(F) Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts.[8]

1. For forms of charges and preliminary note as to their use, see p. 699 *et seq.* See also memoranda for guidance of courts-martial, p. 763 *et seq.*

2. *E.g.*, a single charge under A.A. 8 (2) of using threatening *and* insubordinate language to his superior officer would be a bad charge as it discloses two separate offences; similarly a single charge under A.A. 18 (4) or 41 of stealing *and* receiving would be a bad charge. An accused, however, may legally be charged under A.A. 41 with burglary and larceny or housebreaking and larceny, as under the Larceny Act, 1916, burglary and larceny is made a single offence, as is also housebreaking and larceny.

3. *E.g.*, a single charge under A.A. 8 (2) of striking *or* offering violence to his superior officer would be a bad charge, as it discloses two separate offences. But the use of the word "or" in a charge, *i.e.*, in the statement of the offence, is permissible where the charge discloses only one offence; *e.g.*, a charge under A.A. 15 of "when in garrison being found beyond the limits fixed by general orders without a pass *or* written leave from his commanding officer" would be a good charge, because the accused is not charged with one of two offences, but with a single offence, which is constituted by his having neither a pass nor written leave. If in the charge the words "beyond the limits fixed by general *or* garrison orders" were used, the charge would be a bad charge because it might by one offence to be beyond the limits fix by general orders, and another offence to be beyond the limits fixed by garrison orders.

A single transaction, although technically disclosing more than one offence, should not, as a rule, be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged (assuming the evidence to be satisfactory), the language being admissible in evidence as to the intent. On the other hand, if it seems desirable, a man can legally be charged in two separate charges with escape from arrest and absence without leave (following such escape).

Larceny of goods the property of several different owners should not be included in one charge.

4. The statement of the particulars must support the statement of the offence. If the statement of an offence laid under A.A. 8 (2) alleged that the accused struck his superior officer, particulars stating that the accused offered violence to the said superior officer would not support the statement of the offence and the charge would be a bad charge, and the fact that the accused pleaded guilty to it would not affect the matter.

In all cases involving an intent to defraud, such intent must be stated in the particulars.

5. Under r. 134 (B) this will include the words of any other Act creating the offence, such as the Acts relating to the reserve or auxiliary forces. See notes as to use of forms of charges (25) p. 702.

6. But the essence of the offence charged under A.A. 41 must be expressed; *e.g.*, a charge of damaging property must contain the averment that the act was done "maliciously".

7. See *e.g.*, specimen charge-sheet No. 68, p. 727. If in such a case there were an acquittal upon the first charge and a conviction upon the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

8. Unless these facts are stated in the particulars and proved in evidence, the court cannot award the punishment of stoppages under A.A. 44 (*gg*) and (*n*).

As to evidence of value, see note 16 to A.A. 138 (4).

As to deductions from ordinary pay, see A.A. 137, 138.

Preparation for Defence by Accused Person

Rights of accused to prepare defence.

14.[1]—(A) An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses,[2] and with any friend, defending officer or legal adviser[3] with whom he may wish to consult.

(B) As soon as practicable after an accused has been remanded for trial by court-martial, and in any case not less than twenty-four hours before his trial, an officer[4] shall give to him *gratis* a copy of the summary of evidence or (in the case of an officer where there is no summary of evidence) an abstract of the evidence, and explain to him his rights under these rules as to preparing his defence[5] and being assisted or represented at the trial,[6] and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available.[7] The convening officer shall be informed whether or not the accused so elects. If any other or additional summary or abstract of evidence be taken subsequently, a copy thereof shall be given *gratis* to the accused as soon as may be.

1. For power to dispense with this rule, see r. 104.

2. The freest communication which is consistent with the necessities of discipline and the safe custody of the accused should be permitted; otherwise the subsequent proceedings may be invalidated. See r. 39 (A).

The accused is not bound to call as a witness at his trial any or every person with whom he communicates as a possible witness on his behalf.

3. As to defending officer and friend of accused, see r. 87; and as to counsel, see rr. 88-93. As to the right of the accused to consult the judge-advocate on any question of law or procedure, see r. 103 (*a*).

4. This duty must be properly performed by a responsible officer.

5. See rr. 14 (A), 15, 16.

6. See r. 87, *et seq.*

7. See r. 87 (B).

Information of charge and delivery of list of officers to accused.

15.—(A) The accused, before he is arraigned,[2] shall be informed by an officer[3] of every charge on which he is to be tried; and also that, on his giving the names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly[4]; the interval between his being so informed and his arraignment should not be less than twenty-four hours.

(B) The officer,[3] at the time of so informing the accused, shall give the accused a copy of the charge-sheet, and where the accused is a

soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.[5]

(c) A list of the ranks, names, and corps (if any) of the president and officers who are to form the court, and where officers in waiting are named, also of those officers, should, as soon as the president and officers are named, be delivered to the accused if he desires it[6].

1. For power to dispense with this rule, see r. 104.

2. As to arraignment, see, Ch. V, paras. 42; r. 31 and notes.

3. This duty will usually devolve upon the prosecutor, who should, in any case, satisfy himself before the trial that it has been properly performed. Even if this rule is dispensed with under r. 104, the accused must have information of the charge and opportunity of calling his witnesses.

4. The duty of procuring the attendance of witnesses who are subject to military law devolves, under r. 78 (A) upon the C.O. or convening officer or, after the assembly of the court, the president. If witnesses required by the accused are not subject to military law, the C.O. should at once communicate with the convening officer or, after the assembly of the court with the president or judge-advocate (if any); (see r. 78 (B).)

For form of summons to witnesses, see p. 761.

The request of an accused person for witnesses to be called on his behalf should only be refused if it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. If the request is refused, the refusal and the reasons for it should be communicated to the court, who will deal with the matter under r. 39 (A) or 79.

The court should always adjourn if an essential witness is absent. (See r. 79).

5. Even if the observance of this rule is dispensed with under r. 104, the charges must be clearly explained to the accused.

6. If there is any reason to suppose that the accused may reasonably object to any member, the list should be delivered, even if not demanded.

Joint trial of several accused persons.

16. Any number of accused persons may be charged jointly and tried together for an offence alleged to have been committed by them collectively,[1] but in such a case notice of the intention to try the accused persons together should be given to each of the accused at the time of his being informed of the charge[2], and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence[3]; the convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge admits of it,[4] shall allow the claim, and the person making the claim shall be tried separately.

1. If two accused persons are charged separately with committing the same offence they cannot, even at their own request, be tried together because they have not been charged jointly.

As to swearing the court to try several accused persons, see r. 71 and note, and as to form of proceedings in the case of a joint trial, see para. 22 of memoranda on p. 769.

If one accused pleads "Guilty" and another "Not Guilty" the trial of the latter up to and including the finding must be carried out before the Court deal with the case of the accused who has pleaded "Guilty."

2. Each of the accused should also be told that, if he gives evidence himself, and, in doing so, incriminates any other person charged jointly with him, he is liable to be cross-examined as to character (see r. 80 (D) (iii)). But this liability will not, of itself, entitle the accused to be tried separately.

3. It must be remembered that though each of the accused is a competent witness, none of the other persons charged jointly with him can compel him to give evidence. See Ch. VI, para. 85.

4. In the case of conspiring to cause or joining in a mutiny, the essence of the charge is combination between the accused. In such a case the nature of the charge may not admit of separate trial. In cases of doubt, the accused should be tried separately.

Convening of Court-Martial

Procedure of officer on convening court-martial.

17.—(A) An officer before convening a court-martial[1] should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the accused, or refer the case to superior authority.[2]

(B) He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.[3]

(C) If more than fifteen days in the British Islands, or more than thirty days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial, or to deal summarily with a case, receives an application for a court-martial or to deal summarily with a case, and the time when the case is disposed of, either by the assembly of a general or district court-martial or otherwise, the officer shall report the case and the reasons for the delay, if in the British Islands to the General Officer Commanding-in-Chief the Command or the General Officer Commanding the district, and if in a Dominion or a colony to the General or other officer in chief command of the forces in that dominion or colony, and if in a foreign country to the General or other officer in chief command of the force. But if the officer receiving the application be the General Officer Commanding-in-Chief the command, or the General Officer Commanding the district, or the General or other officer in chief command of the forces, the report shall be made to the Army Council. In India the report shall, in all cases, be made to the Commander-in-Chief of the Forces in India, and, in Burma, to the General or other officer in chief command of the forces in Burma.

(D) The officer convening a court-martial shall appoint or detail the officers to form the court,[4] and may also appoint or detail such waiting officers[5] as he thinks expedient.

(E) The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the accused is to be tried, and the summary or abstract of evidence.[6]

1. With respect to the duties of the convening officer, see further Ch. V, paras. 20-23, and K.R., 615-644. See also form of application for a court-martial (p. 794).

Except on board ship and in such special cases as may be determined by the Army Council, the C.O. of an accused person or an officer who has investigated the charge or remanded the accused for trial cannot afterwards act as convening officer in the same case, but must refer it to a superior authority. (K.R., 617 (*b*).)

2. In the United Kingdom, in the case of a general court-martial and in all cases of indecency, fraud and theft, the proposed charge-sheet and summary of evidence will be submitted by the convening officer to the Judge-Advocate-General before the court is convened. (K.R. 630.)

For the convening officer's duties in relation to the appointment of a judge-advocate, see r. 101 (A) and notes.

3. See K.R., 634.

4. The convening officer must be careful to insert in the convening order the required expression of his "opinion" when he finds it impossible to comply with—

(*a*) A.A. 48 (9), as to rank of the president; or

(*b*) A.A. 48 (10), as to composition of the court; or

(*c*) r. 20 (A), as to appointment of members from different units; or

(d) r. 20 (B), as to appointment of members belonging to the auxiliary forces; or

(e) r. 21 (B), as to the rank of members (see also K.R. 642).

The declaration as to military exigencies, &c., dispensing with certain rules (see r. 104) should be in a separate order. For form of declaration, see p. 741.

See generally as to general or district courts-martial, the number of members, their qualification and rank and the rank of the president, A.A. 48, 50, 182 (4); rr. 19-21; K.R., 642, 643.

If a general officer or colonel is available to sit as president of a general court-martial, an officer of inferior rank is not to be appointed (K.R. 642 (a)).

Under A.A. 53 a court-martial which, after commencement of the trial, is reduced below the legal minimum, is dissolved. If, therefore, the trial is likely to be prolonged, the number of members detailed to serve should be in excess of the legal minimum required. Additional members should also be detailed in doubtful or complicated cases. (See K.R., 643.)

Where several persons are to be tried separately before the same court, a separate copy of the convening order should be prepared for each case.

5. As to detailing of waiting members to meet reduction by challenge or absence, see K.R., 643, r. 25 (c) and note.

6. The convening order should also be sent.

The object of this paragraph is to enable the president to have a general knowledge of the case which is to come before the court. If any amendment in the charges appears to him to be required, he should communicate with the convening officer before the trial begins.

The summary of evidence must be read at the trial when the accused pleads guilty (r. 37 (B)). It may be used at the trial for the purpose of showing that a witness has on a prior occasion made a particular statement or is giving evidence which differs from that given by him when the summary of evidence was taken. Any statement by the accused contained in the summary may be read to the court as evidence at the close of the prosecutor's case upon formal proof that it was made voluntarily after due caution (see r. 4 (E) and notes). Except in the above instances the summary cannot be used as evidence.

During the trial the president should carefully compare the oral evidence given by a witness with that given by him at the summary of evidence and, if any material variations occur, should question him thereon.

Great care must be taken by the members of the court not to be biased by the statements appearing in the summary of evidence, except so far as they effect the credibility of any witness by showing that he has contradicted his previous evidence; indeed it is usually expedient that the president alone should refer to the summary.

Where the accused pleads guilty, the summary of evidence must be annexed to the proceedings (r. 37 (B) and form of proceedings, p. 746). Where the accused pleads not guilty, the summary should be forwarded with the proceedings, but should only be annexed thereto if it or any part of it has actually been used in evidence in the circumstances shown above.

For abstract of evidence, see r. 8 (B).

Adjournment for insufficient number of officers.

18.—(A) If before the accused is arraigned the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, and if there are not sufficient officers in waiting to take the place of those unable to serve, the court should ordinarily adjourn for the purpose of fresh members being appointed[1]; but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn they may, if not reduced in number below the legal minimum,[2] proceed, recording their reasons for so doing.

(B) If the court adjourns for the purpose of the appointment of a new president,[3] or of fresh members,[4] whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

1. A general court-martial for which, say, seven members have been detailed, will not ordinarily begin the trial with less than seven. It may be assumed that

the convening officer, in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial or the desirability, in the circumstances of the case, of submitting the issues to be decided to the arbitrament of a larger tribunal. But the court *may* proceed under this rule if not reduced below the legal minimum. (See notes to r. 17.)

No court can be formed if the number of officers is, from whatever cause, below the legal minimum or the president is absent (r. 65 (B)), nor can the proceedings, even if properly commenced, be continued. In either case the president or, if he is absent, the senior officer present must report the circumstances to the convening officer.

2. See A.A. 48 (3), (4), (5).

3. This will apply if the president is found to be ineligible or disqualified (rr. 19-22), or is not of the required rank (r. 22 (A) (iv)), or if an objection to him is allowed (A.A. 51 (3) and r. 25), or if he cannot attend (A.A. 53 (2)).

4. After the trial has once begun fresh members cannot, in any circumstances, be appointed. (A.A. 53 (1)).

Ineligibility and disqualification of officers for court-martial.

19.—(A) An officer is not eligible[1] for serving on a court-martial if he is not subject to military law[1A] or otherwise qualified to serve under the provisions of the Army Act.

(B) An office is disqualified[2] for serving on a court-martial if he—

(i) Is the officer who convened the court; or

(ii) Is the prosecutor or a witness for the prosecution; or

(iii) Investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the company, &c., commander who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or

(iv) Is the commanding officer of the accused, or of the corps or battalion to which the accused belongs; or

(v) Has a personal interest[3] in the case.

(C) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods, that is to say:—

(i) If it is a district court-martial, two whole years;

(ii) If it is a general court-martial, three whole years.[4]

1. "Eligible" is used with reference to an officer being subject to military law or "otherwise qualified" (*i.e.*, under A.A. 48 (10) and of the necessary standing; that is to say, it refers to the status of the officer, and involves no personal considerations.

1A. See, however, r. 134A and note thereto.

2. "Disqualified" is used with reference to personal disqualification on the part of an officer.

It will be observed that A.A. 50 (2) (3) contains most of the disqualifications contained in this paragraph. Except so far as is provided by r. 20, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial; (A.A. 50 (1)).

3. This will extend to even a remote or very small interest; *e.g.*, where a soldier is charged with stealing a silver fork belonging to a regimental mess, an officer of that mess has a personal interest and is disqualified from serving. A merely technical interest has been held to disqualify a person from holding a judicial position; *e.g.*, a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share or interest himself, has, nevertheless, a personal interest in any charge relating to that money.

4. Paragraph (C) is taken from A.A. 48 (3), (4). In addition, an officer is not to be detailed to sit on a court-martial unless and until his C.O. deems him, after repeated attendances at courts-martial for instructional purposes, competent to perform so important a duty. (K.R., 638).

Corps of members of court-martial.

20.—(A) A general or district court-martial shall, as far as seems to the convening officer practicable, be composed of officers of different corps; in no case shall it be composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service) available.[1]

(B) In the case of a court-martial for the trial of an accused person belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, one member at least of the court should belong to that branch of the auxiliary forces to which the accused belongs.[2]

1. The general rule as to courts-martial is that—

(1) they should not be composed exclusively of officers of the same corps; and

(2) they must not be composed exclusively of officers belonging to the same regiment of cavalry, brigade of artillery or battalion of infantry.

This general rule is however subject to the exceptions mentioned in this paragraph and care must be taken by the convening officer that the expression of his "opinion" is duly inserted in the convening order when required.

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, the following procedure should be adopted:—the convening officer should apply to the command concerned asking for the names of officers to compose the court, and these should be inserted in the convening order (A.F. A.47). The command which furnishes the officers should then insert in the command orders an order to the effect that "the undermentioned officers have been placed at the disposal of the Commander, ... Brigade (or as the case may be) for duty at a court-martial to assemble at..... on....." The command order need not be attached to the proceedings of the court-martial.

2. Although there is no express provision as to the Militia (Supplementary Reserve) if the accused belongs thereto one member of the court should, if practicable, be an officer belonging to the Supplementary Reserve of Officers and serving with the Supplementary Reserve. If the accused belongs to the Territorial Army, then by this rule one member of the court must, if practicable, belong to that force.

The convening officer must be careful to see that the expression of his "opinion is inserted in the convening order where required by this paragraph.

An officer of the regular forces who is an adjutant of a unit of the Supplementary Reserve or Territorial Army is not considered for the above purposes to be an Officer of the Supplementary Reserve of Officers or Territorial Army, as the case may be.

21.—(A) In the case of a general court-martial, four at least of the members must not be below the rank of captain[1].

Rank of members of court-martial in certain cases.

(B) The members of a court-martial for the trial of an officer shall be of an equal, if not superior rank, to that officer, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of that rank are not (having due regard to the public service) available; and in no case shall an officer under the rank of captain be a member of a court-martial for the trial of a field officer.[2]

1. This is, in effect, a statutory requirement. (See A.A. 48 (3).)
When a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the C.O. of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused (K.R. 642).

2. The first portion of para. (B) does not reproduce any statutory provision. As to the second portion, see A.A. 48 (7).
For the trial of a subaltern officer, two members of his own rank (if r. 21 (A) permits so many) will suffice.
The convening officer must be careful to see that the expression of his "opinion" is inserted in the convening order where required by this rule.

Procedure at Trial—Constitution of Court

Inquiry by court as to legal constitution.

22.—(A) On the court assembling,[1] the order convening the court shall be laid before them together with the charge-sheet and the summary or abstract of evidence or a true copy thereof,[2] and also the ranks, names, and corps of the officers appointed to serve on the court[3]; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted[4]; that is to say—

(i) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, and these rules[5];

(ii) That the court consists of a number of officers not less than the legal minimum,[6] and, save as mentioned in Rule 18, not less than the number detailed;

(iii) That each of the officers so assembled is eligible and not disqualified for serving on that court-martial[7];

(iv) That the president is of the required rank and duly appointed;[8] and

(v) In the case of a general court-martial, that the officers are of the required rank.[9]

(B) The court should further, if a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.[10]

(C) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

1. The inquiries necessitated by this and the following rule should be conducted in private. The court is not "open" at this stage, and the accused has not yet been brought before it.

2. The convening order, charge-sheet and summary or abstract of evidence will be in the possession of the president. (See r. 17 (E).)

3. Where members are detailed by rank and corps and not by name, then only officers of the actual rank and corps stated in the convening order can serve as members.

4. It is essential that the court should ascertain, as far as lies in their power, that they have jurisdiction. For form of convening order, see p. 736. In the case of a general or district court-martial, the order must be signed by the convening officer or "for" him by a staff officer or by a staff officer as such. (See r. 107 as to convening order in the case of a field general court-martial). The absence of a properly signed convening order is a fatal flaw although an order for trial is endorsed upon the charge-sheet. Apart from the specific requirements of this rule, the court must be satisfied that it is constituted strictly in accordance with the convening order.

5. *i.e.*, in accordance with A.A. 48, 50, 122-3, 179 (Royal Marines), 180 (Indian forces), 182 (warrant officers), 184 (persons not belonging to H.M. forces), and rr. 17-21.
The court can only look at the convening order; they cannot enquire whether the convening officer holds a warrant to convene. But they must have regard to

rr. 20 and 21, and should see that the order states all that it is required to state; *e.g.*, the expression of the convening officers "opinion" where necessary (see note 4 to r. 17).

6. See A.A. 48 and notes. In counting the number of officers, the president is included.

7. For eligibility and disqualification see A.A. 50 (2) (3); r. 19 and notes; see also Ch. V, paras. 16-19, and 31.

When a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the president must insert and sign the certificate shown in the note on p. 742.

8. For rank of president see A.A. 48 (9) and 182 (4). The president must be named in the convening order (K.R. 644 *(a)*). If the president of a general or district court-martial is not a field officer, care must be taken to see that the opinion of the convening officer as to non-availability (see A.A. 48 (9) is duly expressed in the convening order.

9. See A.A. 48 (3) (7), and r. 21 and note. See also K.R. 642-4.

10. As to appointment and disqualification of judge-advocate see r. 101 and notes. In the United Kingdom a judge-advocate is appointed by the Judge-Advocate-General, and the court should ascertain that he has been so appointed. Out of the United Kingdom judge-advocate is appointed by the convening officer, and the court must assume that the convening officer is authorized by warrant to make the appointment.

(Form of proceedings, pp. 741-2.)

Inquiry by court as to amenability of accused and validity of charge.

23.—(A) The court, when satisfied on the above matters,[1] should satisfy themselves in respect of each charge about to be brought before them,—

(i) That it appears to be laid against a person amenable to military law,[2] and to the jurisdiction of the court[3]; and

(ii) That each charge discloses an offence under the Army Act,[4] and is framed in accordance with these rules,[5] and is so explicit as to enable the accused readily to understand what he has to answer.[6]

(B) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

1. The inquiry by the court under this and the preceding rule should be in closed court.

2. See A.A. 158, 175, 176 and 184, and introductory observations to A.A. Part V, pp. 577-9.

3. The following are examples of cases where a court-martial would have no jurisdiction:—

(a) Trial of an officer by district court-martial (A.A. 48 (6)).

(b) Trial of a warrant officer with a subaltern as president (A.A. 182 (4)).

(c) Trial of a field officer with a subaltern as a member of the court (A.A. 48 (7)).

Amenability may depend upon the question whether the person to be tried, although not in fact an officer or soldier, is subject to military law as an officer (A.A. 175 (7), (8) or as a soldier (A.A. 176 (9), (10)).

When the person to be tried is an officer or man of the Royal Marines, the court may presume that he is amenable to the jurisdiction (see A.A. 179 (1)), unless a special plea to the jurisdiction under r. 34 (A) is raised.

Questions of amenability may also arise with reference to natives of India (see A.A. 175 (7), 176 (10), and 180 (2) *(a)*).

4. See r. 13 (c).

5. See rr. 11-13.

6. See also r. 15 (B).

(Form of proceedings, p. 742.)

Procedure at Trial—Challenge and Swearing

Appearance of accused and prosecutor.

24. When the court have satisfied themselves as to the above facts, they shall cause the accused to be brought before the court, and the prosecutor,[1] who must be a person subject to military law[2], will take his place.

1. The selection of the prosecutor is subject to the approval of the convening officer. The convening officer must not appoint himself as prosecutor, and the prosecutor must not confirm the finding and sentence of the court.

A prosecutor with experience and knowledge of military law should be selected, particularly in cases of difficulty or complexity, and he should, as far as possible, be relieved from ordinary military duties, so that he may be enabled fully to master the case.

In cases where the production of documents only is necessary, a N.C.O. might be permitted to act as prosecutor.

As to the duties of the prosecutor see rr. 39–41, 60 and notes thereto; see also Ch. V, para. 52; K.R. 645.

As to the employment of counsel on behalf of the prosecutor see rr. 89–90. K.R. 640–1.

2. See, however, r. 134A and note thereto.

(Form of proceedings, p. 742.

Proceedings for challenge of members of court.

25.[1]—(A) The order convening the court shall be read in the hearing of the accused and the court shall ascertain that it is constituted of officers to whom the accused makes no reasonable objection.[2]

(B) The accused has no right to object to the prosecutor or judge-advocate.

(C) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(D) The accused may call any person to make a statement[3] in support of his objection. Such person may be questioned by the accused and by the court.

(E) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first; except that, if the president is objected to, the objection to him will be disposed of before the objection to any other officer. On an objection to an officer, all the other[4] officers present[5] shall declare their opinions on the disposal of the objection, notwithstanding that objections have been made to any of those officers.

(F) When an objection to an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings.

(G) When an officer objected to (other than the president) retires, or is not available to serve owing to any cause which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the president shall appoint one of such officers to fill the vacancy.[6] If there is no officer in waiting available, the court will proceed as directed by Rule 18.[7]

(H) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court, as in the case of other officers appointed to serve on the court.[8]

1. This rule must be read in conjunction with A.A. 51.

2. The accused must make each objection separately; he cannot object to the court collectively except upon a plea to the jurisdiction under r. 34. If he persists in objecting to the court collectively, the objection should be dealt with as if made to all the members individually, and the procedure provided by this rule strictly followed. In practice an objection to a member may be equivalent to a plea to the

jurisdiction. In such a case it should be dealt with under this rule although it might more properly have been raised under r. 34.

An officer objected to on the ground of prejudices or for having formed or expressed an opinion upon the case should always be permitted to retire unless the objection is obviously groundless. An officer successfully objected to on the ground of personal interest is disqualified from serving as a member (see r. 19 (B) (v) and notes).

The court may be closed to consider each objection.

For form to be followed upon an objection, see Variation, pp. 742-3.

As to objections to the president see A.A. 51 (3), (4).

3. Witnesses to an objection under this rule cannot be examined on oath.

4. This excludes an officer from voting on his own case.

5. *I.e.*, members who have not retired by reason of objections to them having been allowed.

6. *I.e.*, a vacancy created either by a successful objection or through non-attendance of a member detailed.

The president should ordinarily appoint a waiting officer of corresponding rank to that held by the retiring or absent officer.

7. If the court are reduced below the legal minimum, they must adjourn; even if not so reduced, they should ordinarily adjourn unless they consider that, in the interests of justice or for the good of the service, it is in expedient to do so.

The president can only appoint to a vacancy an officer who has been detailed as a waiting officer.

8. It is desirable to ascertain before the accused is brought before the court whether a waiting member is eligible and qualified to serve if called upon.

An objection to a waiting member called upon to serve will be dealt with immediately, if he is junior to any of the other officers who have been objected to; if he is not, the objections to junior officers will first be disposed of and he will have to vote upon such objections.

In a doubtful case an objection should always be allowed. It is very important that the court should not only be impartial but be believed by the accused and his comrades to be so.

(Form of proceedings, pp. 742-3.)

Swearing of members.

26.—(A) As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been over-ruled, an oath shall be administered to and taken in presence of the accused by each member of the court in the form and manner provided in the Second Appendix to these rules.[1]

(B) If there is a judge-advocate, the oath shall be administered by him to the president first, and afterwards to the other members of the court; if there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn.[2]

1. See pp. 762-3.

It is not necessary to kiss the Book. The oath must be administered and taken with distinctness and solemnity.

As to swearing the court to try several persons, see rr. 29 and 71 (A).

For solemn declaration in lieu of oath, see A.A. 52 (4), r. 28 and notes.

For taking of oath in Scottish or other fashion, see r. 30.

2. This provision prescribes, in accordance with A.A. 52 (1), the persons who are to administer the oath to the president and other members of the court.

The president must be sworn separately; the other members may be sworn collectively.

(Form of proceedings, p. 744.)

Swearing of judge-advocate and other persons.

27. After the members of the Court are all sworn, an oath shall be taken in the presence of the accused by the judge-advocate, by an officer attending for the purpose of instruction, by a shorthand writer and by an interpreter or by such of them as are attendant upon a court-martial, in the form and manner provided in the Second Appendix to these rules. The oath shall be administered by the president or by some member of the court or, except in the case of the judge-advocate, by the judge-advocate (if any).[1]

1. See A.A. 52 (2). For form and manner of taking the oath, see pp. 762-3.

For solemn declaration in lieu of oath, see A.A. 52 (4), r. 28 and notes. See also, generally, notes to r. 26.

This rule prescribes, in accordance with A.A. 52 (2), the persons, who are to administer the oath to the judge-advocate, officers under instruction, shorthand writer and interpreter. The accused has a right of objection to the shorthand writer or interpreter (r. 72 (c)), who may be sworn at any time during the trial (r. 72 (A) (B)); he has no right to object to the judge-advocate (r. 25 (B)) or to the officers under instruction.

(Form of proceedings, p. 744.)

Substitution of solemn declaration for oath.

28.—(A) Where a person is permitted[1] to make a solemn declaration instead of taking the oath in the prescribed form and manner, the declaration shall be in the form or forms provided in the Second Appendix to these rules.[2]

(B) The declaration shall be made before some person authorized by these rules to administer the oath.

1. *I.e.*, under A.A. 52 (4).

2. See p. 763.

When a solemn declaration is made in lieu of an oath, a note to that effect should be made in the proceedings.

Form of oath in case of trial of several accused persons.

29. When the oath is administered to or the declaration made by the members of a court who are about to try several persons, the plural shall be substituted for the singular wherever required.

Swearing of person according to the form of his religion.

30.—(A) If any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so.[1]

(B) In any case an oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience.[2]

1. If a person desires to be sworn in the Scottish form, no question as to his religious belief is to be asked nor is he required to hold or kiss a Bible while being sworn. He will be sworn standing and holding up his right hand. The forms of oath will be the same as those set out on pp. 762-3, except that after the words "Almighty God" will be inserted "as I shall answer to God at the Great Day of Judgment."

2. Where a person to be sworn objects to take the oath in the form prescribed (see pp. 762-3) or in the Scottish fashion (see (A) of this rule) or to make the prescribed form of declaration (see r. 28), and the court are satisfied of the sincerity of his objection, an oath will be administered in accordance with this provision.

A Mahommedan is sworn on the Koran, sometimes kissing it or placing it on his head. In the case of natives of India, the form varies according to race, caste, and locality, and it will be well to follow the practice of the civil courts of the district and if they receive an affirmation in lieu of an oath, to receive such affirmation.

Prosecution, Defence and Summing-up

Arraignment of accused.

31.—(A) After the members of the court and other persons are sworn as above mentioned, the accused shall be arraigned[1] on the charges against him.

(B) The charges upon which the accused is arraigned will be read to him, and he will be required to plead separately to each charge as soon as it has been read to him.[2]

1. See Ch. V, paras. 42-50. The accused should be arraigned by the president or judge-advocate (if any).

Arraignment consists of (1) calling upon the accused by his number (if any), rank, name and description; (2) reading the charge to him; and (3) asking him whether he is guilty or not guilty. When the accused is called upon by his number, rank, name, &c., as stated in the charge-sheet, he should be asked "Is that your number, rank, name and unit?"

Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first before arraignment upon the second or subsequent charge-sheets (see r. 62).

2. The plea of the accused must be taken upon all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them (see, however, r. 35 (C)).

The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president (r. 17 (E)), who will lay the charge-sheet before the court before arraignment, and the charge-sheet will then be annexed to the proceedings.

(Form of proceedings, p. 744.)

Objection by accused to charge.

32. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act,[1] or is not in accordance with these rules.[2] The court, after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, will consider the objection in closed court and will either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority; or if they are in doubt, they may adjourn to consult the convening authority.[3]

1. *E.g.*, a charge laid under A.A. 24 (2) of losing by neglect the greatcoat of a comrade would not disclose an offence under that section of the Act.

2. See rr. 11-13.

3. For form to be followed upon the objection to a charge, see Variation, p. 744.

For procedure where it appears that the accused is, by reason of insanity, unfit to take his trial, see r. 57 and notes thereto.

(Form of proceedings, p. 744.)

Amendment of charge.

33.—(A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.[1]

(B) If on the trial of any charge[2] it appears to the court, at any time before they have begun to examine the witnesses,[3] that in the interests of justice any addition to, omission from, or alteration in,[4] the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with the amended charge after due notice to the accused.

1. A mistake in name or description will only be amended if it is clear to the court that the accused is the person intended to be charged in the charge-sheet and that he is not prejudiced in his defence by the mistake. For form to be followed, see Variation, p. 745.

2. The court may act under this paragraph whether an objection to the charge is taken by the accused, or the judge-advocate, or by a member of the court, and either before or after the arraignment (see rr. 23, 32).

3. *I.e.*, the witnesses on the substance of the charge, not those who are called as to objections to members or when a special plea to the jurisdiction is raised under r. 34.

4. If the addition, omission or alteration can be met by a special finding under r. 44 (*e.g.*, by omitting from the finding some articles alleged to have been lost by neglect or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended. But if the date is material, or if an addition requires to be made in the *particulars* of the charge, it will be safer for the court to adjourn and apply for the amendment. If the charge appears not to disclose an offence under the Army Act, the court must adjourn (see r. 32). For form to be followed, see Variation, p. 745.

(Form of proceedings, p. 745.)

Special plea to the jurisdiction.

34.—(A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court[1]; and, if he does so, and the court consider that anything stated in the plea shows that the court have not jurisdiction, they shall receive any evidence[2] offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by or on behalf of the accused and any reply by the prosecutor in reference thereto.

(B) If the court overrule the special plea they shall proceed with the trial.[3]

(C) If the court allow the special plea,[4] they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such a decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(D) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision[5] with respect to the plea, and proceed with the trial.

1. *I.e.*, a plea to the right of the court to try the accused on any charge, as distinct from a plea which relates to a particular charge; *e.g.*, a plea that the court is improperly constituted, either in respect of the rank or number of the members, or that the accused is not amenable to the jurisdiction. (See note 3 to r. 23.) A plea relating to a particular charge will be raised either under r. 32 or in bar of trial under r. 36.

2. *I.e.*, on oath.

3. The confirmation of the finding, after a plea to the jurisdiction has been overruled, will have the effect of confirming the decision of the court in overruling the plea. If, however, the confirming officer is of opinion that the plea was valid and should have been allowed, he must refuse to confirm the finding of the court and another court may legally be convened.

4. If the court allow the plea, the decision of the court cannot be overruled, but another court may legally be convened.

5. If a special plea to the jurisdiction were raised, *e.g.*, on the ground that the accused was not subject to military law as a soldier, under A.A. 176 (9), (10), and the court were in doubt as to the validity of the plea, they might record a special decision to that effect, and state that they had nevertheless decided to proceed with the trial. This procedure, in effect, transfers the decision as to the validity of the plea to the confirming officer, who should act as if the plea had been overruled.

For form to be followed on a special plea to the jurisdiction, see Variation, p. 745.

(Form of proceedings, p. 745.)

General plea of "Guilty" or "Not guilty."

35.—(A) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is overruled, or is dealt with by a special decision under Rule 34 (D), the accused person's plea—"Guilty" or "Not Guilty" (or if he refuses to plead, or does not plead intelligibly,[1] either one or the other, a plea of "Not Guilty")—shall be recorded on which he is arraigned.

(B) If an accused person pleads "Guilty," that plea shall be recorded as the finding of the court[2]; but, before it is recorded, the president, on behalf of the court, shall ascertain that the accused understands the nature of the charge[3] to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure[4] which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty.[5]

(C) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the prosecutor may, after rule (B) of this rule has been complied with by the court and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.[6]

(D) A plea of "Guilty" shall not be accepted in cases where the accused is liable, if convicted, to be sentenced to death, and where such plea is offered a plea of "Not guilty" shall be recorded and the trial shall proceed accordingly.[7]

1. *I.e.*, in some language not understood by the court or inarticulately. For form to be followed, see Variation, p. 745.

2. See, however, para. (D) of this rule.

3. This procedure must be adopted to prevent the accused pleading guilty under a misapprehension; *e.g.*, a man charged with wilfully damaging his arms may, under a misapprehension, plead guilty because his arms have been in fact damaged though not wilfully; or a man charged with knowingly making a false statement in a document may, under a misapprehension, plead guilty because the statement made by him was in fact false, though it was not false to his knowledge. So, again, when arraigned on a charge of desertion, the accused may plead "guilty but I intended to return." This amounts to a plea of "not guilty" as (except as mentioned in Ch. III, para. 20) the intention not to return is an essential element in the offence of desertion. In each case the president must explain to the accused that he must plead "not guilty."

4. This is shown by r. 37. See also Ch. V. para. 47.

5. A plea of "guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned on a charge of losing by neglect a number of articles who pleads guilty in respect of some of those articles only, must be taken to have pleaded "not guilty" as regards the remaining articles. But as no procedure is prescribed in the rules whereby a special finding may be recorded on a plea of guilty, it would be the duty of the court to try the accused upon the actual charge on which he was arraigned, and, if necessary, make a special finding under r. 44 (D).

If the accused pleads guilty, a statement that the requirements of r. 35 (B) have been complied with must be recorded.

It must be recollected that there is nothing untrue in an accused person pleading not guilty, even though he committed the offence; his plea merely amounts to a claim, which he is entitled to make, that the charge against him shall be formally proved. And, indeed, where the accused, while admitting the offence, wishes to show that it was committed in circumstances of great provocation, he must plead "not guilty" if he desires to prove the existence of such provocation out of the mouth of the witnesses for the prosecution who would not be called to give evidence if he pleaded guilty. (See, however, r. 37 (F) as to the power of the court.)

As to the procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see r. 37 (D).

6. If the prosecutor adopts the procedure provided by this paragraph the accused will not be entitled to a verdict upon the alternative charges, as he will not have been arraigned upon them. The convening officer must take care that the most serious of two or more alternative charges is placed first in the charge-sheet. As to the procedure to be followed in other cases where there are alternative charges, see r. 37 (A).

7. This is in accordance with the practice of the civil courts and is intended to ensure that an accused person charged with an offence for which a death penalty can be awarded shall not be convicted without a full trial.

(Form of proceedings, pp. 744-6.)

Plea in bar.

36.—(A) The accused at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

(i) he has been previously convicted or acquitted of the offence by a competent civil court or by a court-martial, or has been dealt with summarily for the offence by his commanding officer or by an officer having power to deal summarily with the case, or a charge in respect of the offence has been dismissed[1]; or

(ii) the offence has been pardoned or condoned[2] by competent military authority; or

(iii) the time which elapsed between the commission of the offence and the beginning of the trial was more than three years,[3] or in the case of a civil offence proceedings in respect of which must be commenced within a shorter period than three years,[4] more than that shorter period.

(B) If he offers a plea in bar the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered[5] and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

(C) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and either shall adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused thereon.

(D) If the finding that a plea in bar is proved is not confirmed,[6] the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(E) If the court find that a plea in bar is not proved, they shall proceed with the trial, but such a finding shall be subject to confirmation like any other finding of the court.

1. The Army Act provides that a person subject to military law is not liable to be tried for an offence of which he has been acquitted or convicted by a court-martial (s. 157), or by a civil court (s. 162 (6)), or for which he has been dealt with summarily, or a charge in respect of the offence has been dismissed (ss. 46 (7), 47 (5)). Further, a person is not liable to be tried for an offence which (except in the cases of mutiny, desertion and fraudulent enlistment), was committed more than three years before the date of the trial. (A.A. 161.) In all these cases a plea in bar of trial under this rule can properly be offered.

An accused person cannot be retried for desertion where, on the first trial for desertion, he was found guilty under A.A. 56 (3) of absence without leave and the proceedings were not confirmed. In such circumstances, a plea in bar of trial that he had previously been acquitted of the same offence must be allowed.

2. It has long been recognized that a military offence can be "condoned," *cf.* Clode, Mil. Forces, i, p. 173, Simmons (6th Edition), p. 235. For the purpose of barring a trial condonation means such conduct on the part of a competent authority —*i.e.*, an authority having power to determine that the charge should not be proceeded with—as is inconsistent with subsequently trying the offender, and as would make it inequitable to do so; it must be a deliberate and intentional act, done with full knowledge of all material facts. The Duke of Wellington is quoted by Clode as having written in a Dispatch that the performance of a duty of honour or of trust after the knowledge of a military offence committed ought to convey a pardon. If, with full knowledge of the facts, competent authority removes an officer under P.W. 527, or allows him to resign, he should not afterwards be tried by court-martial for his offence. The fact that after trial, but before confirmation, the accused has been employed in active operations does not affect the legal validity of the sentence, but affords ground for pardon.

3. See note 1 above.

4. In general there is in civil courts (other than courts of summary jurisdiction) no limitation of time within which criminal proceedings may be commenced; but in a few cases; *e.g.*, carnal knowledge of a girl between 13 and 16,—proceedings must be commenced within a shorter period than nine months from the commission of the offence. In such cases, proceedings must be commenced in the military courts within the shorter period.

5. *I.e.*, evidence on oath.

6. If it is confirmed, it amounts to an acquittal and is final. It will be noted that the finding of the court upon a plea in bar of trial, whether in favour of or against the plea, is subject to confirmation.

For form to be followed on a plea in bar of trial, see Variation, pp. 745-6.

(Form of proceedings, pp. 745-6.)

Procedure after plea of "Guilty."

37.—(A) Upon the record of the plea of "Guilty", if there is any other charge in the same charge-sheet to which the plea is "Not guilty," the trial will first proceed with respect to every such other charge, and, after the finding on those charges, will proceed with the charges on which a plea of "Guilty" has been entered[1]; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not guilty" upon all the other alternative charges.[2]

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement[3] which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract, shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these rules in the case of a plea of "Not guilty."

(C) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.[4]

(D) If from the statement[5] of the accused, or from the summary or abstract of evidence, or othwewise, it appears to the court that the

accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.[6]

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) will take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.[7]

1. In the illustration of charge on p. 714, the charges are entirely distinct and not alternative, and therefore if the accused pleads "guilty" to the first charge and "not guilty" to the second charge, the court must first proceed to try him upon the second charge.

2. An accused person cannot be found guilty upon more than one of two or more charges lain in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.

Where two alternative charges are preferred and the accused pleads "not guilty" to the charge which alleges the more serious offence and "guilty" to the other, the court should try him under this paragraph as if he had pleaded not guilty to both charges. Having regard to r. 35 (c), the most serious of two or more alternative charges should always be placed first in a charge-sheet.

3. For procedure where the statement of the accused is inconsistent with his plea, see para. (D) of this rule and note 6 below.

4. The accused will always be asked, in the case of a plea of "guilty," whether he desires to call witnesses to character.

5. This would include a statement in mitigation of punishment under para. (C) as well as a statement with reference to the charge under para. (B) of this rule. For form to be followed, see Variation, p. 747.

6. The following examples are given of cases in which a plea of "guilty" should be altered to a plea of "not guilty" under this paragraph:—

(a) Private A, charged with desertion (not being desertion to avoid a particular service), states "I always meant to come back."

(b) Private B, charged with stealing a tunic, states "I only borrowed it for the evening."

(c) Private C, charged with striking his superior officer, states "I only did it to defend myself after he had struck me."

(d) Private D is charged with sleeping on his port when a sentinel and makes no statement with reference to the charge. On the reading of the summary of evidence, it is found that all the witnesses depose that Private D was beyond the confine of his post when found asleep.

(e) Corporal E is charged with disobeying a lawful command given by Corporal F his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Corporal F is junior to the accused. In this case the action of the court in altering the plea of the accused would be founded upon the words "or otherwise" in this paragraph.

If the court failed to act upon the provisions of this paragraph, the confirming officer should refuse confirmation and can order a new trial. (See A.A. 54 (6), 157 and notes.) If he confirms, the finding will be set aside.

Where the accused alleges provocation for the offence, it may be desirable to record a plea of "not guilty." (See note 5 to r. 35.)

A court cannot record a special finding under A.A. 56 on a plea of guilty if an accused after pleading guilty to a charge of desertion states "I admit I was absent all the time but I intended to return," a finding of "not guilty of desertion but guilty of absence without leave" cannot be made, but the accused must be tried on a plea of "not guilty."

7. Although, under this paragraph, the permission of the court is required to enable the accused to call witnesses in extenuation of the offence and consequent mitigation of punishment, such permission should always be given. For form to be followed, see Variation, p. 747.

(Form of proceedings, pp. 746-7.)

Withdrawal of plea of "Not guilty."

38. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and plea "Guilty", and in such case the court will at once, subject to a compliance with Rule 35 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 37.[1]

1. The court must take care that the accused understands the effect of his action in withdrawing his plea.

Plea of "Not guilty," application for adjournment, and case for the prosecution.

39. After the plea of "Not guilty" to any charge is recorded the trial will proceed as follows:—

(A) The court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these rules relating to procedure before trial have not been complied with, and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence, and shall record his answer.

If the accused shall make any such application the court shall hear any statement or evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto; and if it shall appear to the court that the accused has been prejudiced by any non-compliance with any such rule of procedure,[1] or that he has not had sufficient opportunity of preparing his defence, they may grant such adjournment as may appear to them in the circumstances to be proper.

(B) The prosecutor[2] may, if he desires, and shall if required by the court, make an opening address,[3] and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into any unnecessary detail.

(C) The evidence for the prosecution shall then be taken.[4]

(D) If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address (if any), and he must be sworn, and give his evidence in detail.[5]

(E) He may be cross-examined[6] by or on behalf of the accused, and afterwards may make any statement which might be made by a witness on re-examination.

1. Non-compliance with rules relative to procedure before trial would not provide a valid reason for adjournment, unless the accused has, in the opinion of the court, been prejudiced thereby, but if the court have any doubt in the matter, the proceedings should be adjourned.

2. As to the duties of the prosecutor, see r. 60 and note 1; Ch. V, para. 52; K.R. 645.

3. In cases of complexity (*e.g.*, cases of fraudulent misapplication) the prosecutor should always make an opening address, so that the members of the court may be enabled to understand the general nature of the allegations. He must be careful to refrain from making any assertions which he does not propose to substantiate by evidence. The address of the prosecutor may be in writing; in such a case it should be read by him and handed to the court for attachment to the proceedings. If the address is made orally, see r. 95 (c).

4. For general provisions as to evidence, see Ch. VI, and rr. 73-86. The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any omissions. It is the

duty of the prosecutor to conduct the examination of the witnesses for the prosecution and to see that all facts essential to constitute the offence are proved: *e.g.*, on a charge laid under A.A. 27 (1) of knowingly making a false accusation against Private A, it must be proved—

(1) that the accused made the accusation in question against Private A;

(2) that it was false;

(3) that the accused made it knowing it was false.

The prosecutor must be careful, in examining his witnesses, to avoid putting leading or suggestive questions.

For the duty of the president, see r. 59 and note.

If the same person gives evidence in more than one case tried by the same court, he must be sworn as a witness in each case, even if all such cases are tried on a single day.

5. The prosecutor should never give evidence for the prosecution, unless it be evidence of a merely formal nature, or for the purpose of producing documents which are in his possession. In exceptional cases, however (*e.g.*, on active service), no prosecutor may be available except an officer who is a material witness as to the facts for the prosecution. In such a case the prosecutor must give his evidence before any other witness for the prosecution, and must not, after delivering an address, be allowed to swear generally as to the truth of the statements contained in such address.

Documentary evidence will be read by the president or judge-advocate; it should then be marked with a distinguishing letter or figure and attached to the proceedings. As a rule, original documents will be annexed to the proceedings, but, if they are urgently required for other purposes, it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the president to be true copies.

6. Any witness may be cross-examined by the opposite party and re-examined by the person calling him on matters raised by the cross-examination. (r. 84 (A)).

As to the general principles to be observed in cross-examination and reexamination, see Ch. VI, paras. 114-120.

As to questions by or on behalf of the court, see rr. 85 and 86.

(Form of proceedings, pp. 747-9).

Procedure where no witnesses to facts (except accused) called for defence.

40.—(A) At the close of the evidence for the prosecution[1] the accused shall be told by the court that he may, if he wishes, give evidence as a witness, but that if he gives evidence he will subject himself to cross-examination.[2]

(B) The accused will then be asked[3] whether he wishes to give evidence as a witness himself, and whether he intends to call any witnesses to the facts of the case[4] other than himself.

(C) If the accused states that he wishes to give evidence as a witness himself but does not intend to call any other witness to the facts of the case, the procedure, whether ot not he is represented by counsel or by an officer subject to military law, will be as follows:—

(i) The accused will give evidence immediately after the close of the evidence for the prosecution.[5]

(ii) The accused may, if he wishes, call witnesses as to his character.[6]

(iii) The prosecutor may then make a final address[7] for the purpose of summing up the evidence for the prosecution and commenting on the evidence of the accused.

(iv) The accused or counsel or the defending officer (as the case may be) may then make a closing address in his defence.[8]

(D) If the accused states that he does not wish to give evidence as a witness himself and does not intend to call any witnesses to the facts of the case the procedure will be as follows:—

(i) If he is not represented by counsel or by an officer subject to military law:—

(*a*) The accused may, if he wishes, call witnesses as to his character.

(*b*) The prosecutor may make a final address for the purpose of summing up the evidence for the prosecution.

(*c*) The accused may then make an address in his defence giving his account of the subject of the charge against him.[9] The address may be made orally or in writing.[10]

(ii) If he is represented by counsel or by an officer subject to military law:—

(*a*) The accused may make a statement giving his account of the subject of the charge against him. This statement may be made orally or in writing but the accused must not be sworn and no question may be put to him by the court or by any other person.[11]

(*b*) The accused may, if he wishes, call witnesses as to his character.

(*c*) Counsel or the defending officer (as the case may be) may then make a closing address.

(*d*) If the accused has made the statement referred to in (*a*) the prosecutor may reply; but if the accused has made no such statement, the address of the prosecutor will precede the closing address of counsel or the defending officer.[12]

1. It is open to the accused, his counsel or defending officer, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a *prima facie* case against him and that he should not, therefore, be called upon for his defence. The court will consider this submission in closed court and, if they are satisfied that it is well founded, must acquit the accused. This submission may be made in respect of any one or more charges in a charge-sheet. (See also note to r. 70.)

2. The judge-advocate or, if there is none, the president must explain in simple language to the accused, especially if he is not represented by counsel or defending officer, that he need not give evidence on oath unless he wishes to do so. He must also be told that if he gives sworn evidence he is liable to be cross-examined by the prosecutor and questioned by the court and judge-advocate. He should also be informed that evidence upon oath will naturally carry more weight with the court than a mere statement not upon oath.

3. *I.e.*, by the judge-advocate or, if there is none, by the president.

4. As will be noted from the succeeding paragraphs of this rule, the whole course of procedure in connection with the case for the defence will depend upon the answer of the accused to this question.

Witnesses to extenuating circumstances are witnesses to the facts of the case.

The fact that the accused has stated that he does not intend to call any witnesses to the facts of the case does not prevent him from doing so before the evidence for the defence is completed if, for example, unexpected witnesses become available, or the prosecutor, in cross-examination of the accused, challenges him to support a statement made by him in evidence by the testimony of another witness.

As to the evidence of the wife of the accused, see r. 80, and notes.

5. See r. 80 (*x*). It is the duty of counsel for the defence or defending officer (if any) to conduct the examination of the accused (if he gives evidence) and of the witnesses for the defence. For cross-examination, &c., see note 6 to r. 39.

The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence (see r. 60 (c)), and the court should, if necessary, adjourn to allow him time for its preparation.

6. The calling of witnesses to character does not affect the order of proceedings prescribed under this and the following rule.

7. The address may be in writing, and in such a case it should be read by the prosecutor and handed to the court for attachment to the proceedings. If the address is made orally, see r. 95 (c).

In summing up the evidence, the prosecutor must confine his remarks to the evidence given by the witnesses for the prosecution and defence; he must not strain or overstate that view of the facts which it is his duty to present to the court; he must not state any new fact which has not been given in evidence. Any deviation in these respects on the part of the prosecutor or any want of moderation may lead to the setting aside of the proceedings. It is the duty of the court, as far as possible, to prevent the prosecutor from transgressing in any of these respects.

If the prosecutor, contrary to r. 80 (B), comments on the failure of the accused or his wife to give evidence, the proceedings may be invalidated (and see r. 60 (B) and note).

As to the duties of the prosecutor, see r. 60 and notes; also Ch. V, para. 52.

8. The accused has the privilege, whether he has given evidence or not, of making statements in his address which are unsupported by evidence. As to statements made by the accused not on oath, see note 9 below. As to the rights and duties of counsel and defending officer, see rr. 87-92.

9. The address here referred to is, in effect, a statement of the facts upon which the accused, when he does not give sworn evidence, relies for his defence, and the court will treat it as his defence to the charge though the accused has not by giving evidence on oath submitted it to the test of cross-examination. A statement which could have been made on oath will not carry with the court the same weight as sworn testimony.

10. If made orally, it should be taken down verbatim so far as it states facts which are within the personal knowledge of the accused and upon which he relies for his defence. If made in writing, it should be read and attached to the proceedings. The accused cannot be questioned by the court or any other person upon an unsworn statement or address.

11. See note 10 above.

12. Counsel for the defence may not state as a fact any matter which has not been proved in evidence (r. 92 (c)), and the same restriction is placed upon a defending officer (r.87 (c)).

For procedure when two or more persons are tried together, see r. 61 and note.

(Form of proceedings, pp. 749-752.)

Procedure where witnesses called for defence.

41.[1]—(A) If the accused states that he wishes to give evidence himself and to call witnesses to the facts of the case, the procedure, whether or not he is represented by counsel or by an officer subject to military law, will be as follows:—

(i) The accused or, if he is represented by counsel or by a defending officer, then such counsel or defending officer may make an opening address[2] for the defence.

(ii) The accused will give evidence as a witness,[3] and call his other witnesses, including, if he so desires, witnesses as to character.

(iii) After the evidence of all the witnesses has been taken, the accused or counsel or the defending officer (as the case may be) may make a closing address.

(iv) The prosecutor may reply.

(B) If the accused states that he does not intend to give evidence himself but intends to call witnesses to the facts of the case, the procedure will be as follows:—

(i) If he is not represented by counsel or by an officer subject to military law—

(a) The accused may make an opening address giving his account of the subject of the charge against him. The address may be made orally or in writing.

(b) The accused will then call his witnesses including, if he so desires, any witnesses as to character.

(c) After the evidence of all the witnesses has been taken, the accused may make a closing address.

(d) The prosecutor may reply.

(ii) If he is represented by counsel or by an officer subject to military law—

(a) The accused may make a statement giving his account of the subject of the charge against him. This statement may be made orally or in writing but the accused must not be sworn and no question may be put to him by the court or by any other person. If the accused makes no such statement, counsel or the defending officer (as the case may be) may make an opening address.

(b) The accused will then call his witnesses, including, if he so desires, any witness as to character.

(c) After the evidence of all the witnesses has been taken counsel or the defending officer (as the case may be) may make a closing address.

(d) The prosecutor may reply.

1. The notes to the preceding rule should be referred to generally.

It will be noted that, in all cases falling under this rule, the prosecutor has a right of reply.

2. Counsel (r. 92 (c)) and defending officer (r. 87 (c)) are not permitted in an opening address to state as facts matters which they do not intend to prove in evidence.

3. The accused is entitled to give his evidence at any time during the hearing of the evidence for the defence, although he has previously stated that he does not apply to give evidence himself. He should, however, usually give his evidence before any other witness for the defence, and should be warned that if he gives his evidence after hearing that of the other witnesses for the defence, the value of it may be considerably discounted.

(Form of proceedings, pp. 749-752.)

Summing-up by judge-advocate.

42.—(A) The judge-advocate (if any) will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court.[1]

(B) After the summing-up of the judge-advocate, no other address shall be allowed.

1. The judge-advocate has a right to sum up when he considers it necessary or desirable. Generally speaking, a summing-up is unnecessary in simple cases; but even where the facts are simple, a legal direction is often necessary (see r. 103 *(e)*).

The judge-advocate should always sum up in cases involving fraud or indecency or where civil offences are charged, and he must be careful where necessary to advise the court upon the law relating to confession, (see Ch. VI, paras. 72-83), to corroboration and to the evidence of accomplices (see Ch. VI, paras. 45 and 86).

In summing up the evidence, the judge-advocate must be careful not to indicate to the court any opinion which he may have formed as to the facts. He may, in his discretion, comment upon the fact that the accused has not given evidence upon oath or called his wife as a witness. (See also r. 103 *(h)*).

The summing-up may, but need not, be in writing: if not in writing, see r. 95 (c).

If a summing-up is considered unnecessary, a record to that effect must be made in the proceedings.

For the powers and duties of a judge-advocate, see r. 103.

(Form of proceedings, p. 752.)

Finding and Sentence

Consideration of finding.

43.—(A) The court will deliberate on their finding in closed court.[1]

(B) The opinion of every member of the court as to the finding will be given by word of mouth[2] on each charge separately.

1. See r. 63.

2. The opinions of members must be given orally. As to taking opinions, see r. 69 and note.

The president should initiate the deliberations of the court by a statement of the questions to be considered and the order in which they should be considered. If, for example, the charge is laid under A.A. 9 (1), he will ask them to discuss the bearing of the evidence upon the following questions *(a)* was a command given? *(b)* was it a lawful command? *(c)* was it given by the superior officer of the accused? *(d)* personally? *(e)* in the execution of his office? *(f)* was the command disobeyed? *(g)* in such a manner as to show a wilful defiance of authority? *(h)* did the accused know that the person giving the order was his superior officer?

Similarly, where the charge laid is under A.A. 16 or 40, the questions to be considered should be:—*(a)* have the facts alleged in the particulars of the charge been proved in evidence? if they have, *(b)* do such facts amount to scandalous conduct or conduct to the prejudice of good order and military discipline? (as the case may be).

If the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been entirely established in evidence, they must consider their powers of making a special finding, either under A.A. 56 (see note to that section) or under r. 44 (see note 6 to that rule).

The members of courts-martial must remember (1) that it is a fundamental maxim of English law that an accused person is presumed to be innocent until he has been proved to be guilty, and (2) that their finding must be based upon the *evidence* given before them.

Any statement made by the accused not upon oath must be carefully considered, and although the court will naturally attach less weight to such a statement than to sworn evidence subjected to the test of cross-examination, it will sometimes be of value, particularly if it is in any respect corroborated by evidence from other sources.

At any time before the finding has been arrived at, the court may be reopened to enable a witness to be called or recalled and examined by them through the president or judge-advocate. (see r. 86 (D)). It is also permissible, where a shorthand writer has been employed, to re-open the court to enable any portion of the evidence already given to be read out by him.

As to form and record of finding, see r. 44 and notes.

(Form of proceedings, pp. 752-3.)

Form and record of finding.

44.—*(a)* The finding on every charge upon which the accused is arraigned[1] will be recorded and, except as mentioned in these rules, will be recorded simply as a finding of "Guilty," or of "Not Guilty," or of "Not guilty and honourably acquit him of the same."[2]

(B) Where the court are of opinion as regards any charge that the facts proved do not disclose the offence charged[3] or any offence of which he might under the Army Act legally be found guilty on the charge as laid,[4] the court will acquit the accused of that charge.

(C) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or any offence of which he might under the Army Act legally be found guilty on the charge as laid, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which they find to be proved, and may, if necessary, adjourn for that purpose.[5] Upon receiving the opinion of the con-

firming officer the court will reassemble in closed court to record their finding and shall not receive any further evidence.

(D) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty," record a special finding.[6]

(E) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.[7]

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge.

(G) If the court think that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, they may, before recording a finding on those charges refer to the confirming authority for an opinion, setting out the facts which they find to be proved and stating that they doubt whether those facts constitute in law the offence stated in such one or another of the charges and may, if necessary, adjourn for that purpose. Upon receiving the opinion of the confirming officer the court will reassemble in closed court to record their finding and shall not receive any further evidence.[8]

1. This includes alternative charges, except in the cases which come within r. 35 (c).

2. In the case of an acquittal on every charge, the president must date and sign the proceedings (r. 45 (A)). The judge-advocate (if any) must also sign (r. 45 (B)). See generally r. 45.

A finding of "honourable acquittal," which may be recorded in the case of N.C.Os and privates as well as officers, is incorrect unless the charge affects the honour of the person charged. The Duke of Wellington (Well. Desp., Vol. 5, 221-2) expressed the following views on the matter:—

"It is difficult and needless at present to define in what cases honourable acquittal "is peculiarly applicable; but it must appear to all persons to be objectionable in a "case in which any part of the transaction which has been the subject of investiga- "tion before the court-martial is disgraceful to the character of the party under trial. "A sentence of honourable acquittal by a court-martial should be considered by "the officers and soldiers of the army as a subject of exultation, but no man can exult "in the termination of any transaction, a part of which has been disgraceful to him: "and although such a transaction may be terminated by an honourable acquittal "by a court-martial, it cannot be mentioned to the party without offence, or without "excited feelings of disgust in others; these are not the feelings which ought to be excited "by the recollection and mention of a sentence of honourable acquittal."

It may be said that an "honourable acquittal" is generally inappropriate unless the conduct of the accused throughout the transactions investigated by the court has been irreproachable.

3. *E.g.*, where a man is charged with receiving property knowing it has been stolen, and the facts show that, although the property was in fact stolen, the accused was unaware that it was stolen property, the court must acquit as the accused would not have committed the offence charged.

4. *I.e.*, under A.A. 56.

5. Before referring to the confirming authority under this rule, the court must have arrived at a decision as to the facts which they find to be proved, and the opinion of the confirming authority will be sought as to whether, upon the facts

so found to be proved, the accused can legally be found guilty.

The courts cannot refer to the confirming authority for any opinion as to the facts as to which they are the sole judges.

The reason for the reference should be recorded (see p. 753).

The opinion of the confirming officer should be read upon re-assembly of the court and attached to the proceedings.

6. The special finding here referred to relates only to the particulars of the charge, and not to the statement of the offence, as to which see A.A. 56 and notes. Before recording a special finding under the paragraph, the court must be satisfied that the facts which they find to be proved, subject to certain exceptions and variations, amount to the substance of the charge; otherwise they must acquit: *e.g.*, on a charge against a soldier of losing by neglect a greatcoat and a waistbelt, the court may properly find the accused "guilty of the charge except that he did not lose a waistbelt," but they could not legally find him "guilty of the charge except that he made away with and did not lose" the articles in question.

An immaterial variation of date may be made by special finding, but in cases of desertion or absence without leave the substitution of a date which would have the effect of lengthening the period of absence alleged in the charge would not be permissible.

On a charge of striking his superior officer—Sergeant A—with his fist in the face, the court could properly except the words "in the face," but it could not make a special finding substituting Sergeant B for Sergeant A.

On a charge of fraudulently misapplying £100, a special finding that the sum misapplied was £50 would be permissible; but a special finding omitting from the particulars of the charge the words "with intent to defraud" would be tantamount to an acquittal. A special finding cannot be made under this rule on a plea of "Guilty" being recorded.

7. See note 6 above.

8. For general procedure, see note 5 above, and Variation, p. 753. When the court have decided to convict upon one or two or more alternative charges, they will record a finding of "not guilty" upon the other alternative charge or charges. (See para. (A) of this rule and note 1.)

(Form of proceedings, pp. 752-3.)

Procedure on acquittal on every or any charge.

45.—(A) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court,[1] and if there are no other charges upon which the trial proceeds, the accused will be released.

(B) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted as soon as possible in like manner as is directed by these rules[2] in the case where the findings require confirmation.

(C) If the finding on one or more, but not all, of the charges in a charge-sheet is "Not guilty," such finding or findings of "Not guilty" will be announced at once in open court.[3]

1. This is required by A.A. 54 (3).

2. Rr. 50 and 97. Confirmation is not required in the case of an acquittal.

3. See A.A. 54 (3).

Where a special finding is made under A.A. 56, *e.g.*, that the accused is not guilty of desertion but guilty of absence without leave, this is not an acquittal for the purpose of this paragraph and this finding will not be announced in open court.

(Form of proceedings, p. 752.)

Procedure on conviction.

46.—(A) If the finding on any charge is "Guilty," then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, shall, wherever possible, take evidence of and record[1] the character, age, service, rank, and any recognized acts of gallantry or distinguished conduct, of the accused, and the length of time he has been in arrest or in confinement on any previous sentence,[2]

and any deferred, pay, naval, military, or air force decoration, or military reward,[3] of which he may be in possession or to which he is entitled.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books[4] respecting the accused person, and identifying the accused as the person referred to in that summary.

(C) Evidence on the part of the prosecutor upon the above matters should not be given by a member of the court.

(D) The accused may cross-examine any such witness, and may call witnesses to rebut any such evidence[5]; and if the accused so requests, the regimental books, or a duly certified copy[6] of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

When all the evidence on the above matters has been given, the accused may address the court thereon, and in mitigation of punishment.

(E) If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the court renders him liable to any exceptional punishment[7] in addition to that to be awarded by the sentence of the court, it will be the duty of the prosecutor to call the attention of the court to the fact, and it will be the duty of the court to enquire into the nature and amount of such additional punishment.

1. The court will always take evidence as to character, unless the circumstances render it impracticable to do so, in which case they will record upon the proceedings the reasons for such impracticability.

The court cannot take oral evidence that the accused is of bad character; this should be proved in the manner shown in (B) of this rule. But oral evidence of good character is always permissible; if given on oath by the accused himself he may be cross-examined as to character (see r. 80 and notes); if he calls witnesses as to his good character, they may be cross-examined by the prosecutor with a view to testing their veracity and thereby indirectly bringing out evidence of bad character. Witnesses as to character can also be called during the hearing of the case for the defence and before the finding.

2. The court will also consider the length of time during which the accused has been in confinement awaiting trial upon the present charge or charges.

3. For definition of *decoration* and *military reward*, see A.A. 190 (18) and (19).

4. Previous convictions, etc., of the accused will be proved by the production of a verbatim extract from the regimental books (A.F. B.296) duly completed by the officer in charge of these books; (A.A. 163 (1) *(g)* and *(h)*, K.R. 1629-1632.) As to regimental books, see K.R. 1598 and App. XXV. If the accused challenges the correctness of the extract from the regimental books, see (D) of this rule. If there is any reason to doubt the correctness of the entry in the regimental books of a civil conviction, such conviction may be proved by a certificate in accordance with A.A. 164. As to civil convictions, see also K.R. 648, 1630.

The witness producing the extract from the regimental books and the statement as to age, service, rank, etc., of the accused should be the adjutant or some other officer. He must be sworn as any other witness and may be cross-examined by the accused and questioned by the court.

5. The accused may give evidence himself to rebut the evidence given on the part of the prosecutor as to his character, age, service, etc. But if he puts his character in issue, see r. 80.

6. *I.e.*, certified by the officer having custody of the original book. (A.A. 163 (1) (*h*)).

7. This means such punishment as is contemplated by the first sentence of K.R. 652 (*a*).

(Form of proceedings, pp. 753-6.)

Mode of forfeiting seniority of rank.

47. Where a court-martial or an officer dealing summarily with a charge under Section 47 of the Army Act desires to sentence an officer to forfeit seniority of rank,[1] the form of punishment may be that he take rank and precedence in his corps, or in the Army, or in both, as if his appointment to the rank or ranks held by him, and specified in the sentence, bore the date of some day or days specified in the sentence, and later than the actual date of his said appointment; or that he take precedence in the rank held by him in his corps, or in the Army, or in both, as if his name had appeared a specified number of places lower[2] in the list of his corps, or of the Army, or in both.

Where a court-martial for the trial of a warrant or non-commissioned officer,[3] or an officer dealing summarily with a charge against a warrant officer under Section 47 of the Army Act desires to award the sentence of forfeiture of seniority or rank, the form of punishment will be that he take rank and precedence as if his appointment to the rank held by him, and specified in the sentence, bore the date of some day specified in the sentence, and later than the actual date of said appointment.

1. See A.A. 44 (*f*); K.R. 555-7.

2. This form of forfeiture of seniority or rank is intended to apply to cases where the dates of appointment of a large number of officers are identical, such as in the R.A., R.E., R.A.S.C., etc., and where forfeiture of even one day's seniority might in its effect, constitute too severe a punishment for the offence, which nevertheless would not be adequately met by a severe reprimand. The court or the officer dealing summarily with the case will be able to gauge the effect of such a sentence by a reference to the current Army List.

3. As to the effect of such a sensence in the case of a N.C.O., see A.A. 44, note 12.

(Form of proceedings, pp. 757-8.)

Sentence.

48. The court shall award one sentence in respect of all the offences of which the offender is found guilty,[1] and that sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.[2]

1. This rule applies whether the charges on which the offender has been tried are contained in one or several charge-sheets.

For procedure upon a death sentence, see note (*b*) on p. 762.

As to postponement of sentence where several persons are tried separately for offences arising out of the same transaction, see r. 71 (D).

The sentence must be a sentence authorized by the Army Act (see s. 44), e.g., a court-martial cannot award a sentence of confinement to barracks, or sentence an offender to restore stolen property though an order of restitution may subsequently be made under A.A. 75.

For observations on the duty of the court in awarding sentence, see Ch. V, paras. 76-85, and K.R. 652.

For procedure in voting upon the sentence, see r. 69.

2. The object of this portion of the rule is to prevent legal objection to the validity of the sentence. If, for example, an offender has been found guilty by a general court-martial on a charge of desertion, after a previous conviction for that offence, and also upon a charge of drunkenness when not on duty, a sentence of penal servitude awardable in respect of the first charge will be valid, although a sentence of detention with or without a fine is the maximum sentence which could have been awarded upon the second charge.

(Form of proceedings, pp. 756-9.)

A finding of insanity (see A.A. 130 and r. 57) requires confirmation and may be sent back for revision.

A confirming officer cannot send back part of a finding or sentence; if he thinks that a part only requires revision, he must return the wole, pointing out the part which, in his opinion, requires revision.

The object or revision will generally be to cure defects in the finding or sentence, or both, or to give the court an opportunity, upon reconsideration, of acquitting or passing a more lenient sentence upon the offender. The confirming authority cannot recommend the increase of a sentence, nor can the court upon revision increase the sentence previously awarded. (A.A. 54 (2)).

If the sentence originally awarded by the court is wholly illegal, *e.g.*, a sentence of dismissal where the officer is convicted under A.A. 16 of scandalous conduct, or a sentence of reduction to the ranks awarded to a lance-corporal, or a sentence of confinement to barracks awarded to a soldier, it is null (see note to r. 55), and the court on revision, may award any legal sentence, even if such sentence is, in effect, more severe than the original award. This procedure is not, strictly speaking, a revision of the sentence at all.

If the sentence originally awarded is illegal in the sense that it is in excess of the sentence authorized by law, the court, on revision, may award any legal sentence, *e.g.*, if a soldier, not on active service, is charged with drunkenness and a sentence of nine months' detention is awarded, the court upon revision may pass a new sentence not exceeding six months' detention. In such a case, however, revision is not essential, as a confirming officer under r. 55 may vary the sentence so that it shall not be in excess of the punishment authorized by law.

For duties of the confirming officer where a sentence is illegal or irregular, see K.R. 665.

5. *I.e.*, where either no revision has taken place because no order for revision has been made, or, if an order has been made, it cannot be carried out owing to dissolution of the court (see note 1 to r. 52).

Under A.A. 68 (1) the term of penal servitude, imprisonment or detention commences on the date of the *original* sentence.

6. Where a C.O. has investigated a case in his capacity as C.O., he cannot, except where he has authority to convene a court-martial under K.R. 617 (*b*), subsequently confirm the proceedings of a court-martial arising out of the same matter. If he purports so to act in a case outside the exception, the proceedings are not void but must be confirmed by a properly qualified authority. (K.R. 660).

7. For forms of confirmation, etc., see pp. 760-1.

As to comments by confirming officer upon proceedings of courts-martial, see K.R. 662, 664.

(Form of proceedings, pp. 759-761.)

Procedure on revision.

52.—(A) Where the finding or sentence is sent back for revision, the court shall re-assemble in closed court[1], and shall not receive any further evidence.[2]

(B) Where the finding is sent back for revision ,and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding,[3] and, if the new finding involves a sentence,[4] pass sentence afresh.

(C) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(D) After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate (if any), shall as soon as possible be transmitted for confirmation in the manner provided in Rule 97 of these rules.[5]

1. See r. 63.

The court should be re-assembled as soon as practicable.

If the court upon re-assembly is reduced, by death or otherwise, below the legal minimum (see note 4 to r. 17 and note to r. 18), it cannot proceed with the revision, and the proceedings must be returned to the confirming authority. In such a case, as no revision has taken place, the original finding and sentence will stand and will be dealt with by the confirming authority. If the president dies or is unable to attend within a reasonable time, the convening officer may appoint the senior member (if of

sufficient rank) as president ,provided that the court is not thereby reduced below the legal minimum. (See A.A. 53 (2)).

2. See A.A. 54 (2).

3. Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence. (See A.A. 54 (2) and notes to preceding rule.)

4. If the revised finding is an acquittal or a finding of insanity (see A.A. 130 and r. 57), no sentence is involved. If a court, on revision, revoke their original finding upon any charge, the original sentence automatically falls to the ground, and, if the revised finding entails a sentence, the court must pass sentence afresh (see note 3 to A.A. 54); if the court omit to do so, the accused is not legally under any sentence and the confirming officer may return the proceedings with directions to the coutr to complete the revision and pass sentence. This will not be a second revision which is prohibited by A.A. 54 (2).

5. See also K.R. 667, 669-673.

(Form of proceedings, pp. 759-760.)

Promulgation.

53. The charge, finding, and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulagted in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service.[1] Until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been comfirmed until they have been promulgated.

1. See K.R. 668. For form of minute of promulgation, see p. 761.

A sentence of cashiering or dismissal takes effect from the date of promulgation.

A finding of acquittal upon all of the charges preferred must be pronounced at once in open court (A.A. 54 (3)), and this, when taken in conjunction with the discharge from custody of the accused, operates as sufficient promulgation of the acquittal. But where the court acquits the accused upon one or more but not upon all the charges preferred against him, the findings of acquittal, though pronounced in open court in accordance with A.A. 54 (3), should also be promulgated under this rule together with the findings of guilty.

All special findings must be promulgated in the forms in which they are made.

In the absence of any direction by the confirming authority, the usual custom of the service as to promulgation will be followed, but a written notice to the offender of the charge, etc., will be sufficient promulgation under this rule.

If a sentence of penal servitude, imprisonment or detention is confirmed and not suspended in accordance with A.A. 57A, the C.O. of the offender as soon as may be after promulgation of the sentence will sign the order for his committal (see App. III) to some prison or detention barrack in accordance with any general or special instructions received from superior authority. See K.R. 676, 681. As to commitment abroad, see K.R. 677, 682-685.

(Form of proceedings, p. 761.)

Mitigation of sentence on partial confirmation.

54.—(A) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of those charges, that authority shall take into consideration the fact of such non-confirmation and shall mitigate, remit, or commute the punishment awarded as may seem just, having regard to the offences in the charges the findings on which are confirmed.[1]

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of those charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit or commute the punishment

awarded by the sentence shall take into consideration the fact of such invalidity, and mitigate, remit, or commute the punishment awarded according as may seem just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.[2]

(c) Where a sentence passed by a court-martial has been confirmed, and is found from any reason to be invalid, the authority who would have had power to commute[3] the punishment awarded by the sentence if it had been valid may pass a valid sentence, and the sentence so passed shall have the same effect as if passed by the court-martial, but the punishment awarded by that sentence shall not be higher in the scale of punishments than the punishment awarded by the invalid sentence, nor in the opinion of the said authority, be in excess of the last-mentioned punishment. Confirmation notwithstanding informality in, or excess of, punishment.

1. As to meaning of mitigation, remission and commutation, see notes 3-5 to A.A. 57.

Where a soldier has been convicted of (1) desertion, after a previous conviction for that offence, and (2) escaping from confinement, and has been sentenced to penal servitude, and the confirming officer confirms the finding on the second charge but not that on the first charge, which alone justified the sentence of penal servitude, he is bound under this rule to commute the sentence at least to imprisonment, the maximum sentence under A.A. 22. If, however, the confirming officer confirms the finding on the first charge but not that on the second charge, he may mitigate or commute it to some less punishment if he considers that a sentence of penal servitude on the charge of desertion alone is, in the circumstances, too severe.

See generally as to mitigation and commutation, K.R. 661.

2. This paragraph gives to the authority prescribed under A.A. 57 (2) and r. 126 (B) similar powers do after confirmation that which, under para. (A) of this rule, the confirming authority may do before confirmation. But it will be noted that the prescribed authority can only act under this paragraph where any one of the charges, or the finding thereon, is found to be *invalid*, and has been set aside. The prescribed authority derives the ordinary powers of mitigation, etc., from A.A. 57 (2).

As to setting aside convictions by the confirming officer, see K.R. 665.

3. As to the commuting authority, see A.A. 57 (2) and r. 126 (B).

55. If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorized by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorized by law; and the confirming authority may confirm the finding and the sentence as so varied of the court-martial.[1]

1. The object of this rule is to prevent the proceedings of courts-martial from being rendered invalid when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who award sentences which are informal or in excess of their powers. Confirming officers should, if practicable, order a revision of sentence, but if revision is impracticable and they decide to act under this rule, they should call the attention of the members of the court to the informality or irregularity of the sentence.

The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore null, *e.g.*, a sentence of discharge with ignominy from His Majesty's service awarded by a district court-martial to a warrant officer (see

also examples of illegal sentences in note 4 to r. 51). In such cases the court must be re-assembled for the purpose of passing a valid sentence. This proceeding is not, strictly speaking, a revision of the sentence, and therefore the provisions of A.A. 54 (2) as to increase of sentence on revision would not apply.

The following are examples of cases where the confirming officer may properly act under this rule:—

(*a*) A sentence of 12 months' detention should be varied to a sentence of detention for one year (see K.R. 654).

(*b*) A sentence of three years' imprisonment with hard labour, which is in excess of the punishment authorized by law, must be varied to a sentence of two years' imprisonment with hard labour or some less punishment. (See A.A. 44 (*c*) and (*k*)).

(*c*) A sentence of eight months' detention for an offence of drunkenness committed by a soldier not on active service or on duty, must be varied to a sentence of six months' detention or less. (See A.A. 19.)

(Form of proceedings, p. 760.)

Confirmation notwithstanding technical or other deviation.

56. Whenever it appears that a court-martial had jurisdiction to try any person, and that that person was charged with some offence or offences under the Army Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer, or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender; but nothing in this rule shall relieve an officer from any responsibility for any wilful or neglectful disregard of any of these rules.[1]

1. This rule is intended to prevent a miscarriage of justice in consequence of defects, usually of a technical nature, in matters of procedure which do not affect the real merits of the case. But before acting upon this rule the confirming officer must be satisfied that the accused has not suffered any injustice through any deviation from the rules, or through any defect or objection. Whether or not a deviation, etc., is of a substantial kind will often depend upon the circumstances.

The following examples may be given of cases where the confirming officer might properly act under this rule, if satisfied that the accused has suffered no injustice:—

(*a*) Failure by the court to comply with r. 39 (A) (application for adjournment).

(*b*) Failure by the court to comply with r. 83 (B) (reading over evidence).

The court should not allow any technicality to interfere with the accused in the making of his defence.

The confirming officer should always direct the attention of all officers concerned to deviations and defects which have been observed and for which they are responsible.

It may be convenient to note here that if, after confirmation, the charges or findings thereon are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all the consequences of his trial and the record of the conviction erased. (See K.R. 665.)

If the sentence alone is declared invalid, the finding will stand good and therefore the soldier convicted will suffer the forfeitures or penalties which are consequential on conviction.

Where punishment is remitted, the remission, unless otherwise expressed will not extend to any forfeiture incurred automatically by reason of the conviction. (K.R. 665).

Insanity

Provisions as to finding of insanity and custody of insane person.

57.—(A) Where the court find either that the accused is unfit, by reason of insanity, to take his trial, or that he was guilty of the act or omission charged, but was insane at the time when he did the said act or made the said omission,[1] the president shall date and sign the finding and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.[2]

(B) If the finding is not confirmed, the accused may be tried by the same or another court-martial for the offence with which he was originally charged.

(C) Where the finding is confirmed, then, until the directions of His Majesty as to the disposal of the accused are known, or in the case of an accused person unfit to take his trial, until any earlier time at which the accused is fit to take his trial, the accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

1. See generally A.A. 103.

For forms of findings of insanity, see Variations on pp. 745 and 753.

It is to be observed that two distinct cases are contemplated. A person may have been sane at the time when he did the act or made the omission charged, but may not be sane enough to take his trial; while on the other hand, a man insane at the time when he did the act or made the omission charged may have recovered sufficiently to take his trial. In the former case, if he recovers before His Majesty's directions as to his disposal are known, he should be ordered for trial.

2. In both cases mentioned confirmation is required.

An application that the accused is, by reason of insanity, unfit to take his trial should be made before arraignment. The application will normally be made by counsel for the defence or defending officer, but should, if necessary, be made by the prosecutor. Evidence in support of the application may, of course, be given.

(Form of proceedings, pp. 745 and 753.)

General Provisions as to Proceedings of Court

Seating of members.

58. The members of a court-martial will take their seats according to their army rank.

Responsibility of president.

59.—(A) The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, and in a manner befitting a court of justice.[1]

(B) It is the duty of the president to see that justice is administered, and that the accused has a fair trial,[2] and that he does not suffer any disadvantage in consequence of his position as a person under trial or of his ignorance, or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise.

1. The court should always have at its disposal the Army Act, Rules of Procedure, and King's Regulations, and any other official books or orders relating to courts-martial.

The president should be careful to safeguard the dignity of the court and the solemnity of its proceedings.

2. If the accused is not represented by counsel or defending officer, the president should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a judge-advocate, he has a similar duty (r. 103 (g)). If a witness gives evidence different from that given by him when the

summary of evidence was taken, he should be questioned as to the difference.

The president should always put to the witnesses (including the accused if he gives evidence) any questions which appear to him necessary or desirable for the purpose, of eliciting the truth. (See, r 86 and notes.)

Power of court over address of prosecutor and accused.

60.—(A) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.[1]

(B) The prosecutor may not refer to any matter not relevant[2] to the charge or charges then before the court, and it is the duty of the court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor, and to prevent the prosecutor from commenting[3] at any time on the failure of the accused or his wife to give evidence.

(C) The court should allow great latitude to the accused in making his defence[4]; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability which he may thereby incur.[5] The court may caution the accused as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of irrelevance.

1. The prosecutor is an officer whose duty it is to see that justice is done, not a partisan intent on securing a conviction independently of the justice of the case. (See Ch. V., para. 52.) He should therefore put before the court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the accused or extenuate his offence, *e.g.*, he should himself produce any available evidence of provocation which might mitigate punishment.

It occasionally happens that a soldier charged with desertion was to the knowledge of the prosecutor arrested or rendered as involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, although he has no direct evidence to prove the earlier termination of the absence, to tell the court the information which he possesses, and to invite them to act upon such information by recording a special finding under r. 44 (D).

The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him. (See Ch. III para. 48, and K.R. 645.)

The prosecutor should always inform the court if the accused has elected trial by court-martial instead of being dealt with summarily by his commanding officer. (See Variation, p. 744.)

2. As to relevancy, see Ch. VI, paras. 15-30. Generally speaking, anything which tends to show that the accused committed the offence charged, or to show the true character of the offence, is relevant.

3. See r. 80 (B). The court should at once check a prosecutor if he infringes this rule, and should record upon the proceedings that they have done so.

4. *I.e.*, whether he gives evidence on oath or not.

5. *I.e.*, a liability to be cross-examined as to his previous character (r. 80 (D)) or to be charged subsequently with knowingly making a false accusation (A.A. 27 (1)). The court should always caution the accused as the the possible effect which will result from making inputations upon the character of witnesses for the prosecution.

Procedure on trial of accused persons together.

61. Where two or more accused persons are tried together and any evidence as to the facts of the case, other than his own, is tendered by any one of them, the evidence and addresses on the part of or on behalf of all the accused persons will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the accused persons.[1]

1. The effect of this rule is that, if no evidence as to the facts of the case, other than their own, is called for the defence of two or more persons jointly charged and tried, the prosecutor's final address will precede that of the accused or their counsel or defending officer. If, however, any one of the accused calls witnesses as to the facts, the prosecutor will have a right of reply on he whole case. See also rr. 40 and 41, and note 3 to r. 16.

Separate charge-sheets.

62.—(A) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and where he so directs, the accused shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 44, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.[1]

(B) The trial upon the several charge-sheets shall be in such order as the convening officer directs.[2]

(C) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 45 (A) and (B), and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 37 and 45 (C) to 50, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.[3]

(D) If the convening officer direct that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such an event may, without trying the accused upon any of the subsequent charge-sheets, proceed as directed by (C).[4]

(E) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such a case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.[5]

(F) If a plea of "Guilty" to any charge in a charge-sheet has been recorded as the finding of the court, the provisions of Rules 37 (B) and (C) shall not be complied with until after the court have arrived at their findings on all the charge-sheets.[6]

1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, embarrassment is likely to arise, and in such cases the convening officer should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

It is difficult to lay down for the guidance of convening officers any definite rules as to the placing of the charges in different charge-sheets; much will depend upon the circumstances of each particular case. But the following general principles may be laid down:—

(*a*) Alternative charges must not be placed in different charge-sheets.

(*b*) A series of offences forming part of one escapade should normally be placed in a single charge-sheet; *e.g.*, escape from confinement, followed by resistance to escort upon re-arrest, and wilful damage to a cell after re-committal to confinement. Multiplicity of charges arising out of the same transaction should, however, be avoided, though in some cases it is necessary to allege a series of offences, *e.g.*, to prove some particular intent, or to guide the court in determining the proper punishment to be awarded.

(*c*) Repeated instances of offences of the same or similar character should be included in a single charge-sheet; *e.g.*, a series of barrack room thefts from comrades during a short space of time.

(*d*) Offences of different descriptions should be entered in separate charge-sheets except where they form part of or are relevant to one transaction, *e.g.*, where a soldier is charged with desertion and with striking the sergeant of the guard, his superior officer, after he has been handed over by the escort, the charges should normally be inserted in separate charge-sheets. But if immediately before the alleged desertion, the accused made away with his army clothing, a charge in respect of the latter offences is relevant to the intent of the accused in leaving his unit and should be inserted in the same charge-sheet as the charge of desertion. Again, if an officer is charged with fraudulent misapplication of regimental property of which he is in charge, and, in order to enable him to perpetrate the fraud, has knowingly made fraudulent entries in a book signed by him, charges under A.A. 17 and 25 should be inserted in the same charge-sheet.

Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under para. (E) of this rule has the right to apply for separate trial.

Where the accused is arraigned on separate charge-sheets, the court must arrive at their finding upon one charge-sheet before the next charge-sheet is proceeded with.

For form of proceedings, see para. 23 of memoranda on p. 769.

Where any evidence given upon the trial of a charge-sheet is required to be given on the trial of the same accused person on a subsequent charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn again.

2. Generally speaking the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences differs, it may be desirable to insert the charge involving the gravest offence in the first charge-sheet, as, if the accused is convicted, he will be sufficiently punished without trying him in respect of the minor offences; and see para. (D) of this rule. Occasionally it may be desirable to direct that a charge which necessitates the calling of a large number of witnesses should be inserted in the first charge-sheet, so that the attendance of such witnesses can be dispensed with after the trial on that charge-sheet has been completed.

3. After the finding of the court upon all the charge-sheets has been arrived at, the procedure will be the same as if all the charges had been inserted in one charge-sheet. Unless, therefore, the convening officer directs that the accused need not be tried upon any subsequent charge-sheet, the court will not proceed to sentence until they have arrived at a finding on all the charge-sheets, and will then award one sentence in respect of them all. A finding of "not guilty" on any one or more charges in a charge-sheet (whether alternative or not) will be announced in open court (see r. 45).

4. It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets. On the other hand, it may be desirable to try the accused upon the other charge-sheets in order to justify the award of a more severe sentence.

The powers given to the convening officer under this paragraph cannot be exercised by the prosecutor on his own initiative or by the court.

5. The court should always, unless they think the claim to be unreasonable, accede to a demand to be tried separately in respect of any particular charge.

6. Under this paragraph, where an accused has pleaded guilty to a charge entered in one of several charge-sheets, the summary or abstract of evidence relating thereto and any statement which he may make in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision the fair trial of the accused upon the other charge-sheets might be prejudiced, especially if he stated in mitigation of punishment anything which might point to his guilt on any charge in a charge-sheet which has not yet been tried. Sitting in closed court.

63.—(A) When a court-martial sit in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, and any officers under instruction; and the court may either retire or may cause the place where they sit to be cleared[1] of all other persons not entitled to be present.

(B) Except as above-mentioned, all the proceedings, including the view[2] of any place, shall be in open court[3] and in the presence of the accused.

1. See A.A. 53 (5).
The proceedings will be invalidated if the prosecutor happens to be present when the court is closed, *c.f. R.* v. *Kettridge* L.R., (1915) 1 K.B. 467.
2. See A.A. 53 (7).
All the members of the court must be present at the "view" as must also the accused, even if he is represented at his trial by counsel or defending officer.
3. This does not affect the power of the court to exclude any person, other than the accused, who interferes with the proceedings—a power which every court possesses as necessary for the proper conduct of its proceedings. A court-martial has inherent power to sit *in camera* if necessary for the proper administration of justice. (*R.* v. *Lewes Prison (Governor)*, L.R., (1917) 2 K.B. 254.)

64.—(A) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon, as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determine.[1] Time for trial.

(B) If the court consider it necessary to continue a trial after six in the afternoon they may do so, but if they do so should record in the proceedings their reason for so doing.

(C) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies[2] under his hand that it is expedient for the public service, trials may be held at any hour.

(D) If the court or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly, but otherwise the court should not sit on any of those days.

1. See K.R. 646 and r. 65 and note.
2. This certificate should be attached to the proceedings.
3. A statement of the reasons for sitting on these days should be attached to, or entered in, the proceedings.

65.—(A) When a court is assembled and the accused has been arraigned, the court should (but subject to the provisions of the Army Act,[1] and of these rules[2] as to adjournment) continue the trial from day to day and sit for a reasonable period[3] on every day[4] unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable. Continuity of trial and adjournment of court.

(B) A court-martial in the absence either of the president or judge-advocate[5] (if any) shall not proceed and if necessary shall adjourn.

(C) The senior officer on the spot may also, for military exigencies[6], adjourn or prolong the adjournment of the court.

(D) Any adjournment may be made from place to place[7] as well as from time to time. If the time to which the adjournment is made is not specified, the adjournment will be until further orders from the proper military authority; if the place to which the adjournment is made is not specified, the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority.

1. A.A. 53 (6) authorizes an adjournment of the court without any restriction. It is, however, very important that a trial, once begun, should proceed without interruption to its conclusion. This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

2. Apart from specific provisions under the Rules, an adjournment should be allowed for obtaining the opinion of the confirming authority or Judge-Advocate-General on any point of law or procedure, for enabling the accused to prepare his defence, the prosecutor to prepare his reply or the judge-advocate to prepare his summing up.

The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been forseen. The court should adjourn if they consider that the accused has not had sufficient opportunity for procuring the attendance of any witnesses whom he desired to call, or where it would be unjust to the accused not so to adjourn.

The reasons for any adjournment must be entered in the proceedings (see Variations, pp. 749, 750, 752), and either announced in court in presence of the accused, or communicated to the prosecutor and accused.

3. See K.R. 646 and r. 64 (A). Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused who should never be required to make his defence at the close of a prolonged sitting.

Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning. If a shorthand writer is in attendance, the exacting nature of his work should be taken into consideration by the court in their decision as to an adjournment.

4. But see r. 64 (D) as to Sunday, etc.

5. As to procedure on death of president or his inability to attend, see A.A. 53 (2). As to procedure on death of judge-advocate or his inability to attend, see r. 102. Where the absence of either the president or judge-advocate is due to temporary causes, the court should adjourn until he is able to attend.

As to the duties of the senior member of the court where the president is absent, see r. 66 (A).

6. These can seldom occur except on active service.

7. *E.g.*, where a view under A.A. 53 (7) and r. 63 (B) is necessary, or where a court-martial is held on the line of march; or where an adjournment to a hospital for the purpose of taking the evidence of a sick witness is rendered necessary.

Suspension of trial.

66.—(A) Where, in consequence of anything arising while the court is sitting,[1] the court is unable by reason of dissolution[2] (as specified in Section 53 of the Army Act, or otherwise), or of the absence of the president, to continue the trial, the president, or in his absence, the senior[3] member present, will immediately report the facts to the convening authority.

(B) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, proceedings are null, and the accused may be tried before another court-martial.

1. If the court is not sitting, a report will usually be made in some other way to the convening authority.

2. A court is dissolved if it is reduced below the legal minimum (see note 4 to r. 17 and note to r. 18); if, on the death, etc., of the president, the senior member of the court is not of sufficient rank; if continuance of trial is impossible through illness of the accused before the finding. (See A.A. 53 (1), (2), (3).)

3. *I.e.*, senior according to the rank in which they take their seats. (See r. 58.)

Proceeding on death or illness of accused.

67. In case of the death of the accused or of such illness of the accused as renders it impossible to continue[1] the trial, the court will ascertain the fact of the death or illness by evidence,[2] and record the same, and adjourn, and transmit the proceedings to the convening authority.

1. *I.e.*, within a reasonable time. See A.A. 63 (3).

2. This will be taken on oath or solemn declaration.

Presence throughout of all members of court.

68.[1]—(A) A member of a court-martial who has been absent while any part of the evidence on the trial of an accused person is taken can take no further part in the trial by that court of that person, but the court will not be affected except as provided by Section 53 of the Army Act.[2]

(B) An officer cannot be added to a court-martial after the accused has been arraigned.

1. The principles of this rule must be applied in the case of a field general court-martial through the rule is not specifically applied by r. 121.

2. *I.e.*, through dissolution under A.A. 53.

Taking of opinions of members of court.

69.—(A) Every member of a court-martial must give his opinion by word of mouth[1] on every matter which the court has to decide, including the sentence, notwithstanding that he may have given his opinion in favour of acquittal.

(B) Subject to the provisions of the Army Act,[2] every question shall be determined by an absolute majority[3] of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority.

(C) The opinions of the members of the court shall be taken in succession, beginning with the junior in rank.[4]

1. Opinions must be given orally. (See also r. 43 (B)).

2. The president has no second or casting vote (i) in the case of a sentence of death. (A.A. 48 (8)); and (ii) where there is an equality of votes on the finding of the court (A.A. 53 (8)); (see also A.A. 49 (2)).

3. In order to obtain an absolute majority in respect of the sentence, every member must vote, even if he had voted for an acquittal on the finding. It is desirable that the nature of the punishment to be awarded should first be considered.

The procedure to be adopted will best be illustrated by the following example:—

At a general court-martial consisting of seven members, three give their votes in favour of a sentence of penal servitude, two in favour of imprisonment and two in favour of detention. The most lenient punishment will be first put to the vote and will be rejected by 5 votes to 2. The next most lenient punishment will then be put to the vote, *viz.*, imprisonment. All seven members must vote again and the two members who had previously voted in favour of detention will naturally give their votes for imprisonment rather than penal servitude. The result will be an absolute majority of 4 votes to 3 in favour of imprisonment. The quantum or length of the imprisonment to be awarded will be arrived at in the same manner, the most lenient proposal being put to the vote first.

It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that, in the course of further discussion, members who had originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

4. The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned (see r. 43 (B)).

"Junior in rank" means junior in the rank in which they take their seats.

Procedure on incidental question.

70. If any objection[1] on any matters of law, evidence, or procedure is raised by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have the right of reply.

Swearing of court to try several accused persons.

71.—(A) A court may be sworn at one time to try any number of accused persons then present before it, whether those persons are to be tried collectively or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.[1]

(B) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that person, and swear the members of the court for trial of the others alone.[2]

(C) In the case of several accused persons to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.[3]

(D) Where several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if they consider it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.[4]

1. This course of procedure will not affect the position of the court which will be a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

2. When, in consequence of an objection raised by one of several persons jointly charged, a new officer serves, the other accused persons, who had previously raised no objection to the members of the court, will have the right to object to the new officer.

3. *I.e.*, the finding and sentence (except where the court decided to act under para. (D) of this rule) must be arrived at before the next case is tried.

For form of proceedings, see para. 12 of memoranda on p. 768.

4. It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transactions, be in a position to apportion the proper sentences to be awarded to all the accused persons.

Inasmuch as a sentence of penal servitude, imprisonment or detention will under A.A. 68 (1) commence upon the day upon which it is eventially signed, the court, in awarding sentence, should take into consideration in favour of an accused person any postponement of sentence which has been occasioned through the operation of this paragraph.

Swearing of interpreter and shorthand writer.

72.—(A) At any time during the trial[1] an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sowrn[2] to act as interpreter.

(B) An impartial person may at any time during the trial, if the court think it desirable, be sworn[2] to act as a shorthand writer.

(C) Before a person is sworn as interpreter or shorthand writer the accused should be informed of the person who is proposed to be sworn, and may object[3] to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear that person as interpreter or shorthand writer.

1. An interpreter or shorthand writer is usually sworn at the commencement of the trial.

2. For form of oath or solemn declaration, see pp. 762-3.

For remarks on employment of interpreter, see Ch. V, para. 55.

3. The same procedure will be followed as in the case of an objection to a member of the court.

General Provisions as to Witnesses and Evidence

Evidence to be according to rules in English courts.

73.—(A) A court-martial shall not receive evidence for the prosecution which is not relevant[1] to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act,[2] or under any other Act of the Parliament of the United Kingdom.

(B) The rules of evidence adopted in civil courts in England, including those contained in the Criminal Evidence Act, 1898, will be followed by court-martial,[3] and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before a civil court in England.

(C) By "civil court" in this rule is meant [1] court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction.

1. As to relevancy and admissibility of evidence, see generally Ch. VI.

2. See A.A. 163-165.

3. See A.A. 128. Under A.A. 127, it is provided that as respects the conduct of its proceedings or the reception or rejection of evidence or as respects any other matter or thing whatsoever, a court-martial shall not be subject to any Act, law or ordnance of any legislature or authority whatsoever other than the Parliament of the United Kingdom.

The Criminal Evidence Act, 1898, which first gave an accused person the right to give evidence on his own behalf in all criminal proceedings is, in accordance with s. 6 (2) *(b)* of that Act, applied to courts-martial by this rule. The main provisions of the Criminal Evidence Act, 1898, are reproduced in r. 80. (See notes to that rule.)

Judicial notice.

74.—The court may take judicial notice[1] of all matters of notoriety, including all matters within their general military knowledge.

1. As to meaning of judicial notice, see Ch. VI, paras. 10 and 11.

Calling of all prosecutor's witnesses.

75. The prosecutor is not bound to call all the witnesses whose evidence is in the summary or abstract of evidence given to the accused,[1] but he should ordinarily call such of them who were

called for the prosecution as the accused desires to be called, in order that the accused may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses.[2]

1. As to giving to the accused the summary or abstract of evidence, see r. 14 (B).

2. It will be noted that the prosecutor is not required to call any witness at the trial who was called by the accused at the taking of the summary of evidence.

Calling of witnesses whose evidence is not contained in summary or abstract.

76. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract of evidence given to the accused, notice of such intention shall be given to the accused a reasonable time before the witness is called, together with an abstract of his proposed evidence; and if the witness is called without such notice or abstract having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of the witness to be postponed, and the court shall inform the accused of his right to demand such an adjournment or postponement.[1]

1. It will be noted that this rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under r. 86 (D).

List of witnesses of accused.

77. The accused shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided for by Rule 15(A).[1]

1. A member of the court, the judge-advocate and prosecutor are competent witnesses for the defence, and may be sworn at any stage of the proceedings, but an officer should not be detailed to serve as a member of, or to act as prosecutor or judge-advocate at, a court-martial if his evidence is likely to be required. A witness for the prosecution cannot serve as a member of the court or act as judge-advocate at the trial of the case in which he is a witness. (See A.A. 50 (3)).

Procuring attendance of witnesses.

78.—(A) The commanding officer of the accused, the convening officer, or, after the assembly of the court, the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured,[1] but the person requiring the attendance of a witness may be required to undertake to defray the cost[2] (if any) of his attendance.[3]

(B) Any such witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, or, after the assembly of the court, the president or judge-advocate (if any).[4] The summons shall be in the form provided in the Second Appendix to these rules, and shall be served on the witness either personally or by leaving it with some person at his last or most usual place of abode[5].

(C) Any such witness who is subject to military law shall be ordered to attend by the proper military authority.[6]

1. An accused person can have no technical ground of complaint if the attendance of a witness from distant parts cannot be procured, but it is the duty of the commanding

or convening officer or, after the assembly of the court, the president to take all reasonable steps to secure the attendance of any witness whom there is any ground to suppose to be material to the defence, and r. 79 makes provision for the adjournment of the court if the attendance of such witness is essential.

2. This power is given in order to prevent an unreasonable demand by prosecutors of accused persons for the attendance of witnesses. In the case of the prosecutor the cost will usually be defrayed as part of the expenses of the prosecution. In the case of the accused, the provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had upon the court.

As to expenses of witnesses, see generally Allowance Regulations.

3. As to the mode of applying for the attendance of military and naval witnesses from distant stations, see K.R. 637.

4. See A.A. 125.

5. For form of summons, see p. 761.

A civilian witness who, after being duly summoned to attend a court-martial or summary of evidence and after payment or tender of the reasonable expenses of his attendance, makes default in attending, may be punished by a civil court. (See A.A. 126, 180 (1)). It is essential that the summons be served by a person of sufficient standing to give satisfactory evidence of service having been effected, and a warrant officer or N.C.O. not below the rank of sergeant should, as a rule be detailed for this duty. Where any difficulty is experienced in serving a summons upon a civilian witness, the assistance of the civil police should be invoked.

If a civilian witness who has been duly summoned and whose expenses have been tendered does not attend, the court should take evidence on oath as to the service of the summons and the tender of expenses. The president should then forward a certificate through the convening officer to the Army Council reciting the facts and attaching a certified copy of the evidence relating to the service of the summons and the tender of expenses.

A civilian witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom, nor, if in the United Kingdom, can be be compelled to attend a court-martial abroad.

If a civilian witness has in his possession or under his control any books, accounts, letters, returns, papers or other documents which are considered necessary for the trial, care must be taken in summoning him to require him to bring them with him; the witness would be justified in declining to acknowledge a mere verbal request.

A witness summoned or ordered to attend before a court-martial has the same privilege from arrest as a witness before one of the superior civil courts. (See A.A. 125 (2)).

6. Disobedience to any such order is punishable under A.A. 28 (1).

Adjournment of court for non-attendance of witnesses.

79. If such proper steps as are mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not reasonably be procured before the assembly of the court is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer

Evidence of accused and his wife.

80.[1]—(A) An accused person or his wife is a competent witness for the defence at any stage of the proceedings at which under these these rules[2] evidence for the defence may be given whether the accused is charged solely or jointly with any other person, but neither the accused nor his wife shall, save as provided in section 4 of the Criminal Evidence Act, 1898, be called as a witness, except on the application of the accused.[3]

(B) The failure of the accused or his wife to give evidence shall not be made the subject of any comment by the prosecutor.[4]

(c) The accused when giving evidence shall, unless otherwise ordered by the court,[5] give his evidence from the witness box or other place from which the other witnesses give their evidence.[6]

(d) The accused when giving evidence may be asked any question in cross-examination,[7] nothwithstanding that it would tend to criminate him as to the offence charged, but shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

(i) the proof that he has commited or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged[8]; or

(ii) he has personally or by his counsel or defending officer asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution[9]; or

(iii) he has given evidence against any other person charged with the same offence.[10]

(e) The wife of an accused person shall not be compelled to disclose any communication made to her by her husband during the marriage, nor shall an accused person be compelled to disclose any communication made to him by his wife during the marriage.

(f) Where the only witness to the facts of the case called by the defence is the accused, he shall give evidence immediately after the close of the evidence for the prosecution.[11]

1. This rule sets out all the relevant provisions of the Criminal Evidence Act, 1898, which is applied to the proceedings of courts-martial by r. 73 (n).

2. See rr. 40 and 41.

3. As to the duty of the president or judge-advocate to explain to the accused the effect of giving evidence on oath, see note 2 to r. 40.

The wife of an accused person cannot be called as a witness for the prosecution except in certain cases mentioned in s. 4 of the Criminal Evidence Act, 1898, *e.g.*, where the accused is charged with a civil offence under the Criminal Law Amendment Act, 1885, or where the charge is one involving personal injury to the wife. The wife of an accused person can only be called as a witness for the defence upon the application of the accused. (See Ch. VI, para. 87.)

4. As to the duty of the court, see r. 60 (n) and note 3 thereto.

5. *E.g.*, if the accused is violent.

6. The accused will remain under escort while giving evidence, but should otherwise be treated like any other witness.

7. If the accused refuses to answer a question which another witness would be required to answer, and the question is not one which an accused person is under this rule specially exempted from answering, he may be charged, like any other witness, under A.A. 28 (4).

8. See generally Ch. VI, para. 20, *et seq.*

If, in answer to a charge of breaking out of barracks at 11 p.m., the accused stated in evidence that he was in barracks from 10 p.m., until after reveille the following morning, he could properly be asked in cross-examination whether he had not in fact been convicted of an assault upon the police outside barracks at midnight.

9. It will be for the court to decide whether or not the accused has done anything to render himself liable to be cross-examined as to character under this provision. If there is any doubt on the matter, the decision of the court should be in favour of the accused.

If the accused suggests in cross-examination of a witness for the prosecution or in his own evidence upon oath that such witness himself committed the offence charged against him (the accused), the nature of the defence involves imputations upon the character of the witness, and the accused is liable if he gives evidence to be cross-examined as to his own character. If the matters suggested as involving imputations on the character of the witness for the prosecutions are isolated and do not form a substantial part of the defence, cross-examination as to character should not be permitted unless it is suggested by the defence that the witness ought not to be believed on the ground that his conduct (not his evidence in the case but his conduct outside the evidence given by him) makes him an unreliable witness.

Evidence by the accused that his superior officer whose command he was charged with disobeying had a hasty temper would not be an imputation upon the character of such superior officer within the meaning of this rule.

If an accused person is conducting his case in a manner which renders him liable to be cross-examined as to his character, the court should warn him of the possible consequences.

The prosecutor in his cross-examination of the accused must not put questions designed to draw from the accused imputations upon the character of a witness for the prosecution.

10. If the two accused persons are tried jointly, and one of them in giving evidence on his own behalf incriminates the other, the latter may, under this provision, cross-examine the former.

11. See also r. 40 (c) (i).

Withdrawal of witnesses from court.

81. During the trial a witness other than the prosecutor or accused ought not, except by special leave of the court, to be in court while not under examination,[1] and if while he is under examination a discussion arises as to the allowance of a question or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.[2]

1. It is customary to have all witnesses present in court while the members of the court are being sworn, but they should withdraw before the arraignment. This does not, of course, apply to the prosecutor if a witness.

Permission to remain in court while not under examination may reasonably be given, *e.g.*, to expert or professional witnesses, provided that no objection is made by or on behalf of the accused.

2. Otherwise his answer might be influenced by the discussion.

Swearing of witnesses.

82.—(A) An oath shall be administered by the judge-advocate (if any) or by the president or by a member of the court and taken in presence of the accused by every witness in the form and manner provided in the Second Appendix to these rules.[1]

(B) Rule 30 shall apply to every witness.

(C) Where a witness is permitted to make a solemn declaration[2] instead of taking the oath in the prescribed form and manner, the declaration shall be in the form provided in the Second Appendix to these rules.

1. See A.A. 52 (3).

For form of oath and manner of taking same, see pp. 762-3.

As to power of dealing with recalcitrant witnesses, see A.A. 28 (in the case of persons subject to military law) and s. 126 (in other cases).

2. See A.A. 52 (4). For form of declaration, see p. 763.

Mode of questioning witnesses.

83.—(A) Every question will be put to a witness orally by the prosecutor, by or on behalf of accused, or by the judge-advocate, without the intervention of the court, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or by or on behalf of the accused, in which case he will not reply until the objection is disposed of.[1]

(B) The evidence of a witness as taken down should be read to him[2] after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may respectively examine him respecting the same.

(C) In the case of a court-martial at which a shorthand writer is employed, it shall not be necessary to comply with Rule 83 (B), if in the opinion of the court and the judge-advocate (if any) (such opinion to be recorded in the proceedings) it is unnecessary to do so, but nevertheless, if the witness so desires, Rule 83 (B) shall be complied with.[3]

1. The court and judge-advocate must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form in which such questions are put, and they must intervene before the witness replies if, in their opinion, any question is improper or "leading." (See Ch. VI, para. 106, *et seq.*) If either the prosecutor or the accused or the officer or counsel representing him considers that a particular question about to be put to him may be objected to, he should submit the propriety of the question to the decision of the court, having first informed the witness that he must not make his reply until the decision of the court has been given. This should always be done where it is proposed to cross-examine the accused as to his character.

2. When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the record of his evidence and not by way of interlineation or erasure.

3. Any particular portions of the evidence may be read over at any time before the sentence is awarded, if the court, judge-advocate, prosecutor or accused so desire. The court, if closed at the time, must be re-opened for this purpose.

(Form of proceedings, pp. 748-751.)

Examination and cross-examination.

84.—(A) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised by the cross-examination.[1]

(B) The court may, if they think fit, allow the cross-examination of a witness to be postponed.[2]

1. See Ch. VI, paras. 106-118.

As to re-examination, see Ch. VI, para. 119. It is not necessary for the prosecutor to examine, at length, a witness for the prosecution called at the request of the accused and tendered for cross-examination by the accused under r. 75.

2. The court should, if the accused so requests, allow the cross-examination of a witness to be postponed, especially if his evidence comes as "a surprise"; see also r. 76 where a witness is called whose evidence is not contained in the summary or abstract of evidence. A request for postponement should not be acceded to, if, in the opinion of the court, it is made for purposes of obstruction.

Questions to witness by members of court or judge-advocate.

85.—(A) The president, the judge-advocate (if any) and, with permission of the court, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.[1]

(B) Upon any such question being answered, the president or judge-advocate (if any) shall also put to the witness any question relative to the answer which the prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.[2]

1. It will be noted that this rule applies only to the original evidence of a witness and not to any evidence given by him on being recalled. (As to recalled witnesses see r. 86.)

It is desirable that any questions put by the president, judge-advocate, or members of the court should be put after the conclusion of the examination, cross-examination and re-examination (if any) of the witness; but questions may properly be put to a witness during his examination in order that his evidence may be clearly recorded.

2. The president or judge-advocate should always, under the provisions of this rule, put any question which they are requested by the prosecutor or by or on behalf of the accused to put and which does not seem unreasonable. It is to be noted that members of the court other than the president are not empowered, in the circumstances mentioned in this paragraph, to put questions.

Recalling of witnesses, and calling of witnesses in reply.

86.—(A) At the request of the prosecutor or of the accused a witness may, by leave of the court, be recalled at any time before the closing address[1] of or on behalf of the accused for the purpose of having any question put to him through the president, or judge-advocate (if any.)[2]

(B) The court may, if they consider it expedient, in the interests of justice, so to do, allow a witness to be called or recalled by the prosecutor before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence[3] or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(C) Where the accused has called witnesses as to character, the prosecutor before the closing address of or on behalf of the accused may call or recall witnesses for the purpose of proving a previous conviction or entries in the conduct book against the accused.

(D) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary in the interests of justice.[4]

1. See rr. 40 and 41.

2. The president or judge-advocate should also put to a witness recalled under the provisions of this paragraph any further questions which they consider necessary in view of the answer given.

3. Including a material statement by the accused himself if he has given evidence.

As stated in Ch. VI, para. 20, *et seq.*, evidence of the accused having committed other offences is not usually admissible, except to rebut certain lines of defence (*e.g.*, intent, accident, mistake, etc.), and should not be given (or mentioned by the prosecutor in his opening address) until a line of defence justifying its admission has been definitely adopted. Where the accused in his defence does adopt such a line, evidence of the nature referred to may be admitted under this rule in rebuttal.

4. The power given under this provision of calling or recalling a witness should only be exercised in exceptional circumstances; *e.g.*, where it appears for the first time from the evidence given at the trial that a person who has not been called either by the prosecutor or on behalf of the defence was present at, and probably witnessed, the occurrence which forms the subject of the charge which is being tried. Witnesses should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the accused, the court should permit the accused or his representative to make a further address upon the new matter which has been elucidated (if any).

Defending Officer, Friend of Accused, and Counsel

Defending officer and friend of accused.

87.—(A) If an accused person is not represented at his trial by counsel, he may be represented by an officer subject to military law who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused."[1A]

(B)[2] It shall be the duty of the convening officer to ascertain whether an accused person not otherwise represented desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer.[3] If, owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer be no such officer available for the purpose, the convening officer shall give a written notice to the president of the court-martial, and such notice shall be attached to the proceedings.

(C) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.[4]

(D) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he cannot examine or cross-examine the witnesses or address the court.

1. See, however, r. 134A and note thereto.

1A. Under r. 14 (A) the accused, after he has been ordered to be tried by court-martial, is to be allowed free communication with his "friend," defending officer, or legal adviser.

2. There is power under r. 104 to dispense with this paragraph in the event of military exigencies, etc.

3. Every effort should be made to secure the services of a competent officer, and he should be allowed time and opportunity for properly preparing the defence of the accused.

4. I.e., he must *conduct* the case as representing the accused. (See II, 89 (C), 91, 92.)

(Form of proceeding, p. 742.)

Counsel allowed in certain courts-martial.

88.—(A) Subject to these rules, counsel[1] shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial:

(i) When held in the United Kingdom; and

(ii) When held elsewhere than in the United Kingdom, India or Burma, if the Army Council or the convening officer, and when held in India, if the Commander-in-Chief of the forces in India, or the convening officer and when held in Burma, if the General Officer Commanding the forces in Burma, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such a declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 87, the rules with respect to counsel will apply only to the courts-martial at which counsel are, under this rule, allowed to appear.

1. For qualifications of counsel, see r. 93.

There is no restriction as to the number of counsel engaged in a case. Counsel for the defence, though not bound to such strict impartiality as the prosecutor, must

nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused (see r. 60 (c)); but he should exercise more restraint in commenting on the acts of persons not before the court.

Requirements for appearance of counsel.

89.—(A) An accused person intending to be represented by counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain counsel on behalf of the prosecutor[1] at the trial.

(B) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to represent him at the trial.[2]

(C) The counsel who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to offer any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such a case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rules 40 (D) (ii) *(a)* and 41 (B) (ii) *(a)* or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined, cross-examined and re-examined as any other witness.

1. As to engagement of counsel on behalf of the prosecutor, see K.R. 640, 641.

"2. When the convening officer intends to appoint or apply for the services of an officer holding legal qualifications to act as prosecutor, similar notice should be given to the accused to enable him, if he so desires, to obtain counsel to represent him at the trial."

Counsel for prosecutor.

90.—(A) Counsel appearing on behalf of the prosecutor should always make an opening address, and should state therein the substance of the charge against the accused, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(B) Counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 60 (B).

Counsel for accused.

91.—(A) Counsel appearing on behalf of the accused has the like rights and is under the like obligations as are specified in Rule 60 (C) in the case of the accused.

(B) If the court ask counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

General rules as to counsel.

92.—(A) Counsel, whether appearing on behalf of the prosecutor or of the accused, will conform strictly to these rules and to the rules of

civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

(B) If counsel puts to a witness other than the accused[1] a question as to a matter which is not relevant except so far as it affects the credit of the witnesses by injuring his character, and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it; and

(i) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question; but

(ii) If they are of opinion that the imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the matter.

(C) Counsel will not state as a fact any matter which is not proved, or which he does not intend to prove in evidence.

(D) Counsel will not state what is his own opinion as to any matter of fact before the court.

(E) Counseil will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

(F) Counsel will treat the court and judge-advocate with due respect,[2] and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

¾ 1. If such a question is put to the accused, the court will also have to consider whether, having regard to r. 80, he should be compelled to answer it. (See also note 1 to r. 83.)

2. As to conduct of counsel, see A.A. 129.

Qualification of counsel.

93.—(A) Neither the prosecutor nor the accused has any right to object to counsel, if properly qualified.

(B) Counsel shall be deemed properly qualified to appear at a court-martial wherever held[1]—

(i) If in England or Northern Ireland he is a barrister-at-law or solicitor.

(ii) If in Scotland he is an advocate or law agent.

(iii) If in India or Burma he is a barrister-ar-law or is a legal practitioner authorized to practise, with right of audience, in a court of sessions.

(iv) If in any other part of His Majesty's dominions he is recognized by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules.

1. The effect of this provision is that counsel properly qualified under this rule may appear for the accused person wherever the trial is held, *e.g.*, a Scottish avdocate may appear for the defence at a court-martial held at Aldershot, or a solicitor from Northern Ireland at a court-martial held at Edinburgh.

Proceedings

94. At a court-martial the judge-advocate, or, if there is none, the president shall record or cause to be recorded all transactions of that court,[1] and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate. Record in proceedings of transactions of court-martial.

1. The record, where no shorthand writer is employed, must be taken in a clear and legible hand. Interlineation or correction must be avoided as much as possible; if made they should be initialled by the president. The pages should be numbered and the various sheets fastened together. Sufficient space must be left below the signature of the president for the decision of the confirming officer. The place and date of the signing of the sentence by the president must be inserted.

(See memoranda for guidance of courts-martial, paras. 11-29, pp. 768-770.) As to annexture to the proceedings of original documents, see K.R. 650.

95.—(A) The evidence shall be taken down in a narrative form[1] in as nearly as possible the words used; but in any case where the prosecutor, the accused, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*.[2] Taking down of evidence and addresses.

(B) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests, or the court think fit, be entered upon the proceedings together with the grounds of the objection, and the decision of the court thereon.

(C) Where any address by or on behalf of the prosecutor or accused, or the summing up of the judge-advocate is not in writing, it shall not be necessary to record the address or summing up in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge-advocate requires, except that—

(i) The court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by or on behalf of the accused to each charge against him; and

(ii) The court shall also record any particular matters in the address by or on behalf of the prosecutor or accused which the prosecutor or accused, as the case may be requires.

(D) The court shall not enter in the proceedings any comment, or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president.[3]

1. *I.e.*, the material effect of the question and answer will be written down; *e.g.*, where the question is "What did the accused do next?" and the answer is "He left the room"; the evidence as recorded would read "The accused then left the room."

If a shorthand writer is employed the evidence is usually taken down *verbatim* by him. If the evidence of a witness is not given in English, the material effect of question and answer interpreted into English will be recorded.

2. This applies to questions an answers given in cross-examination and re-examination as well as in examination-in-chief.

3. Cases justifying an expression of censure on individuals who are not present at the trial are rare and exceptional.

Custody and inspection of proceedings.

96. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and accused respectively, at all reasonable times before the court is closed to consider the finding.

Transmission of proceedings after finding.

97.—(A) Where the court is a general court-martial the proceedings shall as soon as possible be sent by the person having the custody thereof[1], to such person as may be from time to time directed by His Majesty, and subject to the provisions of any such direction of His Majesty, as may be directed by the order convening the court.[2]

(B) Where the court is a district court-martial, the proceedings shall as soon as possible be sent by the person having the custody thereof[1], to such person as may be directed by the order convening the court, or in default of any such direction to the confirming officer.[3]

1. See r. 96.
2. See K.R. 667.
Where the accused belongs to the Royal Marines, see K.R. 673.
3. For procedure where a member of the court has become confirming officer, see A.A. 54 (4).

Preservation of proceedings.

98.—(A) The proceedings of a court-martial shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in London or India, or to the Admiralty, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.[1]

(B) In the case of the proceedings of a court-martial held upon an officer or soldier of a force raised in a Dominion, in the custody of the Judge-Advocate-General, such proceedings may be delivered by the Judge-Advocate-General into the custody of such person as may be appointed by the Governor-General or Governor of the Dominion concerned.

1. See K.R. 667, 669-672.

Rate of payment for copies of proceedings.

99. The rate[1] at which copies of the proceedings of a court-martial shall be supplied shall be the actual cost of the copy required, not exceeding two pence for every folio of seventy-two words; and the officer or person having the custody[2] of those proceedings must, on demand made within the time limited for the preservation of the proceedings, supply a copy accordingly to any person entitled under the Army Act to obtain such copy.

1. Prescribed for the purposes of A.A. 124 (see note to that section).
2. See r. 98.

Loss of proceedings.

100.—(A) If, before confirmation,[1] the original proceedings[2] of a court-martial, or any part thereof, are lost, a copy thereof,

if any, certified by the president of or the judge-advocate at the court-martial may be accepted in lieu of the original.

(B) If there is no such copy and sufficient evidence[3] of the charge, finding, sentence and transaction of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings or part thereof lost.

(C) In any case above in this rule mentioned the finding, if it is a finding which requires confirmation, and the sentence consequent thereon, may be confirmed, and shall be as valid as if the original proceedings or part thereof had not been lost.

(D) If the accused refuses his assent as required in (B), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be null.

(E) If, after confirmation, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, finding, sentence, and transactions of the court and of the confirmation of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

1. Confirmation is not complete until finding and sentence have been promulgated. (See r. 53.)

2. See note 2 to r. 50.
As to annexure to the proceedings of original documents, see K.R. 650.

3. This may be obtained by the president or some member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signature of the members. A copy of the charge, however, should always be procured, if possible.
As soon as it is known that the proceedings have been lost, steps should be taken to obtain and preserve the best evidence available.

Judge-Advocate

Appointment of judge-advocate and disqualification.

101.—(A) Where the convening officer is authorized[1] to appoint a judge-advocate, he shall, in the case of a general, and may, in the case of a district court-martial, by order appoint a fit person to act as judge-advocate at the court-martial.

(B) An officer who is disqualified[2] for serving on a court-martial shall be disqualified for acting as judge-advocate at that court-martial.

(C) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person[3] has been appointed; but this rule shall not relieve from responsibility the person who made the invalid appointment.

1. *I.e.*, by the warrant authorising him to convene a court-martial. As in the case of a general court-martial held in the United Kingdom, the warrant to the convening officer does not give him power to appoint a judge-advocate, application must be made to the Judge-Advocate-General to make the appointment. Omission to appoint a judge-advocate at a general court-martial will invalidate the proceedings.
As to the appointment of a judge-advocate in the case of a field general court-martial, see r. 106 (E).

2. See r. 19 (B) and notes.
A prosecutor or a witness for the prosecution is disqualified from acting as judge-advocate. (See A.A. 50 (3)).

3. A judge-advocate should be free of all suspicion of bias or prejudice. He should have had experience of the practice and procedure of courts-martial and a knowledge of the general principles of law and of the rules of evidence.

Death, illness, or absence of judge-advocate.

102. If the judge-advocate dies, or from illness, or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance to the convening authority; and in the case of death, or, if in any other case the convening officer is of opinion that it is inexpedient to delay the continuance of the trial the court shall be dissolved and the accused may be tried again before another court.[1]

1. The court will in no circumstances proceed in the absence of a judge-advocate who has been duly appointed.

Powers and duties of judge-advocate.

103. The powers and duties of a judge-advocate are as follows:

(a) The prosecutor and the accused respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law or procedure relative to the charge of trial, whether he is in or out of court, subject, when he is in court, to the permission of the court;

(b) At a court-martial he represents the Judge-Advocate-General;

(c) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and will give his advice on any matter before the court;

(d) Any information or advice given to the court on any matter before the court will, if he or the court desire it, be entered in the proceedings;

(e) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence and advise the court upon the law relating to the case before the court proceed to deliberate upon their finding.[1]

(f) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, and not disregard it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate of any legal point. The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion;[2]

(g) The judge-advocate has, equally with the president,[3] the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise, and may, for that purpose, advise the court[4] that witnesses should be called or re-called for the purpose of being questioned by him on any matters which appear to be necessary or desirable for the purpose of eliciting the truth;

(*h*) In fulfilling his duties the judge-advocate will be careful to maintain an entirely impartial position.

1. See r. 42 and note.

2. If a court-martial acting without jurisdiction or in excess of jurisdiction convict an officer or soldier, the members of the court may be held liable in damages by a civil court (see Ch. VIII, para. 30). Such liability—or at least the quantum of the damages—may depend upon the question whether they exercised a bona fide judgment, and the fact that they accepted the advice of the judge-advocate, even if such advice was held to be wrong, might practically exonerate the members from liability.

3. For duty of president, see r. 59 (B) and note.

4. This advice should always be acted upon unless the court consider that the judge-advocate is acting improperly or in such a manner as to obstruct the proceedings. If his advice is disregarded the court should record their reason for disregarding it.

Exception from Rules

Suspension of rules on the ground of military exigencies or the necessities of discipline.

104. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the Rules 4 (C), (D), (E), (F), and (G), 5, 8, 14, 15, and 87 (B), he may, by order under his hand, make a declaration[1] to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in the declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial.[2]

Provided that the accused shall have full opportunity of making his defence,[3] and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

1. For form of declaration, see p. 741.

2. The power conferred by this rule should rarely be exercised except on active service and then only if absolutely necessary. Occasionally it may be necessary to ressort to it in the case of embarkation or on the line of march, or possibly in an extreme case where the necessities of discipline require speedy trial and punishment.

In exercising the powers conferred by this rule, it is not necessary to dispense with all the provisions mentioned, *e.g.*, it may be expedient to comply with the relevant provisions of r. 4 but not with r. 5.

If rr. 4 (C), (D), (E), (F) and (G) are suspended, steps must be taken to inform the accused beforehand of the nature of the charge, the names of the witnesses and the effect of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance by not having received a summary of evidence.

The power of dispensing with r. 14 (A) is only intended to be exercised where it is necessary to try a person before he can communicate with a witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend upon the spot.

R. 15 (C) should always be complied with, and r. 15 (A) and (B), if not complied with within the time therein mentioned, should be complied with as long as possible before the court assembles.

3. The accused will not have this opportunity unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

Field General Court-Martial

The foregoing rules shall not, save as hereinafter mentioned,[1] apply to field general courts-martial, which shall be subject to the following rules:—

Convening of field general court-martial.

105.—(A) A field general court-martial[2] may be convened—

(i) By any officer in command of a detachment or portion of troops in any country out of the United Kingdom when not on active service, where complaint is made to him that an offence had been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in that country; or

(ii) By the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a body of forces on active service, where it appears to him, on complaint or otherwise, that a person subject to military law has committed an offence.

(B) An officer in command of a detachment or portion of troops not on active service should not convene a field general court-martial in His Majesty's dominions unless he is authorized so to do by the general officer or brigadier commanding the forces to which the officer belongs.

(C) An officer, before convening a field general court-martial for the trial of a person, shall be satisfied that it is not practicable[3] to try the person by an ordinary court-martial, and—where the officer is below the rank of field officer and is not a commanding officer— be further satisfied that it is not practicable to delay the trial for reference to a superior officer.

1. See r. 1. See rr. 108, 110 (B), 111, 116 and 121.

2. See generally as to field general courts-martial, A.A. 49 and Ch. V, paras. 111-113.

The order convening a field general court-martial must be signed by the convening officer personally and not by a staff officer on his behalf. For form of convening order, see pp. 737-740.

The court should not, as a rule, be convened for the trial of an offence not committed on active service, in any place where ordinary civil justice is administered.

Subject to the restrictions imposed by A.A. 49 and by this rule, a field general court-martial can try any offence, but it cannot try the civil offences of treason, murder, manslaughter, treason-felony or rape if committed in the United Kingdom (see proviso to A.A. 41).

A field general court-martial can try an officer.

A judge-advocate may be appointed at a field general court-martial. (See r. 106 (E)).

3. For meaning of "practicable," see r. 122 (A).

Composition of field general court-martial.

106.—(B) Subject to the provisions of Rule 107 (*a*), not less than three officers must be appointed.[1]

(B) If the convening officer is of opinion that three other officers are not available[2] to form the court, he may appoint himself president of the court; but if he is of opinion that three other officers are available, or that although three other officers are not available he is himself by reason of his position as confirming officer or otherwise not available, he must appoint as president some other officer;

Provided that the convening officer—

(i) Must not appoint as president any officer below the rank of field officer, unless he is himself below that rank, or unless in his opinion a filed officer is not available[3]; and

(ii) Where under the foregoing provision he has power to appoint as president an officer below the rank of field officer must not appoint an officer below the rank of captain, unless in his opinion a captain is not available.

(c) The officers should have held commissions for not less than one year,[4] and if in the opinion of the convening officer any officers are available who have held commissions for not less than three years, he should appoint those officers in preference to officers of less service.

(d) The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit.

(e) The convening officer, although not authorised to appoint a judge-advocate in the case of other courts-martial, may in the case of any field general court-martial by order appoint a fit person to act as judge-advocate thereat.

1. This paragraph gives the ordinary rule for the constitution of a field general court-martial, which may, however, in the circumstances mentioned in A.A. 49 (1) *(b)* and r. 107, consist of two officers.

2. For meaning of "available", see r. 122 (a).

3. By A.A. 49 (1) *(c)*, the president of a field general court-martial may be of any rank, and in some circumstances it may be the duty of the convening officer to follow the statute and disregard this rule. For instance, a court consisting of a major as president and two captains heard all the evidence and were agreed upon their findings of fact, but adjourned to obtain advice upon a point of law. In the interval the president was killed. Another field officer was available, but as the witnesses were no longer available, it was not possible to re-try the case before a new court. It was ruled that the convening officer ought to act in accordance with A.A. 49 (1) *(c)* and 53 (2) and appoint the senior captain as president, so that the court might conclude the trial.

4. If an officer of less than one year's standing is appointed, the necessity for so doing should be recorded.

As to field general court-martial where military exigencies occur.

107.—(a) Where the convening officer is satisfied that military exigencies or other circumstances prevent compliance with Rule 106 (a) and that it is not practicable to delay the trial for the prupose of such compliance, then if, in his opinion, three officers are not available,[1] two will be appointed.

(b) The court may be convened, and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules[2]; but if it appears to the convening officer that military exigencies or other circumstances[3] prevent the use of that form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable must be kept by the provost-marhal or assistant provost-marshal, if present, or if not, by the president and the officer charged with the promulgation, stating as near as may be the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, sentence, and confirmation, and any recommendation to mercy.

(c) The convening officer will report to superior authority for the information of the officer who, if a field general court-martial had not been convened, would have had power to convene a general court-martial to try the accused, the military exigencies or other circumstances which prevented compliance with Rule 106(A), or the use of the form in the Second Appendix.

1. For meaning of "practicable" and "available", see r. 122 (A).

2. See pp. 737-740.

3. Before resorting to the exceptional courses allowed by this rule, the convening officer must satisfy himself of the military exigencies or other circumstances which justify it.

The accused must always have full opportunity for making his defence; see r. 115.

Charge.

108. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act. No formal charge-sheet shall be necessary, but the convening officer may nevertheless direct the separate trial of two or more charges preferred against an accused; or the accused, before pleading, may apply to be tried separately on any one or more of such charges on the ground that he will be embarrassed in his defence if not so tried separately, and the court shall accede to his application unless they think it to be unreasonable. If such charges are separately tried, the provisions of Rule 62 shall apply as if the field general court-martial were a district court-martial.

Trial of several accused persons.

109. The court may be sworn at one time to try any number of accused persons then present before it, but except so far as accused persons are tried together for an offence committed collectively, the trial of each accused person will be separate.

Challenge.

110.—(A) The names of the president and members of the court will be read over in the hearing of the accused persons, and they will be asked if any of them objects to be tried by any of those officers.

(B) If any accused person objects to an officer, the objection will be dealt with in the manner provided in Rule 25, which shall apply to every field general court-martial.

Swearing of members, witnesses, etc.

111. The provisions of the foregoing Rules 26 to 30 (inclusive) and Rule 82 relating to the administering and taking of oaths and the making of solemn declarations shall apply to every field general court-martial.[1]

1. For forms of oaths and declarations, see App. II, pp. 762-3.

Arraignment.

112. When the court are sworn, the judge-advocate (if any) or the president will state to the accused then to be tried the offence with which he is charged,[1] with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the accused whether he is guilty or not of the offence.[2]

1. As to objection by accused to charge, see r. 32 which, by r. 121, is applied, so far as practicable, to a field general court-martial. As to responsibility of president, see r. 59.

2. As to general plea of "guilty" or "not guilty", see r. 35 and notes: as to procedure after plea of "guilty" see r. 37. Both of these rules are, by r. 121, applied, so far as practicable, to a field general court-martial.

A plea of "guilty" will not be accepted by the court if the charge or charges upon which an accused is arrainged render him liable, on conviction, to be sentenced to death. If such plea is offered, the court will enter a plea of "not guilty" and proceed with the trial accordingly. See r. 35 (D) which in all cases will be applied to a field general court-martial.

Plea of jurisdiction.

113. If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.[1]

1. See r. 34 (which by r. 121 is applied, so far as practicable, to a field general court-martial) and notes.

Witnesses and evidence.

114.—(A) The witnesses for the prosecution will be called, and the accused will be allowed to cross-examine them, and to call any available witnesses for his defence.[1]

(B) The judge-advocate, if there be one, or if there be none, the president of the court shall take down, or cause to be taken down, a short summary of the evidence of all the witnesses at the trial, and the summary so taken down shall be attached to the proceedings;

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, the trial may be carried on without any summary being taken down, but in every such case the convening officer shall report to superior authority in the same manner as he is required to do under the provisions of Rule 107 (C).

1. Although by r. 121 only a limited number of the foregoing rules are applied, so far as practicable, to field general courts-martial, the procedure to be adopted at a field general court-martial should be the same as at a general or district court-martial. See also r. 116.

As to evidence, see r. 73.

Defence.

115. The accused will be asked what he has to say in his defence, and shall be allowed to make his defence.[1]

1. See note to r. 114.

As to the rights of the accused to prepare his defence, see r. 14, which by r. 121 applies, so far as practicable, to field general court-martial.

Procedure at trial.

116. Where during the course of a trial any doubt arises as to the procedure to be followed in connection with the calling or recalling or questioning of witnesses, or the order in which such witnesses are to be examined and addresses are to be made by the prosecutor or by or on behalf of the accused, the provisions of the foregoing rules[1] relating thereto shall, so far as practicable, apply as if the field general court-martial were a district court-martial.[2]

1. See rr. 39, 40, 41, 83-86.

2. As to the presence throughout of all members of the court, see note 1 to r. 68.

Acquittal.

117.—(A) In the case of an equality of opinions on the finding the accused will be acquitted.

(B) The finding of acquittal requires no confirmation, and, if it relates to all the offences charged against an accused person, will

be declared at the time of the finding, and the accused will thereupon be released from custody. If it relates to one or more, but not all, of the charges, it will be announced at once in open court.

Sentence.

118.—(A) The court if consisting of three or more officers, may award any sentence which a general court-martial can award; but if the court pass sentence of death,[1] the whole court must concur.

(B) The court, if consisting of two officers, may award any sentence authorised for the offence, not exceeding field punishment,[2] or two years' imprisonment with hard labour.

(C) Any recommendation to mercy will be attached to the proceedings, and communicated to the accused, together with the finding and sentence.[3]

1. See A.A. 49 (2). As to communication to accused persons upon whom sentence of death has been passed, see note *(b)* to forms of oath in App. II, p. 762.
2. See Field Punishment Rules, p. 787.
3. As to promulgation, see r. 53.

General provisions as to votes and powers of court.

119.—(A) Except as provided by Rules 110 (B), 117, and 118, every question will be determined by the majority of opinions, and in case of equality, the president shall have a second or casting vote.

(B) If, after the commencement of the trial, the court consider that any accused person named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that person out of the schedule.

(C) The proceedings shall be held in open court,[1] in the presence of the accused, except on any deliberation among the members, and the judge-advocate (if any), when the court may be closed.

(D) The court may adjourn from time to time, and may, if necessary, view any place.

1. As to sitting *in camera*, see note 3 to r. 63.

Confirmation.

120.—(A) Except in the case of acquittal, the finding and sentence of the court shall be valid only in so far as they are confirmed by proper military authority.[1]

(B) The provost-marshal or an assistant provost-marshal cannot confirm the finding or sentence of the court.[2]

(C) A prosecutor of an accused person or a member of the court trying an accused person cannot confirm the finding or sentence of the court as regards that person, except that if a member of the court trying an accused person would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable[3] to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(D) In any case where a sentence of death, is passed, the confirming authority shall after confirmation forthwith transmit the proceedings to the officer in chief command of the forces in the field comprising the force with which the accused is present, and such sentence shall not be carried into effect pending the decision of that officer on the case:—

Provided that where the confirming officer is of opinion that, by reason of the nature of the country, the great distance, or the operations of the enemy, it is not practicable[3] to delay the case for the purpose of referring it to the officer in chief command in the field, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of the sentence.

(E) Subject to the preceding provisions of this rule, the finding and sentence of a field general court-martial as regards any person may be confirmed—

(i) Where the court was convened by an officer in command of a detachment or portion of any troops not on active service, by an officer authorised to confirm the findings and sentence of general courts-martial for the trial of offences in the force of which the detachment or portion of troops form part; and

(ii) Where the court was convened by an officer in command of any troops on active service, by the senior officer,[4] not being an officer below the rank of field officer, present at the place where the trial takes place, or if there is no officer not below that rank present at that place, by the senior officer not below the rank of field officer present at any other place.

(F) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority.

(G) A confirming authority shall not send back a finding and sentence for revision more than once, nor recommend the increase of a sentence, and on any revision the court shall not take further evidence nor increase the sentence.[5]

1. This is the same provision as in enacted in A.A. 54 (6) for ordinary courts-martial. (See note to that section and Ch. V, para. 87.)

2. The general effect of paras. (B) to (M) is as follows:—The finding and sentence of a field general court-martial will, when troops are not on active service, be confirmed by an officer authorized to confirm general courts-martial. If troops are on active service, the senior officer on the spot, if of field rank, or, if not of that rank, the nearest available senior officer of that rank will confirm.

Where a sentence of death is passed, it must, after confirmation, be referred to the general in chief command in the field and must not be carried into effect pending his decision. But if communication with that officer is impracticable, or so difficult as to cause too great delay, a sentence of death may be carried into effect if confirmed by the general or field officer commanding the force with which the accused is present.

Paras. (B) and (C) give effect to the ordinary rule that a prosecutor or member of the court is not to confirm, and the rule is extended to the provost-marshal and his assistant, as if he were the prosecutor.

3. See r. 122 (A).

4. "Senior" means senior in relation to command. It does not include a senior officer who holds no command, but is on the spot performing duties of, for example, a quasi civil character.

5. This applies the law enacted for ordinary court-smartial by A.A. 54 (2).

Application of rules.

121. The foregoing rules—3 (Hearing of charge), 4 (Disposal of the charge or adjournment for taking down the summary of evidence), 5 (Remand of accused), 8 (Procedure on charge against officer), 14 (Rights of accused to prepare defence), 15 (Information of charge and delivery of list of officers to accused), 32 (Objection by accused to charge), 34 (Special plea to the jurisdiction), 35 (General plea of "guilty" or "not guilty"), 36 (Plea in bar), 37 (Procedure after plea of "guilty"), 39 (A) (Application for adjournment), 43 (Consideration of finding), 44 (Form and record of finding), 46 (Procedure on conviction), 53 (Promulgation), 54 (Mitigation of sentence on partial confirmation), 55 (Confirmation notwithstanding informality in or excess of punishment), 56 (Confirmation notwithstanding technical or other deviation), 59 (Responsibility of president), 60 (Power of court over address of prosecutor and accused), 73 (Evidence to be according to rules in English Courts), 74 (Judicial notice), 80 (Evidence of accused and his wife), 87 (Defending officer and friend of accused), 97 (Transmission of proceedings after finding), 98 (Preservation of proceedings), 99 (Rate of payment for copies of proceedings), 100 (Loss of proceedings), 101 to 103 (Judge-advocate), and 104 (Suspension of rules on the ground of military exigencies or the necessities of discipline)—shall, so far as practicable, apply as if a field general court-martial were a district court-martial.[1]

1. See also rr. 108, 110 (B), 111 and 116.

Definitions.

122.—(A) In the rules with respect to field general courts-martial, unless the context otherwise requires, the expressions "practicable" and "available" mean respectively practicable and available, having due regard to the public service.

(B) The expression "commanding officer[1] of a corps or portion of a corps" means the officer whose duty it is under the provisions of the King's Regulations for the Army, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to the corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority or to refer it to superior authority.

1. See note to r. 129.

Evidence of opinion of convening and confirming officer.

123. Any statement in an order convening a field general court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a field general court-martial as to the opinion of the confirming officer, shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

PART II.—MISCELLANEOUS

Courts of Inquiry

(i) *General*

Courts of inquiry: General.

124. (A) A court of inquiry[1] is an assembly of officers, or of one or more officers together with one or more warrant or non-commissioned officers, directed to collect and record evidence, and, if and as required to report or make a declaration with regard to any matter which may be referred to them.

(B) A court of inquiry may be assembled by the Army Council or by the officer in command of any body of troops.

(C) The court will be composed of two or more members,[2] each of whom may be of any branch or arm of the service, according to the nature of the investigation.

(D) Previous notice should be given of the time and place of meeting of a court of inquiry, and of all sittings of the court, to all persons concerned in the inquiry.

(E) It is the duty of a court of inquiry to put such questions to a witness as they may think desirable for the purpose of testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(F) The whole of the proceedings of a court of inquiry will be forwarded by the president to the authority who assembled the court.

1. See generally as to courts of inquiry, K.R. 733-743. For disqualifications of members of courts of inquiry for service on subsequent courts-martial, see r. 19 (B) (m). As to privilege of report of court and that of witnesses, see Ch. VIII, paras. 48-52.

A court of inquiry has no power to compel the attendance of civilian witnesses. As to expenses of witnesses, see Allowance Regulations, 1930, paras. 207, 271.

2. The court should normally consist of three members (K.R. 733).

(ii) *Courts of Inquiry under Section 72 of the Army Act for the purpose of determining the illegal absence of soldiers.*

Courts of inquiry as to illegal absence under Army Act, s. 72.

125.—(A) A court of inquiry under Section 72 of the Army Act[1] will require the attendance of such witnesses as they may think sufficient to prove the absence and other facts specified as *matters of inquiry* in that section.[2]

(B) They will take down in writing the evidence given before them, and at the end of the proceedings they will make a declaration[3] of the conclusions at which they have arrived in respect of the facts into which they are assembled to inquire.

(C) They will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and will put such questions to them as may be desirable for testing the truth or accuracy of any evidence they may have given, and otherwise for eliciting the truth, and the court, in arriving at their conclusions, will give due weight to the evidence of all such witnesses.

(D) The court will administer the same oath[4] or solemn declaration to the witnesses as if the court were a court-martial, but the members will not themselves be sworn.

(E) The commanding officer of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(F) The soldier, the subject of the inquiry, will be entitled to a copy of the declaration of the court, to be supplied by the person having custody of the regimental books, on payment of the actual cost of the copy required, not exceeding twopence for every folio of 72 words.

1. Notes to A.A. 72.

2. See note 1 to r. 124.

The court must not be assembled until the soldier has been absent for a period of 21 *clear* days—excluding the day on which the absence commenced and that on which the court assembles.

3. The court, in making their declaration on A.F. A.2, will follow the wording shown below. An exact reproduction of the declaration will be entered in A.B. 161. (See K.R. 1620.) It should be free from alteration or erasure.

Declaration

The court declare that .....(*number, rank, name, corps*) illegally absented himself without leave (or other sufficient cause) at ..... (*station or place*) .....on the..... day of .....; that he still is so absent, and that on the ..... (*date on which the inventory of kit was taken*)..... he was deficient, and that he is still deficient of the following articles (*value of equipment and public clothing to be stated*)

.....
.....
.....

Names of President and Members. { ..... President. } { ..... } Members.

In framing a charge of losing by neglect under A.A. 24 (2), the date of the inventory should be assigned.

Before a court of inquiry are entitled to find deficiency, they will require evidence:—

(1) that the absentee has been at some time previously in possession of a complete kit, or, at any rate, of the articles alleged to be deficient;

(2) that an inventory of his kit has been taken, and at the taking of the inventory certain specified articles were deficient;

(3) that none of the articles have since been recovered. (Any articles recovered will, of course, be omitted.)

When the declaration is given in evidence at a court-martial, it will be entered on A.F. B.115, which is admissible in evidence under A.A. 163 (1) (*h*), and will be produced instead of A.B. 161. A.F. B.115 must be a correct extract from A.B. 161 and free from alteration or erasure. A.F. A.2 is not admissible in evidence.

4. See r. 82, and as to form of oath see App. II, p. 763.

(iii) *Courts of Inquiry other than those held under Section 72 of the Army Act.*

Courts of inquiry other than those held under Army Act, s. 72.

125A.—(A) The court will be guided by the written instructions of the authority who assembled the court. The instructions will be full and specific, and will state the general character of the information required. They will also state whether a report is required or not.

(B) Whenever any inquiry affects the character or military reputation of an officer or soldier, full opportunity must be afforded to the officer or soldier of being present throughout the inquiry, and of making any statement and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and of producing any witnesses in defence of his character or military reputation.

The president of the court will take such steps as may be necessary to ensure that any person so affected, and not previously notified, receives notice of his rights under this rule and will satisfy himself that he fully understands them[1].

(C) When a court of inquiry is held on recovered prisoners of war, and in any other case in which the authority who assembled the court has so directed, the evidence will be taken on oath, in which case the court will administer the same oath[2] or solemn declaration to witnesses as if the court were a court-martial.

(D) The authority who assembled the court will, when the court is held on a returned prisoner of war, direct the court to record their opinion whether the officer or soldier concerned was taken prisoner by reason of the chances of war, or through neglect or misconduct on his part, and the authority who assembled the court will record his own opinion.

(E) The members of the court will not themselves be sworn, but when the court is a court of inquiry on recovered prisoners of war the members will make the following declaration:—

> *I, A.B., do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which.....became a prisoner of war, according to the true spirit and meaning of the King's Regulations for 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.*

(F) A court may be re-assembled as often as the authority who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information. They may also be directed to make such further report or reports as may be required.

(G) Except upon the trial of any officer or soldier under Section 29 of the Army Act, for wilfully giving false evidence before the court,[3] the proceedings of a court of inquiry[3A], or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against an officer or soldier, nor shall any evidence respecting the proceedings of the court be given against any officer or soldier.[4]

(H) An officer or soldier who is tried by court-martial in respect of any matter or thing which has been investigated by a court of inquiry, and unless the Army Council see reason to order otherwise, an officer or soldier whose character or military reputation is, in the opinion of the Army Council, affected by anything in the evidence before, or in the report of, a court of inquiry, shall be entitled to a copy of the proceedings of the court, including any report made by the court, on payment of the actual cost of the copy required, not exceeding twopence for every folio of 72 words.

1. Whenever it appears possible that the character or military reputation of an officer or soldier may be affected as the result of a court of inquiry, the authority who assembles the court will take all necessary steps to secure that the provisions of this rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the president of the court, and should it transpire during the sitting of the court that the character or military reputation of any officer or soldier is affected by the evidence put forward, the president will immediately arrange for such officer or soldier to be afforded the full facilities of the rule, adjourning the court if necessary for the purpose of securing his attendance.

2. See r. 82, and as to form of oath, etc., see App. II, p. 763.

3. A charge can only be laid under A.A. 20 if the evidence before the court of inquiry was properly given on oath, *i.e.*, if under para. (C) of this rule it was required to be so taken.

3A. On a trial under A.A. 29, in respect of evidence given on oath before a court of inquiry, the fact that the accused swore as charged must be proved in the manner described in note 2 to that section. The proceedings of the court of inquiry are not admissible for this purpose and must not be produced in evidence or attached to the court-martial proceedings.

4. This privilege, however, extends only to military tribunals. If a person is being tried in an ordinary criminal court statements made by him voluntarily before a court of inquiry may be given in evidence against him: *R.* v. *Colpus*, L.R. (1917), 1 K.B. 574.

Explanation of "Prescribed" and "Commanding Officer"

Prescribed officers for the purpose of Army Act, Sections 43, 57 and 73, and competent military authorities for the purposes of Army Act, Sections 58, 60, 61, 64, 65 and 66.

126.—(A) The general officer or brigadier to whom a complaint may be made in pursuance of Section 43 of the Army Act shall, as respects a soldier serving elsewhere than in India, be the general or other officer, not below the rank of brigadier, in chief command of a command or district, in or under whose command the soldier may for the time being be.

(B) The expression "prescribed officer" for the purpose of subsection (2) of Section 57 of the Army Act means:—

Elsewhere than in India, the general officer commanding-in-chief the command and the general or other officer commanding the independent command, the district, the division or area in which the trial took place or in which the offender may for the time being be; and when the trial took place or the offender is for the time being in India, the Commander-in-Chief of the forces in India or such officer as he may appoint[1].

[*Note.*—These rules may be cited as the Rules of Procedure (Amendment) Rules (No. 5), 1931.]

(c) The competent military authority for the purpose of the proviso to Section 58 of the Army Act shall include the general or air officer commanding-in-chief in the field, and the officer who confirmed the sentence.

(d) The competent military authority for the purpose of Section 60 (1) (*b*) of the Army Act shall be:—

(i) In India—the Commander-in-Chief of the forces in India; the Adjutant-General in India; the general officer commanding-in-chief a command and his deputy adjutant and quartermaster-general; the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general; and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be;

(ia) In Burma—the General Officer Commanding the forces in Burma, and his deputy or assistant adjutant and quartermaster-general, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be;

(ii) In a Dominion or colony—the officer commanding the forces and the officer in charge of administration of the forces in that colony, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be;

(e) The competent military authority for the purpose of Section 65 of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the commanding officer of the soldier under sentence, and every officer in or under whose command such soldier was serving when the sentence was passed or may for the time being be, provided that he does not hold a command inferior to that of the commanding officer.

(f) The competent military authority for the purpose of Section 61 (1) of the Army Act shall include:—

(i) In the United Kingdom—the commanding officer of the military convict, and every officer in or under whose command the military convict may for the time being be, provided that he does not hold a command inferior to that of the commanding officer;

(ii) In India—the Commander-in-Chief of the forces in India; the Adjutant-General in India; the general officer commanding-in-chief a command and his deputy adjutant and quartermaster-general; the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general; and the general or other officer commanding a brigade area that does not form part of a district;

(iia) In Burma—the General Officer Commanding the forces in Burma, and his deputy or assistant adjutant and quarter-master-general, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be;

(iii) In a Dominion or colony—the officer commanding the forces and the officer in charge of administration of the forces in that colony, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be;

(iv) In a foreign country—the officer in charge of administration of the forces in that country, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be.

(G) The competent military authority for the purpose of Section 66 (1) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the commanding officer of the soldier under sentence, and every officer in or under whose command such soldier may for the time being be, provided that he does not hold a command inferior to that of the commanding officer.

(H) The competent military authority for the purposes of Sections 61 (2), 64 (2) and 66 (2) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the officer who confirmed the sentence; and as respects a person under sentence in any of the following places shall include:—

(i) In the United Kingdom—the general officer commanding-in-chief the command in or with which the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be; the officer in charge of administration of that command; the general or other officer commanding the district, division or brigade in or with which the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be; and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be;

(ii) In India—the Commander-in-Chief of the forces in India; the Adjutant-General in India; the general officer commanding-in-chief a command and his deputy adjutant and quarter-master-general; the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general; and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be;

(iia) In Burma—the General Officer Commanding the forces in Burma, and his deputy or assistant adjutant and quarter-master-general, and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be;

(iii) In a Dominion or colony—the officer commanding the forces and the officer in charge of administration of the forces in that Dominion or colony, and any officer not under the

rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be;

(iv) In a foreign country—the officer in charge of administration of the forces in that country, and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be.

The competent military authority for the purposes of Sections 64 (2) and 66 (2) of the Army Act, as respects a soldier under sen-

tence of detention awarded by his commanding officer in whatever place he may for the time being be, shall include the commanding officer.

(I) The competent military authority for the purposes of Sections 61 (3) and 66 (3) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the officer who confirmed the sentence; and as respects a person under sentence in any of the following places shall include:—

In the United Kingdom—any of the authorities named in sub-paragraph (i) of paragraph (H) of this rule;

In India—any of the authorities named in sub-paragraph (ii) of paragraph (H) of this rule;

In Burma—any of the authorities named in sub-paragraph (iiA) of paragraph (H) of this rule;

In a Dominion or colony—any of the authorities named in sub-paragraph (iii) of paragraph (H) of this rule;

In a foreign country—any of the authorities named in sub-paragraph (IV) of paragraph (H) of this rule.

But any of the authorities above mentioned shall not, by virtue thereof, be a remitting authority.

The competent military authority for the purpose of Section 66 (3) of the Army Act, as respects a soldier under sentence of detention awarded by his commanding officer in whatever place he may for the time being be, shall include the commanding officer.

(J) The competent military authority for the purpose of Section 73 (3) of the Army Act shall, as respects a soldier serving in the United Kingdom and in any place other than in India include any officer not under the rank of brigadier in or under whose command the soldier may for the time being be.

1. When a sentence is completed, including a sentence of reduction in rank, no mitigation, remission or commutation of punishment is to be granted without reference to the court-martial proceedings, and if the proceedings are not immediately available, the case is to be submitted to the War Office. (K.R. 704 *(e)*).

Prescribed procedure for court of inquest (India or Burma) under Army Act, s. 134.

127. When a court of inquest is required to be convened by the commanding officer under Section 134 of the Army Act, the court shall be convened and inquest held in manner following:—

(a) The commanding officer of the station will order the court to assemble.

(b) The court will consit of three officers and of a medical officer.

(c) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted.

(d) The court after hearing the evidence, shall report to the officer commanding the station the evidence as to the cause of the death, together with the written opinion of the medical officer of the court, on his examination of the body, as to the cause of death.

(e) The commanding officer shall, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest.

Prescribed officer for competent military authority (Army Act, s. 101).

128. The competent military authority in Part II of the Army Act shall include the following officers, viz.:—

(i) In India,

The commander-in-chief of the forces in India, the general officer commanding-in-chief a command, the general or other officer commanding a district or division, and the general or other officer commanding a brigade area which does not form part of a district.

(ii) In any place situate out of India, and out of the United Kingdom, the general or other officer commanding the forces in that place; the general or other officer in charge of administration, or in command of a division or independent brigade in that place.

In addition to the above-mentioned officers, it also includes:—

(iii) For the purposes of Sections 80, 82, 84, 85 and 90 of the said Act, the commanding officer of the soldier, and every officer superior in command to that commanding officer, and not hereinbefore included.

(iv) For the purposes of any transfer by consent under Section 83 (2) any authority superior in command to the commanding officer of the soldier.

(v) For the purposes of Section 99 any officer having power to convene a district court-martial for the trial of the soldier.

(vi) Such officer as may be directed from time to time by the King's Regulations for the Army to perform in any place or for any purpose specified in that behalf the duty of the competent military authority.[1]

1. See K.R. 657, directing other officers to act as a competent military authority for the purpose of A.A. 83 (7).

Definition of "commanding officer."

129. The expression "commanding officer" as used in the sections of the Army Act, relating to "*Courts-Martial*," and to the "*Power of Commanding Officer*," and in the provisions consequential thereon, and in these rules, means, in relation to any person, the officer whose duty it is, under the provisions of the King's Regulations for the Army, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority.[1]

It also, so far as relates to the summary award of any punishments for offences, being punishments which under the provisions of His Majesty's Regulations an officer commanding a squadron, company, troop, or battery is authorised to award, and so far as relates to a summary finding in a case of absence without leave, includes the officer commanding a squadron, company, troop, or battery.[2]

1. Every officer, however temporary or casual his command over a person accused may be, will be within this definition if the custom of the service enables him to "tell off" the accused. In all of these rules "commanding officer" has the meaning given to it by this rule.

A soldier who commits an offence while on leave may be confined in the guard detention room of any unit in the locality, but the C.O. of that unit cannot dispose of the charge and the man must be referred to his own unit for disposal.

In the portions of the Army Act not above mentioned, "commanding officer" is not limited to the C.O. as defined by this rule, though the C.O., as so defined, is often (see notes) the proper officer to act. (See K.R. 526.)

It is laid down in K.R. 563, 564 that the C.O. of a detachment has the same power of awarding summary punishment (as laid down in K.R. 558-560) as the C.O. of the unit, subject to any restrictions that may be imposed by superior authority.

See also as to field general courts-martial, r. 122 (B).

2. See K.R. 542 and 565.

Prisons and Detention Barracks out of the United Kingdom

Committal and removal of soldiers under sentence out of the United Kingdom.

130.[1]—(A) A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may be committed, or, if he has been committed to prison, be removed, if occasion arises, to *a military* prison or detention barrack wherever situate, or if he is in any place mentioned in the first column of the following table, or if, having been sentenced in a foreign country, he is brought into any place so mentioned, may be committed or removed to a civil prison situate in any place mentioned opposite thereto in the second column of the table; but this rule shall not authorize the commitment or removal of a military prisoner to any prison of a Dominion except in so far as the law of the Dominion makes provision for such commitment or removal[2].

TABLE

A military prisoner being in (or, having been sentenced in a foreign country, is brought into) any place in any of the groups following:—	May be committed, or, if he has been committed to a prison, may be removed, to a civil prison in—
GROUP I. (American and Mediterranean.)	
Canada. Newfoundland. Bermuda. Falkland Islands. Gibraltar. Malta. Cyprus. Sudan.	Any place in Group I (American and Mediterranean); or In Group III (South African); or In Group VII.
GROUP II. (West Indian.)	
Bahamas. Barbados. British Guiana. British Honduras. Jamaica (including Turks and Caicos Islands). Leeward Islands. Trinidad and Tobago. Windward Islands.	Any place in Group II (West Indian); or In Group I (American and Mediterranean); or In Group III (South African); or In Group VII.
GROUP III. (South African.)	
Union of South Africa. South African High Commission Territories (Basutoland, Bechuanaland Protectorate and Swaziland). Southern Rhodesia. St. Helena.	Any place in Group III (South African); or In Group I (American and Mediterranean) or In Group V (Australasian); or In Group VII.

TABLE—*continued*

GROUP IV. (West African.)	
Nigeria (including British Cameroons). Gold Coast (including British Togoland). Sierra Leone. Gambia.	Any place in Group IV (West African); or In Group I (American and Mediterranean); or In Group II (West Indian); or In Group III (South African); or In Group VII.
GROUP V. (Australasian.)	
Commonwealth of Australia. New Zealand. Fiji and the Western Pacific High Commission.	Any place in Group V (Australasian); or In Group I (American and Mediterranean); or In Group III (South African); or In Group VII.
GROUP VI. (Eastern.)	
India, as defined by the Army Act. Burma. Aden. Palestine. Mauritius. Seychelles. Ceylon. Straits Settlements. Malay States. Hong Kong.	Any place in Group VI; or In Group I (American and Mediterranean); or In Group III (South African); or In Group V (Australasian); or In Group VII.
GROUP VII.	
Channel Islands and the Isle of Man.	Any place in Group VII.
GROUP VIII. (East African.)	
Kenya Colony and Protectorate. Uganda. Zanzibar. Nyasaland. Tanganyika Territory. Somaliland. Northern Rhodesia.	Any place in Groups I-VIII.

This rule shall not authorize any removal from a prison in the United Kingdom to a prison elsewhere.

(B) A soldier sentenced to detention in any place out of the United Kingdom may be committed, or if he has been committed to a detention barrack or branch detention barrack, be removed, if occasion arises, to a detention barrack or branch detention barrack wherever situate; but this rule shall not authorize any removal from a detention barrack or branch detention barrack in the United Kingdom to a detention barrack or branch detention barrack elsewhere.

1. This rule is rendered necessary by A.A. 64 (4).

2. Where a sentence of imprisonment is passed on a soldier serving outside the United Kingdom, the military prisoner can undergo his sentence as provided in A.A. 64 (4), or as prescribed by this rule.

The main object as regards a colony where there is no military prison, is to enable a military prisoner to be removed with, or sent to, his regiment if the regiment is serving in that colony, but not to allow prisoners in any other case to be sent to that

colony. No prisoners will be committed or removed to a colony where troops are not serving, without the consent of the government of that colony.

Military prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a *military* prison in any place, if they could not be removed under this rule to a civil prison in that place.

The Isle of Man and Channel Islands are declared to be colonies for the purpose of imprisonment by A.A. 187 (2).

PART III.—SUPPLEMENTAL

Exercise of powers vested in holder of military office.

131. Any power of jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office for the purpose of these rules, may be exercised by, or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service[1]; and requisitions of emergency under Section 115 of the Army Act may be signed on behalf of a general officer commanding-in-chief (or general officer commanding) regular forces in the United Kingdom by a field officer of the Quartermaster-General's staff or of the supplies and transport directorate serving at the headquarters of such general officer commanding-in-chief (or general officer commanding), or by an Inspector of Supplementary Transport duly authorized by a general officer commanding-in-chief (or general officer commanding) to sign such requisitions on his behalf.*

1. See A.A. 171.

Cases unprovided for.

132. In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

Forms in Appendices.

133.—(A) The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from any such form will not, by reason only of such deviation, render any charge, warrant, order, proceedings, or other document invalid.

(B) An omission of any such form will not, by reason only of the omission, render any act or thing invalid.

(C) The notes to, and instructions in, the forms will be considered as instructions which it is expedient to follow in all cases to which the notes and instructions apply.

The Army Council may append to any of the forms when issued for use such further notes as they think fit, and any such notes will be considered as instructions which it is expedient to follow in all cases to which they apply.

Definitions.

134. In these rules, unless the context otherwise requires—

(A) The expression "proper military authority," when used in relation to any power, duty, act, or matter, means such military authority as, in pursuance of His Majesty's Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) The expression "Army Act" includes any Act, whether passed before or after the date of these rules, which amends or applies the Army Act; also any Act, whether passed before or after the date of these rules, which enacts an offence which is triable by court-martial.[1]

* Published as a provisional amendment in Army Order 157 of 1939.

(c) In any sentence of imprisonment, detention or field punishment passed after the date on which these rules come into operation, the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month."

(d) Other expressions have the same meaning as if these rules formed part of the Army Act,[2] and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender.

1. See for instance the Reserve Forces Act, 1882, and the T.R.F. Act, 1907.
2. See particularly A.A. 190 and note.

Eligibility of Indian commissioned officers to officiate at courts-martial.

134A. The expression "military law" in Rules 19 (A), 24 and 87 (A) of these rules shall, as regards Indian commissioned officers (as defined in Section 7 (2) of the Indian Army Act), include "Indian military law" when used in relation to the trial by court-martial under the Army Act of an officer or soldier belonging to His Majesty's Indian forces.[1]

1. This rule enables Indian commissioned officers to officiate as members (if otherwise eligible and duly qualified under the Army Act and Rules of Procedure) or as prosecutors or as defending officers at courts-martial held under the provisions of the Army Act for the trial of personnel belonging to His Majesty's Indian forces who are subject to military law.

Construction of rules.

135.—(A) Time, for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment or of any deduction of pay, shall include those days.

(B) Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise, dispenses with the writing.

(c) These rules shall apply to a person subject to military law as an officer,[1] in like manner, so nearly as circumstances admit, as if he were an officer, and to a person subject to military law as a soldier[2] in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the Army Act, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier.

(D) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act.

1. See A.A. 175.
2. See A.A. 176.

Application of rules to Channel Islands and Isle of Man.

136. These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom.[1]

1. The Channel Islands and Isle of Man are colonies for the purpose of imprisonment and detention: see A.A. 187 (2) and r. 130.

Extent of application of rules.

137. These rules shall apply in every place, whether within or without His Majesty's dominions.

Short title.

138. These rules may be cited as the Rules of Procedure, 1926.

Commencement of rules.

139.—(A) The foregoing rules shall come into full force on the first day of October, 1926, and on that day the Rules of Procedure, 1907, as amended by any subsequent rules, so far as they are then in force, shall determine.

(B) Any court-martial, proceeding, or thing held, done, or commenced under the last-mentioned Rules of Procedure shall be as valid and may be completed and carried into effect as if those rules were still in force.

His Majesty has made the foregoing rules in pursuance of the Army Act, and those rules will therefore be observed by all persons concerned.

(Signed) L. WORTHINGTON-EVANS.

War Office,
12th August, 1926.

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of Section 70 of the said Act.

(Signed) JOHN D. KELLY.
(Signed) F. L. FIELD.

Admiralty,
12th August, 1926.

Appendices to Rules of Procedure, 1926.

FIRST APPENDIX APP. I

FORMS OF CHARGES

NOTE AS TO USE OF FORMS OF CHARGES

(1) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges which are given as examples.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 12.)

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts; a statement of the offence, and a statement of the particulars. (Rule 13 (B).)

(4) The statement of the offence will be in one of the forms in Part II.

(5) Where two or more words or expressions occur in Part II bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7) Where two or more of the words or expressions bracketed together appear when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 13 (A).)

(8) For example, a man may be charged with making away with, by selling, his arms, ammunition, *and* regimental necessaries; but a charge for making away with, by selling, his arms, ammunition, *or* regimental necessaries will be a bad charge.

(9) A man should not be charged, however, with making away with by pawning *and* selling his arms and regimental necessaries, as in such case he is charged with two distinct offences, which ought to be included

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in two distinct charges, one for making away with by *pawning* his arms and regimental necessaries, the other for making away with by *selling* his arms and regimental necessaries.

(10) In the first example (para. 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example (para. 9) there are two distinct offences of making away with his articles—(*a*) by pawning, *(b)* by selling—although committed in respect of the same objects—arms and regimental necessaries.

(11) In a few cases, shown in italics bracketed thus [ ] (as for instance, in s. 4 (1), s. 6 (2), *(d)* and *(b)*, and s. 24 (1), (3), and (5)), and (c), words may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression such as "other person," or "other place," or "other means," and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

(12) Words inserted in brackets, thus [ ], without italics, must be adopted, or not according to circumstances. For example, if the offender was not on active service, the words, "when on active service," must be omitted.

(13) In some cases (for example, s. 10 (4), s. 15 (3) and (4), s. 16, and ss. 27 (3) and (4), and 37) the offence can only be committed by an officer or by a non-commissioned officer or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the accused is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit.

(14) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," etc., or "in having," etc., and stating in brief ordinary language what the accused is alleged to have done.

(15) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(16) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 13 (E)); as, for example, "in having done the acts alleged in the particulars of the first charge," or "in that, at the place and time aforesaid, he was deficient of the regimental necessaries above mentioned in the second charge, which it was his duty to have." If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(17) The statement of particulars should specify all the ingredients necessary to constitute the offence; for example, if the charge is under s. 9 (2), for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command; while, if the charge is under s. 9 (1), the "particulars" should also show how the command was given personally, how the superior officer was in the execution of his office, and how the accused showed a wilful defiance of authority.

(18) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(19) The "particulars" should always state the date on which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, the case of absence without leave or being drunk on a post.

(20) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times: as, for instance, in the case of absence without leave, or of quitting a post; in other cases "between" may be used in consequence of the exact day or exact time not being known.

(21) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(22) In many cases, as, for instance, where the defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although they are not the essence of the offence.

(23) There must be added at the end of the "particulars" a statement of any expenses, loss, damage, or destruction in respect of which the court-martial will be asked to award compensation under s. 137 or 138 of the Army Act (Rule 13 (F)). For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment, an averment to the effect that the accused thereby obtained a free kit of regimental necessaries, value* pounds, and in the case of a charge under s. 10 (2) or (3), that the accused thereby damaged 's coat, to the value of shillings, and 's watch to the value of shillings, and other statements may be made, according to the facts.

(24) If, however, the expenses, loss, damage, or destruction were caused by an act or omission which constitutes another offence

* See K.R. 624, 626.

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specially specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts, and is deficient of his regimental necessaries, he should be charged in a separate charge for loss by neglect of his regimental necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(25) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces, or any Act other than the Army Act must, in accordance with Rules of Procedure 13 and 134 (B), follow as nearly as possible the words of the Act; and where the enactment is in the alternative, each charge must as in the following forms, state only one of the alternatives.

FORMS OF CHARGES

PART I

Commencement of Charge-Sheet

The accused [*number, rank, name, battalion, regiment*] a soldier [officer] of the regular forces

or,

The accused [*rank, name*] an officer of the regular forces on the active list on half-pay,

or,

The accused [*rank, name*] retired pay [*or* pensioner, *or* reservist] employed on military service under the orders of an officer of the regular forces who is subject to military law,

or,

The accused [*rank, name, corps (if any)*] an officer of the reserve of officers ordered on duty (or service), for which as such he is liable,

or,

The accused [*rank, name, corps (if any)*] an officer of the supplementary reserve of officers ordered on duty (or service) for which as such he is liable,

or,

The accused [*rank, name, corps*] an officer of the territorial army, on the active list [*or as the case may be* (see Sect. 175 (3A) of the Army Act.)],

or,

The accused [*number, rank, name, battalion, regiment*] a soldier of the territorial army out for training [*or otherwise subject to military law*],

or,

The accused [*rank, name, regiment*] an officer of the militia,

or,

The accused [*rank, name*] an officer of the volunteer battalion of the regiment, whose corps is on actual military service [*or who is otherwise subject to military law*],

or,

The accused [*rank, name, corps*] an officer [a soldier] of a colonial force raised by order of His Majesty, and serving under the orders of an officer of the regular forces,

or,

The accused [*rank, name, corps*] a member of a Dominion force who by virtue of [*state enactment*] relating to the attachment of such persons, is subject to military law as an officer [a soldier].

or,

The accused [*number, rank name*] a militiaman (supplementary reservist) out for training [*or otherwise subject to military law*],

or,

The accused [*name*] a follower [sutler] of His Majesty's forces being subject to military law as a soldier [under the provisions of s. 176 (9) [*or* (10)] of the Army Act],

is charged with—

Where the offence has been committed by a person while subject to military law, and, he has ceased to be so subject at the time when he is charged (in accordance with the provisions of s. 158 *of the Army Act); as, for example, if a soldier has been transferred to the reserve, or discharged, or if the training period of a militiaman (supplementary reservist) or man of the territorial army has expired, the commencement of the charge will run as follows:—*

The accused [*name*] is charged with having, while being [*number, rank*] of the battalion regiment [a soldier of the regular forces] [*or otherwise subject to military law*] committed the following offence [offences], namely,

or,

The accused [*name*] is charged with having, while being [*number, rank*] of the battalion, regiment, a militiaman (supplementary reservist) [*or* man of the territorial army] out for training [*or otherwise subject to military law*], committed the following offence [offences], namely,

or,

Where a person undergoing a sentence of penal servitude, imprisonment or detention commits an offence after his discharge or dismissal from the service has been carried out, the commencement of the charge will run as follows:—

The accused [*name, late number, rank, regiment*] being a person subject to military law under the provisions of Section 158 (2) of the Army Act, is charged with—

or,

(*as the case may be, see Sections* 175 *and* 176 *of the Army Act.*)

APP. I

PART II

Statement of Offence

OFFENCES IN RESPECT OF MILITARY SERVICE

Section 4

(1) Shamefully {abandoning / delivering up} {a garrison. / a place. / a post. / a guard.}

Using {compel / induce} {a governor / a commanding officer / [*or other person*]} shamefully {abandon / deliver up} {a garrison, / a place, / a post, / a guard,} which it was his duty to defend.

(2) Shamefully casting away his {arms / ammunition / tools} in the presence of the enemy.

(3) Treacherously {holding correspondence with / giving intelligence to} the enemy.

Treacherously / Through cowardice } sending a flag of truce to the enemy.

(4) Assisting the enemy with {arms. / ammunition. / supplies.}

Knowingly {harbouring / protecting} an enemy not being a prisoner.

(5) Having been made a prisoner of war, voluntarily {serving with / aiding} the enemy.

(6) Knowingly doing, when on active service, an act calculated to imperil the success of { His Majesty's forces. / forces co-operating with His Majesty's forces. / part of His Majesty's forces. / part of forces co-operating with His Majesty's forces.

Section 5

(1) When on active service, without orders from his superior officer, leaving the ranks. {in order to secure prisoners. / in order to secure horses. / on pretence of taking wounded men to the rear.

(2) When on active service wilfully { destroying / damaging } property without orders from his superior officer.

(3) When on active service, being taken prisoner { by want of due precaution. / through disobedience of orders. / through wilful neglect of duty.

After being taken prisoner when on active service, failing to rejoin His Majesty's service when able to rejoin the same.

(4) When on active service, without due authority { holding correspondence with / giving intelligence to / sending a flag of truce to } the enemy.

(5) When on active service { by word of mouth / in writing / by signals / [*otherwise*] } spreading reports calculated to create unnecessary { alarm. / despondency.

(6) When on active service { in action / previously to going into action } using words calculated to create { alarm. / despondency.

(7) When on active service { misbehaving / inducing others to misbehave } before the enemy in such manner as to show cowardice.

Section 6

(1) *(i)* [When on active service,] treacherously { parole / watchword / countersign } to a person not entitled to receive it.

[When on active service,] treacherously { parole / watchword / countersign } different from what he received.

(2) *(a)* [When on active service,] leaving his commanding officer to go in search of plunder.
(b) [When on active service,] forcing a safeguard.

(c) [When on active service,] { forcing / striking } a sentinel.

(d) [When on active service,] { breaking into a } { house / *[other place]* } in search of plunder.

(e) When a soldier acting as sentinel [on active service] { sleeping on his post. / being drunk on his post.

(f) [When on active service,] leaving his { guard / piquet / patrol / post } without orders from his superior officer.

(g) [When on active service,] by { discharging firearms / drawing swords / beating drums / making signals / using words / *[any means whatever]* } { intentionally occasioning false alarms / negligently occasioning false alarms } { in action. / on the march. / in the field. / *[elsewhere]*.

(h) When a soldier acting as sentinel [on active service] leaving his post before he was regularly relieved.

[*Note.*—These rules may be cited as the Rules of Procedure (Amendment) Rules (No. 4), 1930.]

(3) *(a)* By { discharging firearms / drawing swords / beating drums / making signals / using words / *[any means whatever]* } { intentionally occasioning false alarms / negligently occasioning false alarms } { in action. / on the march. / in the field. / *[elsewhere.]*

(b) Making known the { parole / watchword / countersign } to a person not entitled to receive it.

Without good and sufficient cause giving a { parole / watchword / countersign } different from what he received.

(c) Impeding..... { the provost-marshal / an assistant provost-marshal / an officer / a non-commissioned officer / *[other person]* } { legally exercising authority } { under / on behalf of } { the provost-marshal.

When called on, refusing to assist in the execution of his duty { the provost-marshal / an assistant provost-marshal / an officer / a non-commissioned officer / *[other person]* } { legally exercising authority } { under / on behalf of } { the provost-marshal.

(d) Doing violence to a person bringing { provisions / supplies } to the forces.

Committing an offence against the { property / person } of an inhabitant of / of a resident in { the country in which he was serving.

(e) Irregularly { detaining / appropriating / to his own } { corps / battalion / detachment } { contrary to orders issued in that respect } { provisions / supplies } proceeding to the forces

MUTINY AND INSUBORDINATION

Section 7

(1) { Causing / Conspiring with other persons to cause } { a mutiny / sedition } in His Majesty's { military forces. / naval forces. / air forces.

(2) Endeavouring to seduce a person { in His Majesty's { military forces / naval forces / air force } } from allegiance to His Majesty

Endeavouring to persuade a { person in His Majesty's { military forces / naval forces / air forces } } to join in { a mutiny. / sedition.

(3) Joining in { a mutiny / sedition } in His Majesty's { military forces. / naval forces. / air forces.

Being present at and not using his utmost endeavours to suppress { a mutiny / sedition } in His Majesty's { military forces. / naval forces. / air forces.

(4) After coming to the knowledge of { an actual mutiny / an intended mutiny / actual sedition / intended sedition } in His Majesty's { military forces / naval forces / air forces } { failing to inform without delay his commanding officer of the same.

Section 8

(1) { Striking / Using violence to / Offering violence to } his superior officer, being in the execution of his office.

(2) [When on active service,] { striking / using violence to / offering violence to } his superior officer.

[When on active service,] using { threatening / insubordinate } language to his superior officer.

Section 9

(1) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.

(2) [When on active service,] disobeying a lawful command given by his superior officer.

Section 10

(1) When concerned in a { quarrel / fray / disorder } { refusing to obey / striking / using violence to / offering violence to } an officer who ordered him into arrest.

(2) { Striking / Using violence to / Offering violence to } a person in whose custody he was placed.

(3) Resisting an escort whose duty it was { to apprehend him. / to have him in charge.

(4) Breaking out of { barracks. / camp. / quarters.

Section 11

Neglecting to obey { general / garrison / *[other]* } orders.

DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE

Section 12

(1) *(a)* { [When on active service] / [When under orders for active service] } { deserting His Majesty's service. / attempting to desert His Majesty's service.

(b) { [When on active service] / [When under orders for active service] } { persuading / endeavouring to persuade / procuring / attempting to procure } a person subject to military law to desert from His Majesty's service.

Section 13

(1) *(a)* or *(b)* Fraudulent enlistment.

Section 14

(1) Assisting a person subject to military law to desert His Majesty's service.

(2) When cognizant of { the desertion / the intended desertion } { of a person subject to military law not forthwith / } giving notice to his commanding officer. / taking some steps in his power to cause the { deserter / intending deserter } to be apprehended.

Section 15

(1) Absenting himself without leave.

(2) Failing to appear at the place of { parade / rendezvous } appointed by his commanding officer.
Without leave, before he was relieved, going from the place of { parade / rendezvous } appointed by his commanding officer.

Without urgent necessity, quitting the ranks.

(3) { When in camp / When in garrison / When [*elsewhere*] } being found { beyond the limits fixed by / in a place prohibited by } { general / garrison / [*other*] } orders, without a pass or written leave from his commanding officer.

(4) Without leave from his commanding officer or due cause absenting himself from school when duly ordered to attend there.

Disgraceful Conduct

Section 16

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

Section 17

{ When charged with / When concerned in } { the care / the distribution } { of public property / of regimental property / of garrison property } { stealing / fraudulently misapplying / embezzling } the same.

{ When charged with / When concerned in } { the care / the distribution } { of public property / of regimental property / of garrison property } { being concerned in the conniving at the } { stealing / fraudulent misapplication / embezzlement } thereof.

{ When charged with / When concerned in } the care / the distribution { of public property / of regimental property / of garrison property } wilfully damaging the same.

Section 18

(1) Malingering.
{ Feigning / Producing } disease. / infirmity.

(2) Wilfully { maiming / injuring } { himself / a person subject to military law } { with intent thereby to render } { himself / that person } unfit for service.

Causing himself to be { maimed / injured } by some person, with intent thereby to render himself unfit for service.

(a) { Being wilfully guilty of misconduct by means of which misconduct / Wilfully disobeying orders by means of which disobedience } he { produced / aggravated / delayed the cure of } disease. / infirmity.

(4) { Stealing / Embezzling / Fraudulently misapplying } { property belonging to { a person subject to military law. / a regimental band. / a regimental mess. / a garrison mess. / a regimental institution. / a garrison institution. / the Navy, Army and Air Force Institutes. } / public property. }

{ Receiving / knowing it to have been } { stolen, embezzled, } { property belonging to { a person subject to military law. / a regimental band. / a regimental mess. / a garrison mess. / a regimental institution. / a garrison institution. / the Navy, Army and Air Force Institutes. } / public property }

*APP. I

(5) Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act.

Disgraceful conduct of { a cruel / an indecent / an unnatural } kind.

DRUNKENNESS

Section 19

Drunkenness.

OFFENCES IN RELATION TO PERSONS IN CUSTODY

Section 20

(1) When in command of a { guard / picquet / patrol / post } [wilfully] releasing without proper authority a person committed to his charge.

(2) { Wilfully / Without reasonable excuse } allowing to escape a person { committed to his charge. / whom it was his duty to { keep. / guard.

Section 21

(1) Unnecessarily detaining a person in { arrest / confinement } without bringing him to trial.

Unnecessarily failing to bring a person's case before the proper authority for investigation.

(2) After having committed a person to the custody of { an officer / a non-commissioned officer / a provost-marshal / an assistant provost-marshal } { failing / without reasonable cause to deliver } { at the time of the committal / or as soon as practicable / within 24 hours after such committal } { to the officer / to the non-commissioned officer / to the provost-marshal / to the assistant provost-marshal } { into whose custody the person was committed, / an account in writing signed by himself of the offence with which the person so committed was charged.

(3) When in command of a guard failing { as soon as he was relieved from { guard / his { duty } } / within twenty-four hours after a person was committed to his charge } { to give in writing / to the officer to whom he was ordered to report } { that person's name. / that person's offence so far as known to him. / { the name / the rank / the written account given him by the } { of the officer / of the [*person*] / officer [*person*] } { by whom the person was charged. / by whom the person was committed to his custody.

Section 22

When in { arrest / confinement / prison / [*other lawful custody*] } { escaping. / attempting to escape.

OFFENCES IN RELATION TO PROPERTY

Section 23

(1) Conniving at the exaction of an exorbitant price for a { house / stall } let to a sutler.

(2) { Laying a duty upon / Taking a fee in respect of / Taking an advantage in respect of / Being interested in } { the sale of provisions / the sale of merchandise } brought into { a garrison / a camp / a station / a barrack / a [*place*] } { in which / he had } command authority.

(2) { Laying a duty upon / Taking a fee in respect of / Taking an advantage in respect of / Being interested in } { the sale of / the purchase of } { provisions / stores } for the use of some of His Majesty's forces.

Section 24

(1) { Making away with by / Being concerned in making away with by } { pawning / selling / destruction / [*otherwise*] } { his arms. / his ammunition. / his equipments. / his instruments. / his clothing. / his regimental necessaries. / a horse of which he had charge. / public property issued to him for his use. / public property entrusted to his care for military purposes. }

(2) Losing by neglect { his arms. / his ammunition. / his equipments. / his instruments. / his clothing. / his regimental necessaries. / a horse of which he had charge. / public property issued to him for his use. / public property entrusted to his care for military purposes. }

(3) Making away with by { pawning / selling / destruction / [*otherwise*] } { a military / an air-force } decoration granted him.

(4) Wilfully injuring { his arms. / his ammunition. / his equipments. / his instruments. / his clothing. / his regimental necessaries. / a horse of which he had charge. / public property issued to him for his use. / public property entrusted to his care for military purposes. / a military decoration granted him. / an air-force decoration granted him. / property belonging to { a comrade. / an officer. / a regimental band. / a regimental mess. / a garrison mess. / a regimental institution. / a garrison institution. / The Navy, Army and Air Force Institutes. } / public property. }

(5) Ill-treating a { horse / [*other animal*] } used in the public service.

OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS

Section 25

(1) In a { report / return / muster roll / pay list / certificate / book / route / [*other document*] } { made by him / signed by him / of the contents of which it was his duty to ascertain the accuracy. } { knowingly making / being privy to the making of } { a false statement. / a fraudulent statement. / an omission with intent to defraud. }

(2) { Knowingly, and with intent to } injure some person { suppressing / making away with / defacing / altering } { a document which it was his duty to } { preserve. / produce. }

(3) Where it was his official duty to make a declaration respecting a matter knowingly making a false declaration.

Section 26

(1) When signing a document relating to { pay / arms / ammunition / equipments / clothing / regimental accessaries / provisions / furniture / bedding / blankets / sheets / utensils / forage / stores } leaving in blank a material part for which his signature was a voucher.

(2) { Refusing to / By culpable neglect omitting to } { make / send } { a report / a return } which it was his duty to { make. / send.

Section 27

(1) Making a false accusation against { an officer / a soldier } knowing such accusation to be false.

(2) In making a complaint where he thought himself wronged { knowingly making a false statement affecting the charactor of { an officer. / a soldier. } / knowingly and wilfully suppressing { material facts. / a material fact. }

(3) Falsely stating to his commanding officer that he has { been guilty of { desertion. / fraudulent enlistment. / desertion from the navy. / desertion from the air force. } / served in and been discharged from { a portion of the regular forces. / a portion of the reserve forces. / a portion of the auxiliary forces. / the navy. / the air force. }

(4) Making a wilfully false statement to a { military officer / justice } in respect of the prolongation of furlough.

Offences in Relation to Court-Martial

Section 28

(1) When duly { summoned / ordered to attend } as a witness before a court-martial, making default in attending

(2) Refusing to { take and oath legally required by a court-matrial to be taken. / make a solemn declaration legally required b a court-martial to be made.

(3) Refusing to produce a { power / control } legally required by a court-martial to be produced by him.

(4) Refusing when a witness to answer a question to which a court-martial legally required an answer.

(5) Being guilty of contempt of a court-martial by { using { insulting / threatening } language. / causing { an interruption / a disturbance } in the proceedings of such court.

Section 29

Wilfully giving false evidence when examined on { oath / solemn / declaration } before { a court-martial. / a court / an officer } authorized by the Army Act to administer an oath.

OFFENCES IN RELATION TO BILLETING

Section 30

(1) Being guilty of ill-treatment by {violence / extortion / making disturbances in billets} of the occupier of a house in which a {person / horse / vehicle} was billeted.

(2) {refusing / Neglecting} {on complaint and proof of the ill-treatment by {violence by / extortion by / making disturbances in billets by}} {an officer / a soldier} {under his command of the occupier of a house in which a {person / horse / vehicle} was billeted. / to cause compensation to be made for the same.}

(3) Failing to comply with the provisions of the Army Act with respect to the {payment of the just demands of a person on whom / making up and transmitting of an account of the money due to a person on whom} {he / his horse / his vehicle / {an officer / a soldier} under his command. / the horse of / the vehicle of {an officer / a soldier} under his command} {had been billeted.}

(4) Wilfully demanding billets which were not actually required for some {person / horse / vehicle} entitled to be billeted.

(5) {Taking / Knowingly suffering to be taken} from a person {money / a reward} for {excusing / relieving} a person from {his liability / a part of his liability} in respect of the {billeting / quartering} of {officers. / soldiers. / horses. / vehicles.}

(6) {Offering / Using} {menace to / compulsion on} {a constable / a civil officer} to make him give billets contrary to the Army Act.

Using / Offering {menace to / compulsion on} {a constable / a civil officer} {tending to {deter / discourage} {him from performing part of / tending to induce him to do something contrary to}} his duty under the provisions of the Army Act relating to billeting.

(7) {Using / Offering} {menace to / compulsion on} {a person tending to oblige him} {to receive without his consent, a {person / horse / vehicle} not duly billeted upon him in pursuance of / to furnish some accommodation which he was not required to furnish by} the provisions of the Army Act relating to billeting.

OFFENCES IN RELATION TO IMPRESSMENT OF CARRIAGES

Section 31

(1) Wilfully demanding {carriages / animals / vessels / food / forage / stores} which were not actually required for purposes authorised by the Army Act.

(2) Failing to comply with the provisions of the Army Act, relating to the impressment of carriages, as regards {the payment of sums due the carriages. / the weighing of the load.}

(3) Constraining {a carriage / an animal / a vessel} {furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages} {to travel against the will of the person in charge thereof, beyond the proper distance. / to carry against the will of the person in charge thereof, a greater weight than he was required by the said provisions to carry.}

APP. I

(4) Failing to discharge as speedily as practicable { a carriage / an animal / a vessel } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.

(5) { Compelling / Permitting the commission of } { a person in charge of } { a carriage / an animal / a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages to take thereon } { baggage / stores / though not furnished on a requisition of emergency a } { not entitled to be carried. / soldier / servant } { who was not sick. / woman. / person. }

(6) { Ill-treating / Permitting the ill-treatment of } a person in charge of { a carriage / an animal / a vessel } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.

(7) { Using / Offering } { menace to compulsion on } a constable { to make him provide / tending to } { a carriage / an animal / a vessel / food / forage / stores / deter / discourage } { him from performing a part of / his duty in relation to the providing of } { carriages. / animals. / vessels. / food. / forage. / stores. } / tending to induce him to do something contrary to which he was not bound in pursuance of the provisions of the Army Act relating to the impressment of carriages, to provide.

(8) Forcing { a carriage / an animal / a vessel / food / forage / stores } from the owner thereof.

Offences in Relation to Enlistment

Section 32

(1) After having been { discharged with disgrace from a part of His Majesty's { military / air } forces / dismissed with disgrace from the navy } enlisting in the regular forces without declaring the circumstances of his { discharge. / dismissal. }

Section 33

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the justice before whom he appeared for the purpose of being attested.

Section 34

(1) Being concerned in the enlistment for service in the regular forces of a man when he { knew / had reasonable cause to believe } such man to be so circumstanced that by enlisting he committed an offence against the Army Act.

(2) Wilfully contravening { the enactments of the Army Act / *[other enactments]* / the regulations of the service } in a matter relating to the { enlistment / attestation } of soldiers of the regular forces

Miscellaneous Military Offences

Section 35

Using { traitorous / disloyal } words regarding the Sovereign.

Section 36

Without due authority { verbally / in writing / by signal / [*otherwise*] } disclosing { the numbers of / the position of / some preparations for / some orders relating to } { some forces / some magazines of the forces / some stores of the forces / operations / movements } { of some forces } at such time and in such manner as to have produced effects injurious to His Majesty's service.

Section 37

(1) { Striking / ill-treating } a soldier.

(2) After receiving the pay of { an officer / a soldier } { unlawfully detaining / unlawfully refusing to pay } the same when due.

Section 38

(1) { Fighting / Promoting / Being concerned in / Conniving at fighting } a duel.

(2) Attempting to commit suicide.

Section 39

On application being made to him { neglecting / refusing } { to deliver over to the civil magistrate / to assist in the lawful apprehension of } { an officer / a soldier } { accused of an offence punishable by a civil court.

Section 40

{ An act / Conduct / Disorder / Neglect } to the prejudice of good order and military discipline.

Section 41

(1–4) { When in Gibraltar (*whether on active service or not*) / When in a place not within His Majesty's dominions (*whether on active service or not*) / When in a place within His Majesty's dominions other than the United Kingdom, and more than one hundred miles as measured in a straight line from any city or town in which he can be tried by a competent civil court for the offence (*whether on active service or not*) / When on active service in a place within His Majesty's dominions other than the United Kingdom. } committing a civil offence, that is to say, { treason. / murder. / manslaughter. / treason-felony. / rape.

(5) Committing a civil offence, that is to say [*state the offence according to English law, either using legal terms, e.g.*, arson, larceny, larceny from the person, assault, robbery, with violence, &c., *or, in ordinary language, e.g.*, stealing, maliciously injuring property, setting fire to a house, &c.].

Section 155

(1–3) { Negotiating / Acting as agent for / Aiding / Conniving at } { the { sale / purchase } of a commission in the regular forces. / the { giving / receiving } { of a valuable consideration / in respect of a } { promotion in / retirement from / employment in } the regular forces. / Any exchange made in manner not authorized by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which a } { sum of money / [*consideration*] } was { given. / received.

APP. I

ILLUSTRATION OF CHARGE

Note.—The following is an illustration of a complete charge-sheet, with statement of offences and particulars, as it would be placed before a district court-martial.

CHARGE-SHEET

The accused, No. 153, Private John Smith, 2nd Battalion Regiment, a soldier of the regular forces, is charged with:—

First charge Sec. 8 (2) Army Act.

Using threatening language to his superior officer—

in that he

at Plymouth, on the 20th January, 19 , said to Sergeant William Robinson, the Regiment, "I will punch your head," or words to that effect.

Resisting an escort whose duty it was to have him in charge—

in that he

Second charge Sec. 10 (3) Army Act.

at Plymouth, on the 20th January, 19 , resisted the escort taking him to the guard detention room, and kicked Private John Jones, one of the said escort, and damaged the trousers of Private James Brown, another of the said escort, to the value of five shillings.

A.B.,

Plymouth, *Commanding 2nd Battalion, Regiment.*

22nd January, 19

To be tried by a district court-martial.

X.Y.

Commanding Brigade,
(*or* Staff-Officer who should sign *for* Commanding Brigade).

Devonport,
24th January, 19

[The following specimen charges (which are not however, prescribed by any Rules) may be found useful.]

SPECIMEN CHARGES

NOTE.—The words in brackets is the following specimen charges do not necessarily form part of the charge, but are sometimes alternatives, and sometimes are inserted as aggravating or explaining the offence, or for the purpose of the award by the court of stoppages from pay.

Where the words in brackets are "when on active service" they increase the gravity of the charge, and are very material, but are inserted in brackets because the charge will be a good charge without them, although if they are omitted the charge will be for a less grave offence.

The words "soldier of the regular forces" in the description of the accused are not essential where he is described as belonging to a regiment or battalion in the regular forces.

A second charge may be added to the charge-sheet as an alternative to the first charge in those cases (some of which are mentioned in the notes) where it is doubtful whether the offence committed by the person amounted to one charge or to the other.

No. 1

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Shamefully casting away his arms in the presence of the enemy, Sec. 4 (2), Army Act.

in that he, at , on , when on outlying piquet, and attacked by the enemy, shamefully cast away his rifle, left his piquet, and ran away.

No. 2

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service, without orders from his superior officer, leaving the ranks on pretence of taking wounded men to the rear, Sec. 5 (1), Army Act.

in that he, at , on , when in the ranks, and during an attack upon, , left the ranks without orders from his superior officer, on the pretence of taking to the rear Lieutenant .who was wounded.

No. 3

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When on active service, wilfully destroying property without orders from his superior officer, Sec. 5 (2), Army Act.

in that he, on , in , and encamped near the village of , without orders from his superior officer, wilfully set fire to a dwelling-house, situate in the said village.

No. 4

CHARGE-SHEET

The accused No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 5 (7), Army Act.

When on active service, misbehaving before the enemy in such manner as to show cowardice,

in that he, at , on , during an attack on and when under the enemy's fire, fell out of the ranks, ran away and secreted himself under a bank.

No. 5

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 6 (2) *(a)*, Army Act. *When on active service, leaving his commanding officer to go in search of plunder,*

in that he, on , when belonging to a force in military occupation of , and when marching with his battalion under Lieutenant-Colonel , through the town of , left his commanding officer, and went in search of plunder.

No. 6

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 6 (2) *(b)*, Army Act. [*When on active service*] *forcing a safeguard,*

in that he, at , on , in , forced his way past Serjeant into a house in street, at , in which, by orders of the General Officer Commanding, the said Serjeant had been placed as a safeguard, for the protection of the occupants and the property therein.

No. 7

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 6 (2) *(j)*, Army Act. [*When on active service*] *forcing a sentinel,*

in that he, at , on , after being warned by the sentry on No. Post, Guard, not to pass, passed the said sentry.

No. 8

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 6 (2) *(d)*, Army Act. *When on active service, breaking into a house in search of plunder,*

in that he, at , on , broke into a house, No. in street, and entered it in search of plunder.

No. 9

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Forces, is charged with—

When a soldier acting as sentinel [on active service] sleeping on his post, Sec. 6 (2) *(e)*, Army Act.

in that he, at , on , between 1 and 2 a.m., when sentry on No. Post, Guard, was asleep.

No. 10

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[When on active service] by discharging firearms, intentionally occasioning false alarms on the march, Sec. 6 (2) *(g)*, Army Act.

in that he, on , when on the march with his Battalion between and , by intentionally discharging his rifle occasioned a false alarm.

No. 11

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When a soldier acting as sentinel [on active service] leaving his post before he was regularly relieved, Sec. 6 (2) *(h)*, Army Act.

in that he, at , on , after being posted as a sentry on No. Post, Guard, left his post without having been regularly relieved.

No. 12

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Impeding a non-commissioned officer legally exercising authority under the Provost-Marshal, Sec. 6 (3) *(c)*, Army Act.

in that he, at , on , when Sergeant of the Military Foot Police, a non-commissioned officer legally exercising authority under the Provost-Marshal, was endeavouring to arrest a soldier, impeded the said Sergeant by tripping him.

No. 13

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Doing violence to a person bringing provisions to the forces, Sec. 6 (3) *(d)*, Army Act.

in that he, at , on , assaulted one , a sutler, who was bringing into camp bread and vegetables for the use of the troops.

No. 14

CHARGE-SHEET

The accused, A. B., sutler, being subject to military law as a soldier by reason of accompanying His Majesty's troops on active service in [Egypt], is charged with—

Committing an offence against the property of a resident in the country in which he was serving, Sec. 6 (3) *(d)*, Army Act.

in that he, at , in [Egypt], on , maliciously damaged a motor car belonging to of , a resident in [Egypt], by thrusting a knife into one of the tyres.

No. 15

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 6 (3) *(d)*, Army Act. *Committing an offence against the person of an inhabitant of the country in which he was serving,*

in that he, when serving in [Egypt], at , on , assaulted of , an inhabitant of [Egypt].

No. 16

CHARGE-SHEET

The accused, No. , Sergeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

First charge. Sec. 7 (1), Army Act. *Causing a mutiny in His Majesty's military forces,*

in that he, at , on , in his barrack room addressed Sergeant , Private , and other soldiers, Regiment, there assembled, in mutinous language, by advising them not to turn out at commanding officer's parade at 10 o'clock next day, in consequency of which language they, the said Sergeant and Private , and other soldiers of the said Battalion, did not turn out for the said parade.

Second charge. Sec. 7 (2), Army Act.

Endeavouring to persuade a person in His Majesty's military forces to join in a mutiny.
in that he, at , on , endeavoured to persuade Lance-Corporal , Battalion, Regiment, to join in a mutiny, and not to mount guard, for which duty he, the said Lance-Corporal, had been duly warned.

No. 17

(Joint Trial)

CHARGE-SHEET

The accused persons, No. , Private , Battalion, Regiment, and No. , Private , Battalion, Regiment, soldiers of the Regular Forces, are charged with—

Sec. 7 (3), Army Act.

Joining in a mutiny in His Majesty's military forces,
in that they, at , on [or about] , joined in a mutiny by combining among themselves [and with other soldiers of the] to resist and offer violence to their superior officers in the execution of their duty.

NOTE.—This charge is equally applicable to the case where a single person is charged.

No. 18

CHARGE-SHEET

The accused, No. , Bombardier , Battery, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec. 7 (4), Army Act.

After coming to the knowledge of an intended mutiny in His Majesty's military forces, failing to inform without delay his commanding officer of the same,
in that he, at , on , having been present in the public-house known as the Red Lion, where Bombardier , Gunner , and other soldiers of Battery, Royal Artillery, in his hearing, agreed to cut up and destroy the harness belonging to the said Battery, failed to inform his commanding officer thereof.

No. 19

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 8 (1), Army Act.

Striking his superior officer, being in the execution of his office,
in that he, at , on , struck with his fist in the face Corporal , Regiment, who was at the time in command of an escort taking soldiers in custody to the guard-room.

No. 20

CHARGE-SHEET

The accused, No., , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 8 (2), Army Act.

[*When on active service*] *offering violence to his superior officer,*
in that he, at , on , when checked by Corporal Regiment, attempted to strike the said corporal.

No. 21

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 8 (2), Army Act.

[*When on active service*] *using threatening language to his superior officer,* in that he, at , on , after having been awarded a punishment by his commanding officer, said to Sergeant Regiment, "I'll be revenged on you for this, yet."

No. 22

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office, in that he, at , on , when personally ordered by Captain , Regiment, upon commanding officer's parade, to take up his rifle and fall in, did not do so, divesting himself at the same time of his waist-belt, and saying, "I'll soldier no more, you may do what you please." Sec. 9 (1), Army Act.

No. 23

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[*When on active service*] *disobeying a lawful command given by his superior officer,* in that he, at ,on , did not leave the regimental institute when ordered to do so by Corporal , Regiment. Sec. 9 (2), Army Act.

No. 24

CHARGE-SHEET

The accused, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with—

When concerned in a quarrel, refusing to obey an officer who ordered him into arrest, in that he, on , in the ante-room of the officer's mess at , after having quarrelled with and struck Lieutenant , Regiment, on being ordered into arrest by Lieutenant , Regiment, refused to obey the order. Sec. 10 (1), Army Act.

No. 25.

CHARGE-SHEET

The accused, No. , Corporal , Dragoons, a soldier of the Regular Forces, is charged with—

Striking a person in whose custody he was placed, in that he, at , on , when placed by Sergeant , 9th Dragoons, in the custody of Police Constable , struck with his waist-belt, on the head, the said Police Constable. Sec. 10 (2), Army Act.

No. 26

CHARGE-SHEET

The accused, No. , Private Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Resisting an escort whose duty it was to have him in charge, in that he, at , on , while under escort of Private , and Private , Battalion, Regiment, resisted the escort by kicking and struggling. Sec. 10 (3), Army Act.

No. 27

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Breaking out of barracks, in that he, at , on , broke out of barracks, when his duty required him to be in barracks. Sec. 10 (4), Army Act.

NOTE.—If the soldier was confined to barracks by any special duty the duty should be specified, *e.g.*, "when a defaulter," or "when under open arrest."

No. 28.

CHARGE-SHEET

The accused, No , Sergeant , Hussars, a soldier of the Regular Forces, is charged with—

Sec. 11, Army Act. *Neglecting to obey camp orders,*
in that he, at , on , bathed in the river , above camp, contrary to a camp order [No. dated , directing all persons to abstain from bathing in that part of the river.

No. 29.

CHARGE-SHEET

The accused, W. R., being a person subject to military law as an officer by reason of his accompanying His Majesty's Forces on active service in [Afghanistan,] and holding a pass entitling him to be treated on the footing of an officer, is charged with—

Sec. 11, Army Act. *Neglecting to obey camp orders,*
in that he, on , entered the village of , contrary to a camp order [No.], dated , directing all persons to abstain from entering that village.

No. 30

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 12 (1) *(a)*, Army Act. [*When on active service*] *deserting His Majesty's service,*
in that he, at , on , absented himself from Regiment, until apprehended at , on , by the civil power, on board the steamer , which was about to leave the harbour for

No. 31.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 12 (1) *(a)*, Army Act. [*When on active service*] *attempting to desert His Majesty's service,*
in that he, at , on , absented himself from his battalion and concealed himself in a back room of a house situate in , and when apprehended by the military police on the same day was partly dressed in plain clothes.

NOTE.—In the two preceding charges, if the soldier was under orders for active service, the charge will be the same, with the substitution of "under orders for active service" for "on active service."

No. 32.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 12 (1) *(a)*, Army Act. *Deserting His Majesty's service,*
in that he, at , on , absented himself from Regiment, until apprehended by the civil power at , on , dressed in plain clothes.

No. 33.

CHARGE-SHEET

The accused, No. , Trooper , Dragoons, a soldier of the Regular Forces, is charged with—

Sec. 12 (1) *(a)*, Army Act. [*When under orders for active service*] *deserting His Majesty's service,*
in that he, at , on , when under orders for embarkation [for active service] absented himself without leave from the Regiment, from the of until the of with intent to avoid such embarkation.

NOTE.—The charge is applicable only to cases where actual orders for embarkation (K.R., 1935 para. 1190) have been issued and brought to the notice of the accused. Where "hold in readiness" orders only (K.R., 1935, para. 1183) can be proved to have been issued and brought to the accused's notice, and/or the accused has signed a "warning certificate" (K.R., 1935, para. 1131), the charge should be laid as in Specimen Charge No. 33A.

No. 33A

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[*When on active service*] *deserting His Majesty's service*, Sec. 12 (1) *(a)*, Army Act.

in that he, at , on after having been warned to proceed for service [overseas *or as the case may be*], with intent to avoid so proceeding, absented himself without leave from the Regiment, from until

No. 34.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Fraudulent enlistment, Sec. 13 (1), Army Act.

in that he, at , on , when belonging to the Regiment, without having fulfilled the conditions enabling him to enlist, enlisted into the Regular Forces for general service [*or* for service in the Regiment], thereby obtaining a free kit of necessaries, value

No. 35.

CHARGE-SHEET

The accused, No. , Private , of the Battalion, Regiment, a soldier of the Territorial Army when embodied, is charged with—

Fraudulent enlistment, Sec. 13 (1), Army Act.

in that he, at , on , when belonging to the Territorial Army called out on embodiment, without having fulfilled the conditions enabling him to enlist, enlisted into the Regular Forces for service in the Regiment, thereby obtaining a free kit of necessaries, value

No. 36.

CHARGE-SHEET

The accused, No. , Trooper , Dragoons, a soldier of the Regular Forces, is charged with—

Assisting a person subject to military law to desert His Majesty's service, Sec. 14 (1), Army Act.

in that he, at , on [or about] , well knowing that Private , Regiment, was about to desert, provided him with a suit of plain clothes.

No. 37.

CHARGE-SHEET

The accused, No. , Trooper Lancers, a soldier of the Regular Forces, is charged with—

Absenting himself without leave, Sec. 15 (1), Army Act.

in that he, at , absented himself without leave from tattoo roll call on till 7.30 a.m. on

No. 38.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a militiaman (supplementary reservist) out for training, is charged with— First charge.

Absenting himself without leave, Sec. 15 (1), Army Act.

in that he, at , when his battalion was out for training, absented himself at 9 a.m. on till 11.15 a.m. on

Losing by neglect his equipment and regimental necessaries, Second charge. Sec. 24 (2), Army Act.

in that he, at , on or about , was deficient of one waist-belt value four shillings and tenpence, one pair of socks value eightpence, one shirt value four shillings, and one razor and case value fivepence.

NOTE.—All articles of clothing and necessaries issued to a militiaman (supplementary reservist) are the property of the public. The value of such articles should therefore be given in the particulars of the charge, and stoppages should form part of the sentence.

No. 39.

CHARGE-SHEET

The accused, No. , Gunner , Battery, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec. 15 (2), Army Act. *Failing to appear at the place of parade appointed by his commanding officer,*
in that he, at , on , when in billet at that place, failed to appear at the market square in that town at a.m., the place of parade duly appointed by , his commanding officer.

NOTE.—When the charge is laid under this paragraph it is necessary to prove that the place of parade specified in the particulars is the place appointed by the C.O. and that the hour of such parade has also been appointed. When a C.O. has appointed a place and time for parades generally, and this has been duly notified so that it is, or ought to be, within the knowledge of the accused, it is not necessary to prove that the place and time for the particular parade was notified, provided it comes within the general order.

No. 40.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 15 (3), Army Act. *When in camp being found beyond the limits fixed by regimental orders without a pass or written leave from his commanding officer,*
in that he, when encamped near Exeter, was found on , in Topsham, a place beyond the limits fixed by regimental orders, without a pass or written leave from his commanding officer.

No. 41.

CHARGE-SHEET

The accused, Lieutenant , Regiment, an officer of the Regular Forces, is charged with—

Sec. 16, Army Act. *Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,*
in that he, at , on , in payment of his mess account, gave Mr. , the mess man, a cheque for £31 (thirty-one pounds, on Lloyds Bank, Ltd., Cox's and King's Branch, Army Agents, well knowing that he had not sufficient funds in the hands of the said Agents to meet the said cheque, and having no reasonable grounds for supposing that the aforesaid cheque would be honoured when presented.

No. 42.

CHARGE-SHEET

The accused, Captain , Regiment, an officer of the Regular Forces, is charged with—

Sec. 16, Army Act. *Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,*
in that he, at , on , [*or* between and], wrote and sent to his commanding officer, Lieut.-Colonel , Regiment, an anonymous letter in which he made use of the following words:—

"By stopping leave and overworking your officers and men, you make the Regiment a hell upon earth. Your tyrannical conduct is a matter of general remark, and you may rely on it, unless you change, complaints will be made against you at the next General's inspection."

No. 43.

CHARGE-SHEET

The accused, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with—

Sec. 17, Army Act. *When concerned in the care of regimental property, embezzling the same,*
in that he, at , on or about , when as President of the Mess Committee of the Officers' Mess, Battalion, Regiment, he was concerned in the care of regimental property, that is to say, fifteen

pounds, in money received by him for and on account of the said Mess from , applied the said sum of fifteen pounds to his own use, with intent to defraud.

No. 44.

CHARGE-SHEET

The accused Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with—

When concerned in the care of public property fraudulently misapplying the same, Sec. 17, Army Act.

in that he, at , on , when as officer commanding Company, Battalion, Regiment, he was concerned in the care of public property, applied twenty pounds, ten shillings, part thereof, to his own use with intent to defraud.

No. 45.

CHARGE-SHEET

The accused, Captain , Quartermaster, Royal Army Medical Corps, an officer of the Regular Forces, is charged with—

When charged with the care of public property, fraudulently misapplying the same, Sec. 17, Army Act.

in that he, at , on [or about] when, charged with the care of ten rugs, of the value of , the property of the public, sold the said rugs to , with intent to defraud.

No. 46.

CHARGE-SHEET

The accused, No. , Corporal , Royal Army Ordnance Corps, a soldier of the Regular Forces, is charged with—

When concerned in the care of public property, stealing the same, Sec. 17, Army Act.

in that he, at , on [or about] , when as storeman of the stores, he was concerned in the care of ordnance stores, stole three Webley pistols value each, part of the said stores.

No. 47.

CHARGE-SHEET

The accused, No. , Staff Sergeant , Royal Army Service Corps, a soldier of the Regular Forces, is charged with—

When concerned in the distribution of public property, fraudulently misapplying the same, Sec. 17, Army Act.

in that he, at , on when concerned in the distribution of coals, public property, to Battalion, Regiment, issued four sacks thereof, weighing two cwt. each or thereabout, of a total value of , or thereabout, to , a person not entitled to receive them; with intent to derfaud.

No. 48

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Malingering, Sec. 18 (1), Army Act.

in that he, at , on , [between and], with the intention of evading his duties as a soldier, counterfeited dumbness.

No. 49.

CHARGE-SHEET

The accused, No. ; Trooper , Hussars, a soldier of the Regular Forces, is charged with—

Feigning infirmity, Sec. 18 (1), Army Act.

in that he, at , on , pretended to the Medical Officer in charge of troops that he was suffering from a stiff knee which he could not bend, whereas, as he well knew, he was not so suffering.

No. 50.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 18 (2), Army Act. *Wilfully maiming himself with intent to render himself unfit for service,*

in that he, at , on , when sentry on No. Post, Guard, by discharging his rifle wilfully maimed himself by blowing off the fore and middle fingers of his right hand, with intent thereby to render himself unfit for service.

No. 51

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 18 (3), Army Act. *Being wilfully guilty of misconduct by means of which misconduct he delayed the cure of disease,*

in that he, at , on , [between and], when under medical treatment for syphilitic sores, tampered with the said sores by the secret application of , thereby delaying the cure of his disease.

No. 52.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 18 (3), Army Act. *Wilfully disobeying orders by means of which disobedience he delayed the cure of disease [or infirmity],*

in that he, at , on , when under medical treatment for ophthalmia refused to submit to the treatment, viz., the application of lotion, deemed advisable to effect his cure, and as such ordered by in medical charge of the accused, thereby delaying the cure of his disease.

No. 53.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 18 (4), Army Act. *Stealing public property,*

in that he, at , on , stole two pounds, ten shillings and fourpence, public property, from a cash-box in the orderly room of the Battalion, Regiment.

No. 54.

CHARGE-SHEET

The accused, No. , Trooper (Lance-Corporal) Hussars, a soldier of the Regular Forces, is charged with—

Sec. 18 (4), Army Act. *Stealing public property,*

in that he, at , on , when entrusted by Company Serjeant-Major , Battalion, Regiment, with two pounds, ten shillings, public property, in a sealed envelope, for delivery to Captain , fraudulently converted the said property to his own use.

NOTE.—The particulars of this charge allege stealing as a "bailee."

No. 55.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

First charge. Sec. 18 (4), Army Act. *Stealing property belonging to a person subject to military law,*

in that he, at , on , stole a watch, the property of No. Sergeant , Regiment, a person subject to military law.

Receiving, knowing it to have been stolen, property belonging to a person subject to military law, Second charge (alternative). Sec. 18 (4), Army Act.
in that he, at , on , did receive a watch, the property of the said No. , Sergeant , Regiment, a person subject to military law, which he (the accused) knew to have been stolen.

No. 56.

CHARGE-SHEET

The accused, No. , Colour-Sergeant (Company Quartermaster-Sergeant) Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Embezzling money, belonging to a regimental mess, Sec. 18 (4), Army Act.
in that he, at , on , having as Treasurer of the Sergeants' Mess of the Regiment received from Sergeant , eighteen shillings for and on behalf of the said Mess, fraudulently embezzled the same.

No. 57.

CHARGE-SHEET

The accused, No. , Sergeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act, Sec. 18 (5), Army Act.
in that he, at , on [*or about*] , when employed as caterer of the Sergeants' Mess, Regiment, with intent to defraud, added water to a cask of ale belonging to the stores of the said Mess.

No. 58.

CHARGE-SHEET

The accused, No. , Sergeant , Battalion, Regiment a soldier of the Regular Forces is charged with,—

Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act, Sec. 18 (5), Army Act.
in that he, at , on , with intent to defraud, presented to his company commander for signature by him as correct the Pay and Mess Roll for the month of containing an entry purporting to show that a casual payment of £ had been made to No. , Corporal , on well knowing that no such payment had in fact been made (and thereby obtained £ to which he was not entitled).

No. 59.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act, Sec. 18 (5), Army Act.
in that he, at , on [*or about*] , with intent to defraud, presented to Company Sergeant-Major , Battalion, Regiment, in support of a claim for marriage allowance, a certified copy of an entry of birth, purporting to relate to him, the accused, in which the date set out under the heading "When and where born" had been altered from to , as he, the accused, well knew, and thereby attempted to obtain marriage allowance to which he was not entitled.

No. 60.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Disgraceful conduct of a cruel kind, Sec. 18 (5), Army Act.
in that he, at , on , cruelly ill-treated a cat by throwing it against a wall.

No. 61.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 19, Army Act. [*When on active service*] *drunkenness*,

in that he, at , on , [when on duty (*specify duty*) or having been previously warned for duty (*specify duty*)], was drunk.

NOTE.—If the offender has been warned for special duty, *e.g.*, night piquet or in aid of the civil power, the nature of that special duty should be stated.

No. 62.

CHARGE-SHEET

The accused, No. , Sergeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 20 (1), Army Act. *When in command of a piquet wilfully releasing, without proper authority a person committed to his charge*,

in that he, at , on , when in command of a piquet patrolling the town, without authority released Private Regiment, a person who had been committed to his charge by Provost-Sergeant.

No. 63.

CHARGE-SHEET

The accused, No. , Sergeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 20 (1), Army Act. *When in command of a guard releasing, without proper authority, a person committed to his charge*,

in that he, at , on , when in command of the barrack guard, without authority released Corporal Battalion, Regiment, a person committed to his charge.

No. 64.

CHARGE-SHEET

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 20 (2), Army Act. *Wilfully allowing to escape a person committed to his charge*,

in that he, at , on , when in command of an escort conducting to , Private , Battalion, Regiment, a person committed to his charge, wilfully allowed the said person to escape.

NOTE.—Upon this charge it is competent for a court-martial to find the accused guilty of "without reasonable excuse, allowing to escape a person committed to his charge." Sec. 56 (5), Army Act.

No. 65.

CHARGE-SHEET

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 20 (2), Army Act. *Without reasonable excuse allowing to escape a person committed to his charge*,

in that he, at , on , when conducting to his Battalion, Private , Battalion, Regiment, a person committed to his charge [allowed a crowd to assemble round the said person without taking reasonable means to prevent it, and thus] permitted the escape of the said person.

No. 66.

CHARGE-SHEET

The accused, No. , Trooper , Dragoon Guards, a soldier of the Regular Forces, is charged with—

Sec. 22, Army Act. *When in confinement escaping*,

in that he, at , on , when in confinement (in the detention barrack) at , escaped.

No. 67.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

When in lawful custody attempting to escape, Sec. 22, Army Act.

in that he, at , on , when proceeding under escort to , broke away from his escort and attempted to escape.

No. 68.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Making away with by pawning his clothing and regimental necessaries, First charge. Sec. 24 (1), Army Act.

in that he, at , on [or about] , pawned to , for the sum of five shillings, one pair of ankle boots, two brushes and one flannel shirt, articles of his clothing, and regimental necessaries,

Losing by neglect his clothing and regimental necessaries, Second charge (alternative). Sec. 24 (2), Army Act.

in that he, at the place and on [or about] the day aforesaid, was deficient of the articles of his clothing and regimental necessaries specified in the first charge.

NOTE—If the accused sold his clothing, &c., this same charge can be used with the substitution of "selling" for "pawning."

The second charge should only be added where there is any doubt about the proof of the pawning or selling being sufficient.

No. 69.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Losing by neglect his equipments, clothing, and regimental necessaries, Sec. 24 (2), Army Act.

in that he, at , on [or about] , was deficient of one waist-belt, value , one khaki drill frock, two towels, and two pairs of socks.

No. 70.

CHARGE-SHEET

The accused, No. , Colour-Sergeant (Company Quartermaster-Sergeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

In a document made by him knowingly making a fraudulent statement, Sec. 25 (1), Army Act.

in that he, at , on [or about] , [between and], in his capacity as Company Quartermaster-Sergeant of Company, Regiment, fraudulently entered in his cash account for the month of , 19 , the following item—Washing bills, three pounds four shillings and two pence, whereas the actual amount paid by him in respect of such bills was two pounds fifteen shillings and four pence.

No. 71.

CHARGE-SHEET

The accused, Lieutenant , Battalion, Regiment, an officer of the Regular Forces, is charged with—

In a report signed by him knowingly making a false statement, Sec. 25 (1), Army Act.

in that he, at , on , in the orderly officer's report signed by him stated that he had turned out the guard at , on , well knowing that he had not in fact turned out the guard at that time.

No. 72.

CHARGE-SHEET

The accused, No. , Colour-Sergeant (Company Quartermaster-Sergeant) , Battalion, Regiment, a soldier of the Regular Forces is charged with—

Sec. 25 (1), Army Act. *In a pay list of the contents of which it was his duty to ascertain the accuracy knowingly making a fraudulent statement,*

in that he, at , on [or about] , when acting as pay sergeant of Company, Battalion, Regiment, in the Pay and Mess Roll of the said Company for the month of , of the contents of which it was his duty to ascertain the accuracy, made an entry purporting to show that on the a casual payment of £ had been made to No. , Private , Battalion, Regiment, well knowing that such payment had not been made and with intent to defraud.

No. 73.

CHARGE-SHEET

The accused, No. , Sergeant , Battery, Brigade, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec. 25 (1), Army Act. *In a book made by him knowingly making an omission with intent to defraud,* in that he, at , on [or about] , when caterer of the Sergeants' Mess of the Brigade, Royal Artillery, with intent to defraud, omitted to make an entry in the caterers' daily stock-book kept by him recording the receipt into the stock of the said Mess of 18 gallons of India Pale Ale delivered by Messrs. on

No. 74.

CHARGE-SHEET

The accused, No. , Colour-Sergeant (Company Quartermaster-Sergeant) , Battalion, Regiment, a soldier of the Regular Forces is charged with—

Sec. 25 (2), Army Act. *Knowingly and with intent to defraud, altering a document which it was his duty to preserve,*

in that he, at , on [or about] , when Company Quartermaster-Sergeant of Company, Battalion, Regiment, he had charge of a certain detachment monthly pay sheet (Army Form N 1510) for the month of , with intent to defraud, altered the figures '£ 0s. 0d.' in the first payment column of the said form set against the several names of Lance-Corporal and Private , and changed the said figures in each case into '£2 0s. 0d.'

No. 75.

CHARGE-SHEET

The accused, No. , Colour-Sergeant (Company Quartermaster-Sergeant) , Battalion, Regiment, a soldier of the Regular Forces is charged with—

Sec. 25 (2), Army Act. *Knowingly and with intent to defraud making away with a document which it was his duty to preserve,*

in that he, at , on [or about] , with intent to defraud, burned the Pay and Mess Roll of Company, Regiment, for the month of , 19 , which it was his duty to preserve.

No. 76.

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 27 (1), Army Act. *Making a false accusation against a soldier knowing such accusation to be false,*

in that he, at , on , when appearing before Captain , Regiment, used language to the effect following, that is to say: "The Company Sergeant-Major is not fair in taking men for duty, and no one in the company can get on if he does not give him a bribe," meaning thereby the Company Sergeant-Major of his company, Regiment, well knowing the said statement to be false.

No. 77

CHARGE-SHEET

The accused, No. , Trooper , Dragoons, a soldier of the Regular Forces, is charged with—

Falsely stating to his commanding officer that he had been guilty of desertion, in that he, at , on , stated to , his commanding officer, that he was a deserter from , well knowing such statement to be false. Sec. 27 (3), Army Act.

No. 78

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment a soldier of the Regular Forces, is charged with—

Wilfully giving false evidence when examined on oath before a court-martial, in that he, at , on , when examined as a witness before a court-martial, stated on oath, that Private , Regiment, the person charged before the said court, was in his, the witness's, company in his barrack-room, at , between 4 and 5 p.m. on , well knowing such statement to be false. Sec. 29, Army Act.

No. 79

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

After having been discharged with disgrace from a part [parts] of the military forces, enlisting in the Regular Forces without declaring the circumstances of his discharge [discharges], in that he, at , on , after having been discharged with ignominy from , [for misconduct from and on conviction for felony from], enlisted in His Majesty's Regular Forces for general service [for service in the Regiment], without declaring the circumstances of his discharge [discharges]. Sec. 22, Army Act.

No. 80

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested, in that he, at , on , when he appeared before A.B., a Justice of the Peace [*or* recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [*or* for service in the Regiment]— to the question put to him, "Have you ever served in the Army?" answered "No"; whereas, he had served, as he well knew, in the Regiment. Sec. 33, Army Act.

No. 81

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested, in that he, at , on , when he appeared before A.B., a Justice of the Peace [*or* recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [or for service in the Regiment]— to the question put to him, "Do you now belong to the Royal Navy?" answered "No"; whereas, he was serving, as he well knew, in H.M.S. " " Sec. 33, Army Act.

No. 82

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment a militiaman (supplementary reservist), out for training, is charged with—

Sec. 33, Army Act. *Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested,*

in that he, at , on , when belonging to the supplementary reserve, when he appeared before A.B., a Justice of the Peace [*or* recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for the supplementary reserve, to the question put to him, "Do you now belong to the Army Reserve?" answered "No"; whereas he belonged, as he well knew, to the supplementary reserve of the Regiment.

NOTE.—If the reservist is not subject to military law when the charge is preferred against him he should not be charged under this section, but should be dealt with by a civil court under A.A. 99, and s. 18 (1) Reserve Forces Act, 1882.

No. 83

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 33, Army Act. *Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested,*

in that he, at , on , when he appeared before A.B., a Justice of the Peace [*or* recruiting staff officer having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [*or* for service in Regiment], to the question put to him, "Do you now belong to the Army Reserve?" answered "No"; whereas he belonged, as he well knew, to the Army Reserve, and by his enlistment obtained a free kit of necessaries, value

No. 84

CHARGE-SHEET

The accused, No. , Gunner , Battery, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec. 38 (2), Army Act. *Attempting to commit suicide,*

in that he, at , on , with intent to commit suicide, cut his throat with a razor.

No. 85

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 40, Army Act. *An act to the prejudice of good order and military discipline,*

in that he, at , on , when sentry over soldiers in custody while employed on fatigue duty in the barrack yard, improperly gave to No. , Private , Regiment, one of the said soldiers in custody, a pipe and some tobacco.

No. 86

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 40, Army Act. *Conduct to the prejudice of good order and military discipline,*

in that he, at , on , on returning as a soldier in custody to the guard-room on remand, said, "What the do I care for Captain [being the commanding officer of the accused]. He may go to for me," or words to that effect.

No. 87

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline, Sec. 40, Army Act.

in that he, at , on , became unfit for duty by reason of previous indulgence in alcoholic stimulants.

No. 88

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

An act to the prejudice of good order and military discipline, Sec. 40, Army Act.

in that he, at , on , made use of [or was in possession of] a document purporting to be a genuine pass [to be signed by], well knowing that it was not genuine [so signed].

No. 89

CHARGE-SHEET

The accused, No. , Corporal , Battalion, Regiment, a soldier in the Regular Forces, is charged with—

Neglect to the prejudice of good order and military discipline, Sec. 40, Army Act.

in that he, at , on , after being duly warned by Company Serjeant-Major to parade the regimental defaulters at 3 p.m. on that day, neglected to do so.

Note.—This form of charge is applicable when disobedience is not imputed.

No. 90

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline, Sec. 40, Army Act.

in that he, at , on , was improperly in possession of a pair of boots, the property of No. , Private , Battalion, Regiment.

No. 91

CHARGE-SHEET

The accused, No. , Corporal , Royal Corps of Signals, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline, Sec. 40, Army Act.

in that he, at , on , when on duty as wireless and telephone operator, was asleep.

No. 92

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Neglect to the prejudice of good order and military discipline, Sec. 40, Army Act.

in that he, at , on , so negligently handled a rifle as to cause it to be discharged and thereby injured his left foot and rendered himself temporarily unfit for service.

No. 93

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Conduct to the prejudice of good order and military discipline, Sec. 40, Army Act.

in that he, at , on [or about] , sent to his commanding officer a document purporting to be a certificate of Dr. of , to the effect that he, the accused, was unfit to travel, well knowing the same not to be genuine.

No. 94

CHARGE-SHEET

The accused, Captain , Battery, Brigade, Royal Artillery, an officer of the Regular Forces is charged with—

Sec. 40, Army Act. *Neglect to the prejudice of good order and military discipline,*
in that he, at , between the and , when as officer in command of Battery, Brigade, Royal Artillery, he was concerned in the case of public money, so negligently performed his duties as to be unable to account for £ , part of the said money.

No. 95

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 41, Army Act. *When on active service committing a civil offence, that is to say, murder,*
in that he, at [Ismailia,] on [or about] , when on active service, murdered one Humantoo, a native of the East Indies, a camp follower.

No. 96

CHARGE-SHEET

The accused, No. , Private (Lance-Corporal) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 41, Army Act. *When in a place not within His Majesty's dominions, committing a civil offence, that is to say, manslaughter,*
in that he, at [Alexandria in Egypt], on unlawfully killed No. , Private , Battalion, Regiment.

No. 97

CHARGE-SHEET

The accused, No. , Rifleman , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 41, Army Act. *Committing a civil offence, that is to say, burglary, with intent to commit a felony contrary to section* 25 (1) *of the Larceny Act*, 1916,
in that he, at , on , during the night, did break and enter the dwelling-house of , with intent to commit a felony therein.

No. 98

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 41, Army Act. *Committing a civil offence, that is to say, housebreaking and larceny contrary to Section* 26 (1) *of the Larceny Act*, 1916.
in that he, at , on , did break and enter the dwelling-house of , and did steal therein one watch, the property of , [the said watch being of the value of £.].

Note.—This form of charge is appropriate when a dwelling house is broken into and a felony committed therein by day; or when a shop, warehouse, office, store, garage, factory, pavilion, or workshop, or any building belonging to His Majesty or to any of the Government Department, is broken into and a felony committed at any time, during the night or day.

No. 99

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 41, Army Act. *Committing a civil offence, that is to say, housebreaking with intent to commit a felony contrary to Section* 27 (2) *of the Larceny Act*, 1916.
in that he, at Barracks, on , did break and enter the Quartermaster's Store of the Battalion, Regiment, with intent to commit a felony therein.

Note.—This offence may be committed at any time during the night or day, and the charge is appropriate where a completed theft has not in fact taken place. *(See* note to preceding specimen charge as to class of buildings.)

No. 100

CHARGE-SHEET

The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, robbery with violence contrary to Section 23 (1) (b) of the Larceny Act, 1916, Sec. 41, Army Act.
in that he, at , on , robbed A. B. of a watch and at the time of such robbery did use personal violence to the said A. B.

No. 101

CHARGE-SHEET

The accused, No. , Bombardier , Battery,
Brigade, Royal Artillery, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, wounding with intent, contrary to Section 18 of the Offences against the Person Act, 1861, Sec. 41, Army Act.
in that he, at , on , wounded No. , Private , Battalion, Regiment, with intent to do him grevious bodily harm.

No. 102

CHARGE-SHEET

The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, common assault, Sec. 41, Army Act,
in that he, at , on , assaulted Mr. of
by striking him with a stick.

No. 103

CHARGE-SHEET

The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with

Committing a civil offence, that is to say, stealing, First charge. Sec. 41, Army Act.
in that he, at , on , stole a half a pound of tobacco or thereabout, value , the property of .

Committing a civil offence, that is to say, receiving stolen goods, Second charge (alternative). Sec. 41, Army Act.
in that he, at , on , did receive half a pound of tobacco or thereabout, value , the property of the said , knowing the same to have been stolen.

No. 104

CHARGE-SHEET

The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, fraudulent conversion of property, contrary to Section 20 (1) (iv) (a) of the Larceny Act, 1916, Sec. 41, Army Act.
in that he, at , on , fraudulently converted to his own use and benefit certain property, that is to say, a postal packet addressed to , containing two one pound currency notes, entrusted to him by , in order that he, the accused, might deliver the same to the civil postal authorities for registration and despatch by post.

No. 105

CHARGE-SHEET

The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—

Committing a civil offence, that is to say, obtaining goods by false pretences, contrary to Section 32 (1) of the Larceny Act, 1916, Sec. 41, Army Act.
in that he, at , on , with intent to defraud, obtained from A.B., a leather attaché case of the value of , by falsely pretending that he, the accused, was a servant to Captain , Battalion, Regiment, and that he, the accused, had been sent by the said Captain , to the said A. B. for the said attaché case, and that he, the accused, was then authorized by the said Captain to receive the said attache case on his behalf.

No. 105A

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier with the Regular Forces, is charged with—

Sec. 41, Army Act.

Committing a civil offence, that is to say, taking and driving away a motor vehicle without having either the consent of the owner thereof or other lawful authority, contrary to section 28 of the Road Traffic Act, 1930.

in that he, at , on , unlawfully took and drove away a motor vehicle *(specify type, registered number)* the property of A.B., without having either consent of the said A.B., or other lawful authority.

No. 106

CHARGE-SHEET

The accused, No. , Sergeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 41, Army Act. *Committing a civil offence, that is to say, forgery,*

in that he, at , on [or about] , with intent to defraud, forged the name of Captain to a post office order for four pounds two shillings and sixpence [and thereby obtained the sum of four pounds two shillings and sixpence].

No. 107

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 41, Army Act. *Committing a civil offence, that is to say, uttering a forged document contrary to Section 6 (1) of the Forgery Act, 1913,*

in that he, at , on [or about] , uttered a certain forged cheque purporting to be a cheque drawn on Bank, Limited, Branch, for £ , in favour of , and to be signed by , knowing the same to be forged and with intent to defraud.

No. 108

CHARGE-SHEET

The accused, [*name*], is charged with having, while being No. , Sergeant, of the Battalion, Regiment, a soldier of the Regular Forces, committed the following offences, namely—

Sec. 17, Army Act. *When concerned in the care of regimental property, fraudulently misapplying the same,*

in that he, at , on [or about] , when as caterer of the Sergeants' Mess of the Battalion, Regiment, he was concerned in the care of regimental property, to wit, a sum of £ , being the proceeds of sale of certain stock sold by him on the , applied £ , part thereof, to his own use with intent to defraud.

Note.—This form of charge is applicable in cases where an offence has been committed by a person while subject to military law, and after he has ceased to be so subject he is tried by court-martial for that offence under the provisions of Section 158 of the Army Act.

No. 109

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a soldier of the Territorial Army out for annual training, is charged with—

Sec. 11, T.R.F. Act. *After having been discharged with disgrace from a part [parts] of His Majesty's forces, enlisting in the Territorial Army without declaring the circumstances of his discharge [discharges],*

in that he, at , on , after having been discharged with ignominy [for misconduct, etc.] from the Regiment, enlisted in the Territorial Army for service in the Regiment of , without declaring the circumstances of his discharge.

No. 110

CHARGE-SHEET

The accused [name], a man belonging to the Army Reserve, is charged with—

Sec. 6, Reserve Forces Act, 1882. *Using insulting language to a non-commissioned officer acting in the execution of his office, and who would be his superior officer if the accused were subject to military law,*

in that he, at , on , when receiving his pay from Company Quartermaster-Sergeant , Regiment, said to him, "You are a cheat," or words to that effect.

No. 111

CHARGE-SHEET

The accused, No. , Private , Battalion, Regiment, a militiaman (supplementary reservist) called out for annual training, is charged with—

Absenting himself without leave, Sec. 15, Reserve Forces Act, 1882.

in that he, at , on , without leave lawfully granted, or reasonable excuse, failed to appear for the annual training of his battalion, and remained absent until apprehended by the civil power at , on

No. 112

CHARGE-SHEET

The accused [*name*], a man belonging to the Army Reserve called out for annual training, is charged with—

Absenting himself without leave, Sec. 15, Reserve Forces Act, 1882.

in that he, at , on , the place and time appointed for him to attend, without leave lawfully granted or reasonable excuse, failed to appear.

App. II

SECOND APPENDIX

(1)—FORMS AS TO COURTS-MARTIAL.
(2)—FORMS OF SUMMONS TO WITNESSES.
(3)—FORMS OF OATHS AND DECLARATIONS.

(1)—FORMS AS TO COURTS-MARTIAL

Army Form A. 67

Form of Order for the Assembly of a General or District Court-Martial

ORDERS BY commanding the
(*Place, date.*)

The detail of officers as mentioned below will assemble at on the day of for the purpose of trying by a court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].*

PRESIDENT

is appointed president**

MEMBERS

WAITING MEMBERS

JUDGE-ADVOCATE

has been [*or where the convening officer has the appointment of a judge-advocate, is hereby*] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this day of

A.B.

Note. The President must be named. The members and the waiting members may be mentioned by name, or the number and rank and the unit† by which they belong may alone be named.

"**Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

'In the opinion of the convening officer, other officers are not, having due regard to the public service, available' (*or as the case may be*)."

†*The "unit", in the case of Royal Artillery, is a Brigade, where such organization exists.*

***Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer.* "In the opinion of the conven-

ing officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial,*" "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." (*See Army Act*, s. 48 (9).)

Form for Assembly and Proceedings of Field General Court-Martial on Active Service

Army Form A. 3.

A.

Order convening the court.

PROCEEDINGS

On Active Service, this day of 19

Whereas it appears to me, the undersigned, an officer in command of , on active service that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned;

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court-Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified Officer];

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court-Martial to try the said persons, and to consist of the Officers hereunder named.

*[I am unable to appoint:—

*(1. Three Officers to form the Court)

*(2. A Field Officer as President)

*(3. Three Officers having more than one year's service) for the following reasons, namely:—]

President

Rank	Name	Regiment

Members

Rank	Name	Regiment

*Omit if not applicable.

*Must be signed personally by the Officer actually in command at the time and all alterations in the composition of the Court to be initialled by him.

*Signed.....

Commanding.

Convening Officer.

App. II

SCHEDULE

Number, Rank, (*a*) Name and Unit of accused (*b*)	Offence charged	Plea*	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)

*Question to be asked of accused if he pleads not guilty (Rule of Procedure 39 (A):—

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defense?

Answer (*to be recorded on separate sheet if necessary*):—

(Signed)———— (Signed)————————————

Commanding———— ————————————

Convening Officer (*e*) President.

(*a*) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the day of and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of

each such person were as stated in the third and fourth columns of that Schedule.

I also certify that

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this day of , 19 .

President of the Court-Martial.

C. Certificate in case of death sentences.

I certify that the terms of A.C.I. 570 of 1918 have been complied with.†

Signed this day of 19

President of the Court-Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

*To be omitted unless, penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the officer need only sign once.

†See footnote (b), R.P. App. II, page 762.

App. II

Army Form A. 3

Form for Assembly and Proceedings of Field General Court-Martial when Troops are not on Active Service

PROCEEDINGS

A. Order convening the Court.

At this day of 19 .

Whereas a complaint has been made to me, the undersigned, an Officer in Command of
in the above-named country, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned being offences against the property or person of inhabitants of, or residents in, the above-named country;

And whereas I am of the opinion that it is not practicable that such offences should be tried by an ordinary General Court-Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified Officer;]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court-Martial to try the said persons, and to consist of the Officers hereunder named.

*Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court)

*(2. A Field Officer as President)

*(3. Three Officers having more than one year's service)

for the following reasons, namely:—]

President

Rank	Name	Regiment

Members

**Signed*———————

Commanding———————
Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

[*Note.—The remainder of this Form and the Schedule are the same as in the case of Proceedings of a Field General Court-Martial on Active Service.*]

Form of Declaration for Suspension of Rules under Rule of Procedure, 104

Army Form A. 49.

In my opinion [*military exigencies, namely (*state them*)] render it [†impossible] to observe the provisions of rules‡ on the trial of by court-martial assembled pursuant to the order of the of

Signed at this day of

A.B.

*[or the necessities of discipline.]
†[or inexpedient.]
‡State the rule or rules which cannot be observed. (See Rule 104.)

[Instruction.—*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.*]

**Form of Proceedings for General and District Court-Martial

Army Form A. 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Form of Proceedings of a General Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure), with Instructions for the guidance of the Court.

N.B.—The proper Army Forms, to be obtained from Convening Officers, will be used in accordance with the instructions.

The same Form will be used for district courts-martial, and will apply as nearly as may be, with the substitution of "district" for "general", and with the omission, where there is no Judge-Advocate, of all reference to the Judge-Advocate.

A

PROCEEDINGS OF A GENERAL COURT-MARTIAL, held at on the day of 19 by order of Commanding dated the day of 19

President

Rank	Name	Regiment

Members

Rank	Name	Regiment

——————, Judge-Advocate.

Trial of*

*Here insert No., Rank, full name Regiment, and appointment (if any).

The order convening the Court, the charge-sheet, and the summary (*or abstract*) of evidence are laid before the Court.

[Instruction.—*All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president, and attached to the proceedings.*]

App. II

The Court satisfy themselves that is not available to serve owing to**

§ waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

**Here insert reason.

§Here insert Rank, Name and Regiment.

Note.—Before certifying that the Court have satisfied themselves as provided by Rules 22 and 23, the President will, in every case where a Court of Inquiry has been held respecting a matter upon which a charge against the accused is founded, insert an asterisk after the words "Rules of Procedure 22 and 23," and enter in red ink and sign a footnote at the bottom of the first page of the proceedings, to the following effect:

"*I have satisfied myself that none of the officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court-Martial."

[*Note.*—These rules may be cited as the Rules of Procedure (Amendment) Rules (No. 9), 1937.]

"(Signature of President)"

The accused is brought before the Court.

Here state Rank and Name, and Regiment (if any).

Prosecutor†

Counsel‡ or defending officer†

‡Qualification to be stated.

At o'clock the trial commences.

The order convening the Court is read and is marked signed by the president and attached to the proceedings.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

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. Answer by accused.

No. [Yes—*see variation below.*]

[Instruction.—*The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.*]

VARIATION

CHALLENGING OFFICERS

(Rule of Procedure 25)

Answer.—I object to

Question to Accused.—Do you object to any other person?

(This question must be repeated until all the objections are ascertained.)

Answer.—

[*If the president is objected to, that objection will be dealt with first, otherwise an objection to the junior officer will be disposed of first.*]

Objection to the President.

Question to accused.—What is your objection to me as president?

The accused, in support of his objection to the president, makes the following statement *(set out)* [and calls who states *(set out)*].

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused.

or,

Decision.—The Court allow the objection.
The Court is re-opened, and the above decision is made known to the accused, and the Court adjourn.

Objection to Member.

Question to accused.—What is your objection to (the *junior officer objected to*)?
The accused in support of his objection to , makes the following statement *(set out)* [and calls who states *(set out)*].
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.
(This only applies where there are waiting members of the Court, otherwise the Court must adjourn.)
He appears to the Court to be eligible and not disqualified to serve on this Court-martial.
Question to accused.—Do you object to be tried by *(the fresh member)*?
Accused.—
(If he objects, the objection will be dealt with in the same manner as the former objection.)
Question to accused.—What is your objection to *(the next junior of the officers objected to)*?
(This objection will be dealt with in the same manner as the former objection.)
The Court adjourn for the purpose of fresh members being appointed.

Insert Rank, Name and Regiment.

or,

The Court is of opinion that, in the interests of justice, and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because [*here state the reasons*].
At o'clock on the Court resume their proceedings, and an Order appointing another president [*or*, fresh officers] is read, marked and attached to the proceedings.
The Court satisfy themselves with respect to such president [*or* officers] as provided by Rule of Procedure 22.
[Instruction.—*The procedure as to challenging a new president and fresh officers, and the procedure, if any objection is allowed, will be the same as above.*]
The president and members of the Court, as constituted after the above proceedings, are as follows:—

PRESIDENT

Rank	*Name*	*Regiment*

MEMBERS

Rank	*Name*	*Regiment*

App. II

B

The President, Members, and Judge-Advocate are duly sworn.

The following officers under instruction are duly sworn.

[Instructions.—(1) *The witnesses if in Court, other than the prosecutor and the accused, should be ordered out of the Court at this stage of the proceedings.*

(2.) *Also any interpreter and shorthand writer should be now sworn.*]

Question to accused.
A.
Q.
A.

Do you object to as interpreter?

Do you object to as shorthand writer?

[Instruction.—*In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.*]

CHARGE-SHEET

The charge-sheet is signed by the president, marked B², and annexed to the proceedings.

VARIATION

If the accused has elected to be tried instead of being dealt with summarily by his commanding officer.

The prosecutor informs the Court that the accused has elected to be tried by this Court instead of being dealt with summarily by his commanding officer.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to accused.
A.

Are you guilty or not guilty of the [*first*] charge against you, which you have heard read?

[Instructions (1).—*Where there is more than one charge upon which the accused is arraigned the foregoing question will be asked after each charge (whether alternative or not) is read, the number of the charge being stated.*

(2) *If the accused pleads guilty to any charge, the provisions of Rule* 35 (B) *must be complied with, and the fact that they have been complied with must be recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge, the Court, if they decide to proceed upon the more serious charge, will enter after the plea as recorded: "The Court proceed as though the accused had not pleaded guilty to any charge."*]

VARIATIONS

OBJECTION TO CHARGE

(Rule of Procedure 32*)*

The Court is closed to consider their decision.
The Court disallow the objection [*or*, the Court allow the objection, and agree to report to the convening authority].
The Court is re-opened, and the above decision is made known to the accused.
The Court proceed to the trial [*or*, adjourn].

AMENDMENT OF CHARGE

(Rule of Procedure 33 (A).)

The Court being satisfied that the name (*or* description) of the accused is and not as stated in the charge-sheet amend the charge-sheet accordingly.

or

(Rule of Procedure 33 (B).)

The Court, before any witnesses are examined, consider that, in the interests of justice, the following addition to (*or* omission from *or* alteration in) the change is required *(set out)*, and adjourn to report their opinion to the convening authority.

PLEA TO THE JURISDICTION

(Rule of Procedure 34)

The accused pleads to the general jurisdiction of the Court on the ground that *(set out)*.

Do you wish to give evidence yourself or produce any evidence in support of your plea? *Question to the accused.*

Witness is examined on oath. *A.*

[Instruction.—*The examinations, etc., of the accused, if he wishes to give evidence, and of the witnesses called by the accused and of any witnesses called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.*]

The Court is closed to consider their decision.

The Court *(a)* overrule the plea and decide to proceed with the trial;

or (*b*) allow the plea and decide to report to the convening authority, and adjourn;

or *(c)* are in doubt as to the validity of the plea and decide to refer the matter to the convening authority and adjourn (*or* make the following special decision *(set out)* and decide to proceed with the trial).

The Court is re-opened, and the above decision is made known to the accused.

The Court proceed with the trial [*or* adjourn].

REFUSAL TO PLEAD

(Rule of Procedure 35 (A).)

As the accused does not plead intelligibly [*or* refuses to plead] to the above charge, the Court enter a plea of not guilty.

INSANITY

(Rule of Procedure 57)

The Court find that the accused *(No. rank name regiment)* is by reason of insanity unfit to take his trial.

Signed at this day of 19

(Judge-Advocate). (President).

PLEA IN BAR OF TRIAL

(Rule of Procedure 36)

Accused, besides the plea of guilty [*or*, not guilty] offers a plea in bar of trial, on the following grounds *(set out)*.

What are the grounds of your plea? *Question to the accused.*

A.

Do you wish to give evidence yourself or to call any witnesses in support of your plea?

Witness is examined on oath.

[Instruction.—*The examination, etc., of the accused, if he wishes to give evidence and of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in the case of witnesses to*

App. II

the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.]

The Court is closed to consider their decision.

The Court allow the plea and resolve to adjourn [*or* to proceed to the trial on another charge] [*or* the Court overrule the plea].

The Court is re-opened, and the above decision is made known to the accused.

The Court adjourn [*or* proceed with the trial on another charge] [*or* proceed with the trial].

The accused having pleaded guilty to the charge the provisions of Rule of Procedure 35 (B) are here complied with.

CC

Proceedings on Plea of Guilty

**To be struck out in case no plea of "Not Guilty" has been proceeded with.*

*[The Court having been re-opened, the accused is again brought before it, and the charge [charges] to which he has pleaded guilty is [are] read to him again.]

The accused [*number* , *rank* *name* , *regiment*] is found guilty of the charge [*all the charges*]

or The accused [*number*, *&c.*,] is found guilty of the charge, and is found not guilty of the charge.

[Instruction.—*If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of a plea of guilty until after the finding on that other charge; and in that case the Court will be re-opened and the charge on which the record is guilty must be read to the accused again.*

The accused may, in accordance with Rule 37 (B), *make any statement he wises in reference to the charge.*]

The summary [*or* abstract] of evidence is read, marked , signed by the president, and attached to the proceedings.

[Instruction.—*If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet as on a plea of not guilty.*]

Question to the accused. A.

Do you wish to make any statement in mitigation of punishment?

The accused in mitigation of punishment says [*or if the statement is in writing*, hands in a written statement, which is read, marked, , signed by the president, and attached to the proceedings].

[Instruction.—*If the statement of the accused is not in writing, the material portion should be taken down in the first person, and as nearly as possible in his own words.*

If counsel or defending officer addresses the court on behalf of the accused the material portions of his address should be recorded.

In any case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

VARIATIONS

ALTERATION OF PLEA

(Rule of Procedure 37 (D).)

The Court being satisfied from the statement of the accused [*or* the summary of evidence, *or otherwise*], that the accused did not understand the effect of the plea of "guilty," enters at the foot of page "CC" of the proceedings: "The Court consider that the accused does not understand the effect of his plea of ' guilty,' alters the record, and enters a plea of ' not guilty '."

[Instruction.—*The Court will then proceed in respect of this charge as on a plea of guilty.*]

WITNESSES FOR DEFENCE ON PLEA OF GUILTY

(Rules of Procedure 37 (F).)

The Court give permission to the accused to give evidence himself and [*or*] to call witnesses to prove his above statement that [*here specify the statement which is to be proved*].

[Instruction.—*The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as on a plea of not guilty.*]

DD

Question to the accused.

Do you wish to give evidence yourself or to call any witnesses as to character? A.

[Instruction.—*The examination, &c., of witnesses as to character will proceed as in the case of a witness giving evidence as to the facts of the case.*] *Question to the accused.*

C

PROCEEDINGS ON PLEA OF NOT GUILTY

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

[Instruction.—*This question will only be asked if the accused pleads "not guilty" to one or more of the charges. If accused desires to make an application for an adjournment, the court will hear any statement or evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto. Such statement or evidence will be recorded, together with the decision of the court on a separate sheet of paper attached to the proceedings and signed by the president of the court.*]

The prosecutor makes an opening address, [*or* hands in a written address, which is read, marked , signed by the president, and attached to the proceedings.]

[Instruction.—*Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and the record should be attached to the proceedings.*]

App. II

The prosecutor proceeds to call witnesses.

*First witness for prosecution.

* being duly sworn is examined by the prosecutor.

*Here insert his number, rank, name, regiment and appointment (if any), or other description.

Cross-examined by the Accused [*or* by Counsel, *or* Defending Officer.]

Re-examined by the Prosecutor

Questioned by the Court

[Instructions.—(1) *The fact that Rule* 38 *(B) has been complied with must be recorded at the conclusion of the evidence of each witness.*

(2.) *If the accused, or his counsel, or defending officer declines to cross-examine a witness that fact must be recorded.*]

VARIATIONS

POSTPONEMENT OF CROSS-EXAMINATION

(Rule of Procedure 76*)*

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

OBJECTION TO EVIDENCE OR PROCEDURE

((Rule of Procedure 70*)*

The accused, [*or* counsel, *or* defending officer *or* the prosecutor] objects to the following question on the ground that *(set out)*.

The Court is closed to consider their decision.

The Court overrule [*or* allow] the objection, and the Court is re-opened and the decision announced that the Court proceed with the trial.

EXPLANATION OR CORRECTION OF EVIDENCE

(Rule of Procedure 83 (B).)

The witness, on his evidence being read to him, makes the following explanation *or* correction *(set out)*.

Examined by the prosecutor as to the above explanation *or* alteration.

Examined by (*or* on behalf of) the accused as to the above explanation *or* alteration.

The prosecutor and the accused (*or* counsel *or* defending officer) decline to examine him respecting the above explanation *or* correction.

being duly sworn is examined by the prosecutor. *Second witness for prosecution.*

(The examination, &c., of this and every other witness proceeds as in case of the first witness.)

VARIATIONS

EXTENDED SITTING OF COURT

(Rule of Procedure 64 (B).*)*

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that *(set out)*.

ADJOURNMENT

At o'clock the Court adjourns until o'clock on the
On the of 19 , at o'clock the Court reassemble, pursuant to adjournment; present the same members as on the of

[Instructions.—(1) *If upon reassembly a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.*

(2) *If either the president or the Judge-Advocate is absent, and cannot attend within a reasonable time, the Court will adjourn, and the president or senior member present, will thereupon report the case to the convening authority. (See Rules of Procedure 66 and 108.)*]

ADJOURNMENT

(Rank—Name—Regiment) being absent.

A medical certificate [*or* letter, *or as the case may be*] is produced, read, marked , and attached to the proceedings.

The Court adjourn until

or,

There being present *(not less than the legal minimum)* members, the trial is proceeded with.

An order bearing date , appointing *(the senior member)* president of the Court-martial in the place of is read, marked , signed by the president, and attached to the proceedings.

The trial is proceeded with.

Examination [cross-examination] of continued.

D

The prosecution is closed

DEFENCE

Do you apply to give evidence yourself as a witness? *Question to accused.*

Do you intend to call any other witness in your defence? *A.* *Q.*

Is he a witness as to character only? *A.* *Q.*

App. II

INSTRUCTIONS TO THE COURT

(i) *When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure* 40 *and* 41 *respecting the order of evidence and addresses which is applicable to the circumstances of the case.*

(ii) *All addresses by prosecutor, counsel, or defending officer, whether recorded by the Court or handed in in writing, will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure* 40 (C) (iv) *and* 41 (A) (i) *and* (iii) *will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President.*

[*Where any evidence is given for the defence*]

The evidence of the accused (and of the witnesses for the defence, including witnesses as to character) is recorded on a separate page. *(See overleaf.)*

First witness for the defence.

[Instruction.—*All evidence given upon oath will be recorded in the following form:*—]

The accused* being duly sworn states (*or* being examined by counsel *or* defending officer states.)

**Here insert his number, rank, name, regiment, and appointment (if any), or other description.*

Cross-examined by the Prosecutor.

Re-examined

Questioned by the Court

[Instructions.—(1) *The fact that Rule* 83 (B) *has been complied with should be recorded.*

(2) *If the prosecutor declines to cross-examine, that fact must be recorded.*]

VARIATION

ADJOURNMENT TO PREPARE DEFENCE

The Court at the request of the accused (*or* Counsel *or* defending officer) adjourn until in order to enable him to prepare his defence.

Second witness for the defence.

being duly sworn is examined by the accused (*or* counsel *or* defending officer).

Cross-examined by the Prosecutor.

Re-examined.

Questioned by the Court.

[Instructions.—(1) *The fact that Rule* 83 (B) *has been complied with should be recorded.*

(2) *If the prosecutor declines to cross-examine, that fact must be recorded.*

(3) *The evidence of witnesses to character will be taken in the same manner as that of witnesses to the facts.*]

(Where the accused does not give evidence upon oath.)

Have you anything to say in your defence? *Question to the accused.*

The accused in his defence says *(see Instructions* (1) below) [*or* hands in a written address, which is read, marked , signed by the president, and attached to the proceedings]. *A.*

[Instructions.—(1) *In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see* INSTRUCTIONS TO THE COURT *above.*)

(2) *If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words.*

Any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought foward in the defence or in mitigation of punishment.]

VARIATIONS

RECALLING WITNESSES

(Rule of Procedure 86.)

(1) At the request of the prosecutor (*or* the accused) is recalled and examined on his former oath through the President (*or* Judge-Advocate) and states as follows (*set out*);

or,

(2) The prosecutor with leave of the Court calls (*or* recalls) for the purpose of rebutting a material statement made by a witness for the defence. The witness being duly sworn (*or* on his former oath) being examined by the prosecutor states as follows *(set out with any cross-examination, re-examination, &c.);*

or,

App. II

(3) The prosecutor calls (*or* recalls) in reply to the witness(es) as to character called by the accused. The witness being duly sworn (*or* on his former oath) being examined by the prosecutor states as follows *(set out with any cross-examination, re-examination, &c.);*

or,

(4) The Court in accordance with Rule of Procedure 86 (n) calls (*or* recalls) , who being duly sworn (*or* on his former oath) states in reply to the President (*or* Judge-Advocate) as follows *(set out).*

[Instruction.—*In* (1), (2) and (3) *witnesses must be called or recalled before the closing address of or on behalf of the accused. In* (4) *witnesses may be called by the Court at any time before the finding; in this case the accused or counsel or defending officer should be given the opportunity of asking further questions thrgugh the Court.*]

ADJOURNMENT TO PREPARE ADDRESSES, ETC.

The Court, at the request of the accused, adjourn until to enable the accused to prepare his address.
The Court, at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.
The Court, at the request of the Judge-Advocate, adjourn until to enable him to prepare his summing up.

SUMMING UP

The Judge-Advocate makes the following summing up [*or if the summing up is in writing,* hands in a written summing up, which is read, marked , signed by the President, and attached to the proceedings];

or,

The Judge-Advocate and the Court think a summing up unnecessary.

E

* FINDING

*To be struck out except in cases where trial has taken place on a plea of "not guilty."

The Court is closed for the consideration of the finding.
The Court find that the accused *(number, rank, name, regiment),*

(1) *Acquittal on all Charges*

is not guilty of the charge [*or,* all the charges] [and honourably acquit him of the same.]
The finding[s] is [are] read in open Court and the accused is released.

Signed at , this day of 19 .

(Judge-Advocate). (President).

(2) *Acquittal on some but not all Charges*

is not guilty of the charge[s] [and honourably acquite him of the same], but is guilty of the charge[s].
The finding[s] of "not guilty" is [are] read in open Court.

(3) *Conviction on all Charges,*

is guilty of the charge [*or,* all the charges].

(4) *Special Findings*

(a) is guilty of the charge[s] and guilty of the charge with the exception of the words *(set out)* [or, with the exception that *(set out)*]

or,

(b) is not guilty of desertion but is guilty of absence without leave.

[Instruction.—*Any special finding permitted by Rule of Procedure* 44 (D) *will be framed as far as possible in accordance with* (a). *Any special finding allowed by Section* 56 *of the Army Act, may be expressed in accordance with (b)*].

(5) *Reference to confirming authority*

(Rule of Procedure, 44 (c).)

The Court find as regards the charge that the accused did *(set out the facts which the Court find to be proved,)* but doubt whether the facts proved show the accused to be guilty or not of the offence charged [or of the offence of *(any offence of which the accused might under the Army Act legally be found guilty on the charge as laid)*], They therefore refer to the confirming authority for an opinion and adjourn.

or,

(Rule of Procedure 44 (G).)

[*Note.—This applies only to alternative charges*]

The Court find that the accused did *(set out such particulars of the charge as the Court find to be proved),* but doubt whether such facts constitute in law the offence stated in the charge or in the charge. They therefore refer to the confirming authority for an opinion and adjourn.

(In either case)

The Court re-assembles on the day of 19 . The opinion of the confirming authority is read, marked , signed by the president and attached to the proceedings.

The Court now find that the accused *(number—rank—name—regiment)* is *(the findings to be recorded in the usual manner).*

(6) *Insanity*

(Rule of Procedure 57)

The Court find that the accused *(number—rank—name—regiment)* did the act *(or* made the omission) which forms the subject of the charge[s] but was insane at the time when he did (*or* made) the same.

PROCEEDINGS ON CONVICTION

Before Sentence

*The Court being re-opened the accused is again brought before it. *(Rank—Name—Regiment)* is duly sworn.

*When the Court is already open this sentence will be struck out.

App. II

Question by the President. A.

Have you any evidence to produce as to the character and particulars of service of the accused?

I produce this statement.

The witness hands in the statement, which should be in the following form:

Army Form B. 296.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number—Rank—Name—Regiment , [*or as the case may be*].

(1) The following is a fair and true summary of the entries in the regimental and squadron, battery, or company conduct sheets of the accused, exclusive of convictions by a court-martial or sheets of the accused, exclusive of convictions by a court-martial or a civil court, of summary awards under Sec. 47 of the Army Act, and of cases in which trial has been dispensed with:—

	Within last 12 months	Since Enlistment
For ,	times	times.
For ,	times	times.

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the conduct sheets of the accused.

[Instruction.—*If the charge is for drunkeness, the entries for drunkeness must be stated separately and dated.*]

(2) The accused has not been previously convicted,

or,

Previous convictions of the accused by a court-martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under A.A. 73, are set out in the schedule annexed to this statement.

(3) The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for beginning on the day of

(4) The accused has been in confinement, awaiting trial on the present changes, for days in civil custody, and day is military custody, making a total of days in custody, of which days were spent in hospital.

(5) The present age of the accused according to his record of service / attestation paper is

(6) The date of his commission / attestation specified in his record of service / attestation paper is

(7) The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

(8) The accused is entitled to deferred pay or gratuity in respect of service.

(9) The accused is entitled to reckon service for the purpose of determining his pension, &c.

(10) The accused is in possession of or entitled to no military decoration or military reward [*or* is in possession of *or* entitled to *(state or military decoration or reward)*].

(11) *(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of .

(12) *(In the case of an officer.)* The accused holds in the Army the rank of dated , and in his regiment [*or* corps *or* department] the rank of dated

(13) The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

	Date of promotion.
In the rank of ,	years.
In the rank of ,	years.
In the rank of ,	years.

[Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.*]

SCHEDULE

Of convictions by a court-martial or civil court of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, *No.*
Rank, , *Name* , of regiment
[*or as the case may be.*]

[Instruction.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial must be inserted.*]

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.
Signed this day of

A.B.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President and annexed to the proceedings.

Question by the President. Answer by the witness.

Is the accused the person named in the statement which you have heard read?
Q.
A.

Have you compared the contents of the above statement with the regimental books?
Q.
A.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Cross-examined by the Accused [*or* by Counsel, *or* Defending Officer.]

or,

The accused declines to cross-examine this witness.

[Instructions.—(1) *If any evidence, other than documentary, is given the fact that Rule* 83 (B) *has been complied with will be recorded.*

(2) *Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the accused on which the Court desire to have information for the purpose of their sentence.*

(3) *At the request of the accused, or by the direction of the Court, the regimental books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.*

The accused is entitled to call the attention of the Court to any entries in the regimental books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given, the accused may address the court thereon, and in mitigation of punishment.

(4) *If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the findings of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.*]

Question to the accused. Do you wish to address the Court?

Answer. The court is closed for the consideration of the sentence.

F

SENTENCE

[Instruction.—*The provisions of Sections* 44, 182 *and* 183 *of the Army Act must be carefully attended to by the Court in passing sentence.*]

Sentence. The Court sentence the accused *(No.—Rank.—Name—Regiment.)*

[Instruction.—*The sentence is to be marginally noted in every case.*]

In the case of an officer:—

Death. *(a)* †to suffer death by being shot [hanged.].

Penal servitude or Imprisonment H.L. (or without H.L.) for *(b)* to suffer penal servitude for the term of years [*or* for life].

(c) to be imprisoned with hard labour [without hard labour] for

[Instructions.—(1) *As to the term of imprisonment see below in the case of a soldier.*

(2) *A sentence of cashiering should precede a sentence of imprisonment or penal servitude.*]

Cashiered. *(d)* to be cashiered.

Dismissed. *(e)* to be dismissed from His Majesty's service.

† As to communication to the accused persons upon whom sentence of death has been passed, see footnote *(b)* on p. 762.

Forfeiture of seniority of rank.

(*f*) [*Where the officer's army rank is superior to his regimental rank.*]

to take rank and precedence as in his corps as if his appointment to that corps bore date the day of , and to take rank and precedence in the Army as if his appointment as bore date the day of

or,

to take precedence in the rank held by him in his corps as if his name had appeared [*a specified number of*] places lower in the list of his corps, and in the rank held by him in the Army as if his name had appeared [*a specified number of*] places lower in the list of the Army.

[*Or, where the officer's army and regimental rank are the same.*]

to take rank and precedence in his corps and in the Army as if his appointment as bore date the day of

or,

to take precedence in the rank held by him in his corps as if his name had appeared [*a specified number of*] places lower in the list of his corps and in the rank held by him in the Army as if his name had appeared [*a specified number of*] places lower in the list of the Army.

[*Or, where the officer has no regimental rank.*]

to take rank and precedence in the Army as if his appointment as in the Army bore date the day of

or,

to take precedence in the rank held by him, as if his name had appeared [*a specified number of*] places lower in the list of the Army.

[Instruction.—*In each case the form may be varied so that the Court may exercise the power under the Army Act, s.* 44 *(f), and Rule of Procedure* 47 *of sentencing to forfeiture of seniority either in the corps, or in the Army, or in both.*]

Forfeit service for promotion.

(*g*) to forfeit service for the purpose of promotion.

[Instruction.—*This applies only in the case of an officer whose promotion depends upon length of service, and a sentence can be inflicted in respect of all or any part of his service.*]

Severely reprimanded or reprimanded.

(*h*) to be severely reprimanded [or reprimanded].

Stoppages.

(*j*) to be put under stoppages of pay until he has made good the sum of in respect of *or* [and] until he has made good the value of the following articles viz., 1 value 1 value , &c.

In the case of a soldier:—

Death.

(*k*) †to suffer death by being shot [hanged].

† As to communication to the accused persons upon whom sentence of death has been passed, see footnote (*b*) on p. 762.

Penal servitude for Impt. H.L. (or without H.L.) for

(l) to suffer penal servitude for the term of years [*or* for life].

Detention for

(m) to be imprisoned with hard labour [without hard labour] for

Field punishment for

(n) to undergo detention for

(o) to suffer field punishments for

[Instructions.—(1) *If a person charged is at the time of sentence undergoing imprisonment or detention under a former sentence, a new sentence of imprisonment or detention must not exceed such a term as will make up a period of two years from the date of the former sentence.*

(2) *In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of penal servitude, imprisonment, detention or field punishment, although those sentences necessarily involve a reduction to the ranks.*

Where, for any reason, a court consider that a sentence of reduction to a lower rank in the case of a N.C.O. would be too severe a sentence, they can sentence the offender to forfeiture of seniority of rank.]

Discharged with ignominy. Dismissed.

(p) to be discharged with ignominy from His Majesty's service.

(q) [*if belonging to the territorial army*] to be dismissed from His Majesty's service.

Reduction to

(r) [*if a non-commissioned officer*].*

(1) to be reduced to the ranks; *or*

(2) to be reduced to [*a lower grade, i.e.*, to the rank of corporal, bombardier, *or* sergeant, *as the case may be*]; *or*

Forfeiture of seniority.

(3) to take rank and precedence as if his appointment to the rank of bore date; *or*

Severe reprimand or reprimand.

(4) to be severely reprimanded [*or* reprimanded].

Fined l. s. d.

(s) to be fined

Stoppages.

(t) to be put under stoppages of pay until he has made good the sum of in respect of *or* [and] until he has made good the value of the following articles, viz., value value , &c.

Forfeiture of pay.

(u) to forfeit all ordinary pay for a period of

(w) to forfeit [*state number or* all] good conduct-badge [*or* badges] with the pay attached thereto.

to forfeit deferred pay in respect of [all *or* calendar months *or* years] previous service.

to forfeit [all *or* years, *or* calendar months] past service for the purpose of determining pension.

[Instructions.—(1) *An offender may be sentenced to all or any of the above forfeitures.*

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* A sentence of reduction from or to an acting or lance rank is void; e.g., a sentence on a corporal to be reduced to lance-corporal, or on a lance-corporal to be reduced to the ranks, is void. See A.A. 183 (3) and note 6.

(2) *In the case of a warrant officer, a district court-marital must use one of the following forms either in lieu of, or in addition to, such of the foregoing forms as relate to forfeitures, fines and stoppages; a general court-martial may use them in lieu of, or in addition to, the foregoing forms, see* A.A., *s.* 182 (2).]

(x) to be dismissed from the service,

or,

"*(y)* [*If he was originally enlisted as a soldier but not otherwise*] to be reduced to the ranks;

or,

(z) to be reduced to [*a lower grade*];

or,

to be reduced to an inferior class of warrant officer, that is to say, to

or,

(zz) to be reduced in the list of his rank as if his appointment thereto bore date the day of

or,

(zzz) to be severely reprimanded [*or* reprimanded]."

RECOMMENDATION TO MERCY

The Court recommend the accused to mercy on the ground that *(set out)*

The Court recommend that of the service forfeited under section 79 of the Army Act shall be restored on the ground that *(set out)*

SIGNATURE

Signed at , this day of 19

(Signature)
Judge-Advocate.

(Signature)
President.

REVISION

Revision.

At , on the day of at o'clock, the Court re-assemble by order of for the purpose of re-considering their

Present, the same members as on the

[Instruction.—*If a member is absent and the absence will reduce the Court below the required minimum, or if he is the president, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present, shall thereupon report the case to the convening officer.*]

The letter [order *or* memorandum] directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding [finding and sentence] [*or* sentence] is read, marked , signed by the president, and attached to the proceedings.

App. II

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

(a) do now revoke their finding and sentence, and find and sentence the accused to

or,

(b) do now revoke their sentence, and now sentence the accused, &c., &c.,

or,

(c) do now respectfully adhere to their sentence [*or* finding and sentence]

Signed at , this day of 19 .

Judge-Advocate. President.

Confirmation.

CONFIRMATION

Confirmed,

or,

I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied,

or,

I confirm the finding and sentence of the Court, but mitigate [remit, *or*, commute].

or,

[*Where the confirming officer desires partly to reserve his confirmation.*]

I confirm the finding of the Court on the and charges and reserve for confirmation by superior authority the finding on the and charges, and the sentence;

or,

I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority;

or,

I confirm the findings of the Court and the sentence of the Court as to , and reserve the sentence so far as it for confirmation by superior authority;

or,

[*Where the finding is not confirmed.*]

Not confirmed [*the reasons for non-confirmation may be stated*].

or,

[*Where a plea in bar of trial had been offered under Rule of Procedure* 36.]

The finding of the Court that the plea in bar of trial is proved (*or* not proved) is confirmed (*or* not confirmed).

or,

[*Where the Court find that the accused is unfit by reason of insanity to take his trial or that he was insane at the time when he did the act or made the omission charged against him.*]

Confirmed [*or* not confirmed].
Signed at , this day of 19 .
(Signature of Confirming Authority).

[Instruction.—*Any remarks of the confirming authority should be separate and form no part of the proceedings. The confirming authority will in no case comment upon a finding of "not guilty," or upon the inadequacy of the sentence.*]

PROMULGATION

Promulgated and extracts taken at , this day of 19 .
(Signature of officer in charge of documents).

[Instruction.—*Proceedings which are not confirmed must be promulgated.*]

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(2)—FORMS OF SUMMONS TO WITNESSES

Army Form A. 12.

(a) IN THE CASE OF A SUMMARY OF EVIDENCE

To

Whereas a charge of having committed an offence triable by court-martial has been preferred before me against *(number, rank, name, unit)*, and whereas I have directed a summary of the evidence to be taken in writing at *(place)* on the day of at o'clock in the noon:

I do hereby summon and require you *(name)* to attend as a witness at the said place and hour (and to bring with you the documents hereinafter mentioned, viz.

Whereof you shall fail at your peril.

Given under my hand at on the day of 19 .

(Signature)
Commanding Officer of the Accused.

(b) IN THE CASE OF A COURT-MARTIAL

Army Form A. 13.

To

Whereas a court-martial has been ordered to assemble at on the day of 19 , for the trial of , of the regiment, I do hereby summon and require you *A. B.* to attend, as a witness, the sitting of the said Court at on the day of at o'clock in the forenoon [and to bring with you the documents hereinafter mentioned, namely,], and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at on the day of 19 .

(Signature)
Convening Officer [*or* Judge-Advocate *or* President of the Court].

App. II

(3)—FORMS OF OATHS AND DECLARATIONS

OATHS

PRESIDENT AND MEMBERS *(a)*

I swear by Almighty God that I will well and truly try the accused [or accused persons] before the Court according to the evidence, and that I will truly administer justice according to the Army Act now in force, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Army Council for the purpose of communicating the sentence to the accused, *(b)* I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose, or discover the voto or opinion of any particular member of this court-martial, unless thereunto required in due course of law *(c)*.

JUDGE-ADVOCATE *(d)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

OFFICER UNDER INSTRUCTION *(d)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

SHORTHAND WRITER *(d)*

I swear to Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the Court a true transcript of the same.

INTERPRETER *(d)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

(a) See A.A. 52 (1) and note, and R.P. 26.

(b) The words "except so far as may be permitted by instructions of the Army Council for the purpose of communicating the sentence to the accused" have regard only to communication to accused persons upon whom sentence of death has been passed, and the instructions of the Army Council in the behalf stated are contained in Army Council Instruction 570 of 1918, and are as follows:—

> "When a court-martial upon conviction passes a sentence of death upon any officer or soldier, at the conclusion of the trial the president will cause to be forthwith transmitted to the accused under sealed cover Army Form A. 3996, duly completed and signed by himself. The president will attach to the proceedings a certificate, signed by himself and dated, stating that these instructions have been complied with."

For specimen form see p. 795.

(c) The qualification "unless thereunto required in due course of law" only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice it would, or might, be necessary to make disclosures regarding individual votes to the court trying members so charged.

(d) See A.A. 52 (2) and R.P. 27.

WITNESS *(a)*

I swear by Almighty God that the evidence which I shall give before this Court shall be the truth, the whole truth, and nothing but the truth.

MANNER OF TAKING THE OATH *(b)*

A person taking the oath will hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand and will say or repeat the oath after the person administering it.

SOLEMN DECLARATIONS *(c)*

The form of declaration will be the same as the form of oaths except that for the words "I swear by Almighty God" will be substituted the words "I *(name in full)* do solemnly promise and declare"; and that the words "solemnly promise and declare" will be substituted for the word "swear" wherever it occurs.

MEMORANDA FOR THE GUIDANCE OF OFFICERS CONCERNED WITH COURTS-MARTIAL

Memoranda.

The following memoranda as to courts-martial are intended for the guidance of commanding and convening officers and others with a view to securing uniformity of practice and to avoiding some common mistakes.

These memoranda do not form part of the Appendix to the Rules of Procedure.

Commanding Officers

1. A commanding officer will take care that an accused person is not detained in custody beyond 48 hours without the charge being investigated, unless investigation is impracticable, in which case a report will be made to the officer to whom application to convene a court-martial would be made (R.P. 2). Should the accused remain in custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, the commanding officer will send a special report to the convening officer as above, stating the necessity for further delay. A similar report will be sent every eight days until trial is ordered (A.A. 45; R.P. 1). These reports must be submitted irrespective of whether or not the delay in convening the court-martial rests with the convening officer.

2. Before applying for the trial of an offender a commanding officer should satisfy himself—

(a) That the accused is subject to military law and is charged with an offence which is an offence against the Army Act;

(a) See A.A. 52 (3) and R.P. 82.
(b) See also R.P. 30 as to swearing a person in the form and manner in which an oath is usually administered in Scotland, or according to the form of his religion.
(c) See A.A. 52 (4) and R.P. 28.

(b) That the offender is not exempt from trial under the provisions of the A.A. 161;

(c) That the offence is one not of those referred to in K.R. 547, which he can himself dispose of without reference to superior authority, or, if it is one of those offences, that from its gravity, or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment;

(d) In cases of drunkenness, that A.A. 46 (3) and K.R. 575 do not require him to deal with the case himself;

(e) That the evidence justifies the trial of the offender on the charge;

(f) That the charge is properly framed under the appropriate section of the Army, or other, Act;

(g) That when once an accused has elected to be tried upon the charge as read out to him from the guard report, it is in no circumstances added to or increased in gravity, unless facts subsequently appear which disclose a more grave offence or offences (see K.R. 549 *(b)*);

(h) That an officer had given the accused a copy of the summary (or abstract) of evidence as soon as practicable after he had been remanded for trial, and that his rights as to preparing his defence and of being assisted or represented at the trial had been explained to him by that officer (see R.P. 14 (B)).

3. When making application for the trial of the offender, the commanding officer should satisfy himself that the following provisions are complied with:—

(a) The application for trial (A.F. B 116) must be accompanied by all necessary documents as therein specified, and the medical officer's certificate at the foot completed; the application should ordinarily be submitted within 36 hours after the accused has been remanded for trial (R.P. 5);

(b) The name of the officer to act as prosecutor must be stated on the application;

(c) If the accused has elected to be tried under A.A. 46 (8), the fact must be clearly stated on the form of application for trial;

(d) The information required as to officers who have investigated the case, or sat on a court of inquiry, must be given with great care;

(e) The application must be signed by the officer in actual command of the offender's unit;

(f) The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs, and should state the place and date of signature;

(g) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer to be entered. The place and date should be entered by the officer signing the orders (see p. 714);

(h) The section of the Act under which each charge is framed should be entered in the margin (in red ink), opposite the charge to which it refers;

(*i*) If the accused has elected to be tried instead of submitting to a summary award, it should be so stated (in red ink) at the top of the charge-sheet;

(*j*) When it is intended to prove any facts in respect of which any deduction from the ordinary pay of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge;

(*k*) When part of the evidence is documentary, the statement of the witness made on producing the documents should be included in the summary; such statement must identify the accused as the person to whom the document refers or relates;

(*l*) A statement of evidence as to facts should commence by recording the place, date, and time (if material) to which the evidence refers;

(*m*) All irrelevant, hearsay or otherwise inadmissible statements should be eliminated from the summary;

(*n*) Written statements from witnesses not actually called must be signed and certified as required by R.P. 4 (G);

(*o*) At the close of the evidence of each witness who is not cross-examined by the accused, it should be noted that "accused declines to cross-examine";

(*p*) The evidence of each witness must be signed by him;

(*q*) The record of any statement made by the accused should be prefaced by a note that he was formally "cautioned";

(*r*) A statement that the requirements of R.P. 4 (C), (D), (E) have been complied with should be entered at the end of the summary of evidence and signed by the officer taking the evidence. The place and date should be stated;

(*s*) The convening officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial;

(*t*) Where the charge is for deficiency of kit, unless A.F. B. 115 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete kit, or of the articles alleged to be deficient, the date and place of discovering any subsequent deficiencies, and the fact that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will, of course, be omitted from the charge;

(*u*) A.F. B 296, by whomsoever produced, is to be signed by the officer having the custody of the books from which it is complied. In preparing this form, minor offences may be grouped as "miscellaneous"; offences of the same class as that being charged should always be shown in a separate group;

(*v*) Where A.F. B 115 is to be produced, it must be similarly signed. The original declaration of the court of inquiry (on A.F. A 2), even if in existence, is not admissible in evidence: nor is A.F. B 115, unless the entry in A.B. 161 (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's unit:

(w) It should be noted that a "descriptive return" (A.F. O 1618) is only admissible as evidence of matters therein stated as facts, *e.g.*, that the accused was arrested on a particular day. It is not evidence of the date when his absence began, which must be proved by a witness.

4. After trial has been ordered the commanding officer must satisfy himself that the following provisions have been complied with:—

(a) The accused must be warned for trial not less than 24 hours before the court assembles;

(b) The accused must be informed by an officer of every charge on which he is to be tried, must be given a copy of the charge-sheet and of the summary of evidence, and (if he desires it) informed of the ranks, names and corps of the officers who are to form the court as well as of any waiting members;

(c) The accused must be informed that on his giving the names of any witnesses for the defence, reasonable steps will be taken to procure their attendance;

(d) The accused must be afforded proper opportunity for preparing his defence;

(e) No officer of the unit to which the accused belongs may be detailed as a member of the court who is ineligible or disqualified to serve under the provisions of R.P. 19;

(f) In the case of a joint trial, the accused persons should be informed of the intention to try them together, and of their right to claim separate trials if the nature of the charge admits of it;

(g) The accused must be seen by a medical officer on the morning of each day the court is ordered to sit for his trial.

5. After confirmation the commanding officer must see that the following provisions are complied with:—

(a) The proceedings, whether confirmed or not, must be promulgated as laid down in K.R. 668;

(b) The record of the promulgation must be entered on the proceedings in the form shown on p. 761, and extracts recorded in the regimental books;

(c) The proceedings must be returned without delay to the proper authority after promulgation.

Convening Officer

6. The convening officer, in addition to satisfying himself as regards paras. 2 and 3 (above), will ensure:—

(a) That in the case of all trials by general court-martial at home stations, and in all cases of indecency, fraud and theft committed at home stations, the charge-sheet and summary (or abstract) of evidence are submitted to the J.A.G. before trial is ordered;

(b) That he holds the necessary warrant empowering him to convene the description of court which he desires to convene;

(c) That the court which he has decided to convene is properly composed in accordance with the Army Act (and see R.P. 20-21);

(d) That no officer is detailed to serve on the court who is ineligible or disqualified under the Army Act (and see R.P. 19*);

(e) That at home stations application is made to the J.A.G. for the appointment of a judge-advocate in all cases where such an appointment is legally required or is desirable. It is open to him to submit with his application the name of a person whom he recommends for appointment;

(f) That the president is named in the convening order and that the other officers detailed to serve are stated therein either by name or by the units from which they are to be drawn;

(g) That the convening order is signed by him, or by an officer of his staff authorized by usage of the service to sign his orders;

[N.B.—In the case of a field general court-martial, the convening officer must himself sign the convening order.]

(h) That the order for trial at the foot of the charge-sheet is signed by him, or by an officer of his staff signing "for" him.

7. A special certificate must be inserted in the convening order in the following cases:—

(a) Where an officer of the prescribed rank is not available as president (see A.A. 48 (9)); or

(b) Where, for the trial of an officer, officers of equal or superior rank to the accused are not available (see R.P. 21 (B)); or

(c) Where the court is composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry (see R.P. 20 (A)); or

(d) Where the necessary number of military officers is not, or could not be made, available (see A.A. 48 (10)); or

(e) Where it is not practicable to appoint an officer of the Supplementary Reserve or of the Territorial Army to serve on a court-martial for the trial of an offender belonging to those branches of the service respectively (see R.P. 20 (B)).

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, he will apply to the command concerned asking for the names of officers to compose the court, and these names will be inserted in the convening order. The command which furnishes the officers should then insert in the command orders an order to the effect that "the undermentioned officers have been placed at the disposal of

* For instance, if the accused is charged with embezzling property belonging to the officers' mess of a particular unit, he will be careful to see that no officer of that unit is detailed to sit on the court-martial.

the Commander, th Brigade (or as the case may be) for duty at a court-martial to assemble at [place] on [date].''

8. where the convening officer or the senior officer on the spot considers that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules of Procedure referred to in R.P. 104, he must make on A.F. A 49 a declaration to that effect, specifying the nature of those exigencies or necessities.

9. The convening officer must ascertain whether the accused desires to have a defending officer assigned to represent him at his trial; if so, he must endeavour to meet his wishes. Should no suitable officer be available, the convening officer should notify the president in writing.

10. The convening officer must send to the president the convening order charge-sheet and summary (or abstract) of evidence. Except in the case of the joint trial of two or more persons, a separate copy of the convening order should be supplied in respect of every person to be tried.

General

11. The original convening order must be before the court, and the president must satisfy himself that the court is duly constituted according to its terms.

The court must not make any alteration or correction in the convening order, nor, save as allowed by R.P. 33 (A), in the charge-sheet.

12. Where, in accordance with R.P. 71, the court is sworn at one time in the presence of several accused persons who are to be tried separately in succession, the time at which the convening order is read should be recorded on page A of each A.F. A 9 as the time at which the trial of each of the accused commences; in such cases it is desirable that the time of the arraignment of each such accused should be inserted on page B of each A.F. A 9 before the words: "The accused is arraigned, &c."

13. The full name and description of the accused must be entered on the first page of the proceedins and in every finding and sentence.

14. Care must be taken that, whenever a court of inquiry has been held, the relevant certificate (on the first page of the proceedings) is properly completed (see p. 742 for form).

15. Every witness, including the officer producing A.F. B 296, must be sworn in the presence of the accused to whom his evidence refers; he must not be examined on a former oath taken in the presence of another accused person.

The prosecutor or other person producing documents must be sworn.

16. The evidence will usually be taken down in narrative form. Questions and answers recorded *verbatim* will be numbered consecutively ("Q.1," "A.1," &c.) throughout.

17. When original documents are not retained by the court and copies are attached to the proceedings, it must be stated in the proceedings that the copies have been compared with the originals and found to be correct. As a rule, however, original documents will be annexed to the proceedings unless they are urgently required for other purposes. See K.R. 650.

18. In accepting A.Fs B 296, B 115 and O 1618, attention should be given to para. 3 *(u)*, *(v)*, *(w)*, supra. Where A.Fs. B 115, O 1617 and O 1618 are given in evidence it is sufficient to record upon the proceedings the mere fact of their production without setting out the facts which they purport to prove; but the record of the evidence should always show that a witness identified the accused as the person to whom the particular document relates.

19. A certified true copy on A.F. B 115 of an entry in A.B. 161 is sufficient evidence thereof; it is not necessary for the court to compare the copy with the book.

20. Where the value of arms, ammunition, equipment, or public clothing lost or damaged is proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be discharged with ignominy, in case the latter part of the sentence should be remitted.

21. Included in A.F. A 9 are two sets of pages "C" and "CC" —one for proceedings on the plea of "Not guilty" and one for proceedings on the plea of "Guilty." Where the pleas recorded are all "Not guilty," or all "Guilty," the set pertaining to the plea or pleas recorded is alone to be used.

When some of the pleas are "Not guilty" and some "Guilty," both sets will be used, the court proceeding first on the plea or pleas of "Not guilty" up to and including the finding, and then on the plea or pleas of "Guilty"; it is not necessary to insert before page "CC" a separate sheet containing the findings of the court upon the pleas of "Not guilty."

22. Where two or more persons are charged and tried jointly on a charge-sheet, only one set of proceedings should normally be used, the relevant pages of A.F. A 9 being adapted accordingly, and the replies of each of the accused to the questions therein set out being separately recorded. Page E should be used for the finding and proceedings on conviction and page F for the sentence in each case.

23. Where trial proceeds on more than one charge-sheet, all printed matter on page A and the two printed lines at the top of page B should be struck out in the case of the second or any subsequent charge-sheet, the word "second," "third" (or as the case may be) being inserted before the word "charge-sheet" on page B.

24. The charge-sheet is to be inserted in the proceedings after page B; all other documents are to be attached at the end of the proceedings in the order of their production to the court.

25. Every document attached to the proceedings should be signed by the president and marked with a reference letter, preferably not one used in A.F. A 9.

26. In the case of a plea of "Guilty," the summary of evidence is to be annexed to the proceedings. In the case of a plea of "Not guilty," it will be annexed if it or any part of it has been put in evidence at the trial. In other cases the summary will merely be enclosed with the proceedings when sent to the confirming officer.

27. All erasures of written or printed matter, and all interlineations and corrections should be initialled by the president or judge advocate (if any).

28. After the pages have been put together in the order prescribed, they should be numbered consecutively up to the end of the proceedings. In case of revision, the later proceedings are added at the end, and the numbering of pages carried on.

29. Care must be taken that the proceedings are both signed *and* dated by the president.

THIRD APPENDIX App. III

FORMS OF COMMITMENT

FORM A

Form of Order for Commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude Army Form C.383.

Whereas [*No.—Rank—Name*], of the regiment, was by a *(a)* court-martial, held at , convicted of the offence of *(b)*, and, by a sentence signed on the day of 19 , sentenced *(c)* to suffer penal servitude, for years, commencing on the aforesaid day, and such sentence has been confirmed by , as required by law.*

*Add, if necessary, "with a remission of years."

**And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone; and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of awarded on the day of , 19 .

** This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

Now, therefore, I, the undersigned, the competent militray authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby in pursuance of the above-mentioned Acts and powers order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

Signed this day of , 19

C.D.

(a) Insert "general" or "field general" as required.

(b) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(c) Where the sentence was death, but has been commuted to penal servitude, *substitute* "to suffer death, and such sentence was confirmed by , as required by law, and was commuted to years' penal servitude commencing on the aforesaid day."

App. III

FORM B

Form of Order for commitment to prison of Military Convict sentenced out of the United Kingdom to Penal Servitude

Army Form C. 384.

Whereas [*No.—Rank—Name*], of the regiment was by a *(a)* court-martial held at , convicted of the offence of *(b)*, and by a sentence signed on the day of , 19 , sentenced *(c)* to suffer penal servitude for years, commencing on the aforesaid day, and such sentence has been confirmed by as required by law.*

*Add, if necessary "with a remission of years."

**And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence has been undergone; and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively[1] / concurrently with one of awarded on the day of , 19 .

**This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [*here state route*], or such other route as may be directed by competent military authority, to the port at or such other port as may be directed by competent military authority, thence to be removed by [*here state route*] to such prison as aforesaid in the United Kingdom.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned officer in charge of any detention barrack, and also the governor or chief officer of any prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably necessary

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(a) Insert "general" or "field general" as required.

(b) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(c) Where the sentence was death, but has been commuted to penal servitude, *substitute* "to suffer death, and such sentence was confirmed by , as required by law, and was commuted to years' penal servitude commencing on the aforesaid day."

with the view to his said removal, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .
C.D.

In case an Alteration of the Route above mentioned becomes necessary

(a). Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom, it is necessary to alter the route above mentioned, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [*here state the route so far as varied*] to , thence to be removed as directed by the said order.

Signed at this day of , 19 .
E.F.

In case of need the following Order may be made

For the purpose of carrying into effect the above order, I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of prison or detention barrack at , to receive the above-named convict, and to detain him until he can be removed to , and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .
G.H.

FORM BB

Form of Order respecting a sentence of penal servitude passed for an offence committed on active service, where part of the sentence is ordered to be served in a military prison.

Army Form C. 384A.

Whereas [*No.—Rank—Name*], of the regiment, was by a *(b)* court-martial held at , convicted of the offence of *(c)* , and by a sentence signed on the day of , 19 , sentenced *(d)* to suffer penal servitude for years, commencing on the aforesaid day, and such sentence has been confirmed by , as required by law.*

*Add, if necessary, "with a remission of years."

(a) This order can be repeated by any removing authority as often as necessary.
(b) *Insert* "general" or "field general" as required.
(c) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.
(d) Where the sentence was death, but has been commuted to penal servitude, *substitute* "to suffer death, and such sentence was confirmed by , as required by law, and was commuted to years' penal servitude commencing on the aforesaid day."

App. III

**And where as on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone; and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of awarded on the day of , 19 .

**This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

Now, therefore, I, the undersigned, the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, committed to a military prison in which a military prisoner sentenced to imprisonment by a court-martial can for the time being be confined, either temporarily or permanently, there to undergo†
part of the said sentence, according to law.

†A period not exceeding two years.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict shall, as soon as practicable after completion of the aforementioned part of his sentence or at such earlier date as the competent military authority may order, be transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo the remainder of his sentence according to law *(a)*.

Signed at this day of 19 .

C.D.

FORM C

Army Form C. 335.

Form of Order for Commitment to Prison, Military or Civil (or to a detention barrack), of persons subject to military law sentenced either in or out of the United Kingdom to Imprisonment.

To the Governor or chief officer in charge of *(b)*
prison (or detention barrack) at

Whereas [*No.—Rank—Name*], of the regiment, was by a *(c)* court-martial held at , convicted of the offence of *(d)* , and by a sentence signed on the day of 19 , sentenced

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(a) Form B should be prepared by the competent military authority for the subsequent transfer of the military convict to a prison in the United Kingdom.
(b) Insert "His Majesty's" *or* as required according to title of prison.
(c) Insert "general," "field general" *or* "district," as required.
(d) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(a) to be imprisoned with *hard labour for , commencing on the aforesaid day, and such sentence has been confirmed by , as required by law *(b)*.

**And whereas on the day of , 19 , the sentence was suspended by superior miliraty authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone; and on the day of 19 , the sentence was ordered to be put into execution, to run consecutively concurrently with one of , awarded on the day of , 19 .

*If the sentence does not specify hard labour *alter* "with" into "without."

**This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said person into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at this day of , 19 .

G.H.

FORM D

Form of Order for commitment to a detention barrack of persons subject to military law as soldiers, sentenced either in or out of the United Kingdom to Detention.

Army Form C. 385A.

To the commandant or chief officer in charge of the detention barrack at .

Whereas [*No.—Rank—Name*], of the regiment, was, by a *(c)* court-martial held at , convicted of the offence of *(d)* , and, by a sentence signed on the day of 19 , sentenced *(e)* to detention for commencing on the aforesaid day, and such sentence has been confirmed by as required by law *(f)*.

(a) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into imprisonment for , with *hard labour commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into imprisonment for with *hard labour, commencing on the aforesaid day."

(b) Add, if necessary, "with a remission of ," or "but has been mitigated by the omission of the hard labour," *or as the case may be.*

(c) Insert "general", "field general" *or* "district," as required.

(d) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place and circumstances.

(e) Substitute, where the original sentence was death, penal servitude, or imprisonment, which has been commuted to detention, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into detention for , commencing on the aforesaid day," *or* "to suffer years, penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into detention for , commencing on the aforesaid day," or "to be imprisoned with (or without) hard labour for commencing on the aforesaid day, and such sentence has been commuted into detention for , commencing on the aforesaid day."

(f) Add, if necessary, "with a remission of ."

*If the commutation does not specify hard labour *alter* "with" into "without."

App. III

*And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone; and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of awarded on the day of , 19 .

*This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution Strike out and initial all words not applicable.

Now, therefore, I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at this day of , 19 .
G.H.

FORM E

Army Form C. 386.

Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.

Whereas [*No.—Rank—Name*], of the regiment, was by a *(a)* court-martial held at convicted of the offence of *(b)*, and by a sentence signed on the day of 19 , sentenced *(c)* to be imprisoned with *hard labour for , commencing on the aforesaid day, and such sentence has been confirmed by , as required by law *(d)*.

*If the sentence does not specify hard labour *alter* "with" into "without."

**And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone; and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of , awarded on the day of , 19 .

**This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

(a) Insert "general", "field general," *or* "district," as required.

(b) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place and circumstances.

(c) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into imprisonment for, with *hard labour, commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into imprisonment for , with *hard labour, commencing on the aforesaid day."

*If the commutation does not specify hard labour *alter* "with" into "without."

(d) Add, if necessary, with a remission of ," *or* "but has been mitigated by the omission of the hard labour," *or as the case may be.*

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred to the United Kingdom and there committed to such prison or detention barrack as any other competent military authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison or detention barrack as aforesaid to whom the above soldier is brought, to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military custody and detained in military custory or in civil custody, so far as appears necessary or proper for effecting his transfer to the said prison or detention barrack in the United Kingdom.

Signed at this day of , 19 .
H.I.

In case of a Committal to any intermediate Prison or Detention Barrack being necessary (a).

For the purpose of carrying into effect the above Order, I, the undersigned the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the prison or detention barrack at ,
to receive the said soldier and detain him until he can be transferred, in pursuance of the above order, and to deliver him when required for the purpose of such transfer, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .
I.K.

Order on arrival in United Kingdom of soldier sentenced to imprisonment.

I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order him to be transferred to the prison or detention barrack at to undergo his sentence according to law.

And I do hereby order the governor or chief officer of that prison or detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .
K.L.

(a) This order may be repeated as often as necessary by any authority having power to make it.

App. III

FORM F

Army Form C. 386A.

Form of Order respecting detention under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.

Whereas [*No.—Rank—Name*], of the regiment was by a *(a)* court-martial held at convicted of the offence of *(b)* and by a sentence signed on the day of , 19 , sentenced *(c)* to detention for commencing on the aforesaid day, and such sentence has been confirmed by as required by law *(d)*.

*This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

*And whereas on the day of , 19, the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone; and on the day of , 19 , the sentence was ordered to be put into execution, to run consecutively / concurrently with one of awarded on the day of , 19 .

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred to the United Kingdom and there committed to such detention barrack as any other competent military authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the commandant or chief officer of any such detention barracks as aforesaid to whom the above soldier is brought to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military custody and detained in military custody or in civil custody so far as appears necessary or proper for effecting his transfer to the said detention barrack in the United Kingdom.

Signed at this day of , 19 .
E.F.

(a) Insert "general," "field general," *or* "district," as required.

(b) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place and circumstances.

(c) Substitute, where the original sentence was death, penal servitude, or imprisonment which has been commuted to detention, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into detention for , commencing on the aforesaid day," *or* "to suffer years' penal servitude, and such sentence has been confirmed by , as required by Law and has been commuted into detention for , commencing on the aforesaid day," *or* "to be imprisoned with (or without) hard labour for commencing on the aforesaid day, and such sentence has been confirmed by as required by Law, and has been commuted into detention for commencing on the aforesaid day."

(d) Add, if necessary, "with a remission of ."

If the detention was awarded by the commanding officer, the form from "Whereas" down to "required by law," will be replaced by the corresponding provision in Form "G".

In case of a Committal to any intermediate Detention Barrack being necessary (a).

For the purpose of carrying into effect the above Order, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act and of all other Acts and powers enabling me in this behalf, order the commandant or chief officer of the detention barrack at , to receive the said soldier, and detain him until he can be transferred, in pursuance of the above Order, and to deliver him when required for the purpose of such transfer, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .

D.E.

Order on Arrival of Soldier in United Kingdom

I, the undersigned, the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the said soldier to be transferred to the detention barrack at to undergo his sentence according to law.

And I do hereby order the commandant or chief officer of that detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .

D.E.

FORM G

Form of Commitment to Detention Barrack on award of Detention by Commanding Officer.

Army Form C. 388.

To the commandant or officer or non-commissioned officer in charge of the detention barrack at

Whereas [*No.—Rank—Name*], of the regiment, was on the day of , 19 , awarded by his commanding officer detention for for the offence of

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at this day of , 19 .

D.E.

(a) This order may be repeated as often as necessary by any authority having power to make it.

App. III

FORM H

Army Form C. 389.

Order for Release of Persons subject to Military Law undergoing Imprisonment.

To the governor, commandant, or chief officer of prison or detention barrack at

Whereas [*No.—Rank—Name*], of the regiment, is now in your custody under a sentence of imprisonment by court-martial.

I, the undersigned, being the competent military authority, do hereby order you to release the said soldier.

Signed at this day of , 19 .

E.F.

FORM I

Army Form C. 389A.

Order for Release of Persons subject to Military Law as Soldiers undergoing Detention.

To the commandant or chief officer of the detention barrack at

Whereas [*No.—Rank—Name*], of the regiment, is now in your custody under a sentence of detention by court-martial.

I, the undersigned, being the competent military authority, do hereby order you to release the said soldier.

Signed at this day of , 19 .

E.F.

FORM J

Army Form C. 390.

Form of Releasing Order in case of Detention under the Ward of Commanding Officer.

To the commandant or officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to release the soldier [*No.—Rank—Name*], of the regiment, now in your custody undergoing his sentence pursuant to the award of his commanding officer.

Signed at this day of , 19 .

C.D.

Commanding Officer of the above Soldier.

FORM K

Order for delivery into military custody of a Soldier undergoing Imprisonment.

Army Form C. 391.

To the governor or chief officer of prison or detention barrack at

Whereas [*No.—Rank—Name*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to there to* and then to return him to the above-named prison (or detention barrack) ,or to such other prison (or detention barrack) as may be determined by the competent military authority, and to detain him in military custody until he is so returned or is released in due course of law, and for do doing this shall be sufficient warrant.

*State the purpose for which the military prisoner is required.

Signed at this day of , 19 .
C.D.

If the Prison (or Detention Barrack) to which he is returned is altered.

I, the undersigned, being the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to prison (*or* detention barrack) at , there to undergo the remainder of his sentence.

Signed at this day of , 19 .
C.D.

FORM L

Order for delivery into military custody of a Soldier undergoing Detention.

Army Form C. 391A.

To the commandant or chief officer of the detention barrack at

Whereas [*No.—Rank—Name*], of the regiment, is now in your custody, undergoing a sentence of detention passed by court-martial *(a)*;

(a) If necessary, substitute "awarded by his commanding officer".

App. III

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to , there to*

*State the purpose for which the soldier is required.

and then to return him to the above-named detention barrack, or to such other detention barrack as may be determined by the competent military authority, and to detain him in military custody until he is so returned, or is released in due course of law, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .
C.D.

If the Detention Barrack to which he is returned is altered.

I the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith erturned in military custody to the detention barrack at , there to undergo the remainder of his sentence.

Signed at this day of , 19 .
C.D.

FORM M

Army Form C. 392.

Order for Removal of Soldier undergoing Imprisonment for Embarkation.

To the governor or chief officer of prison (*or* detention barrack) at

Whereas [*No.—Rank—Name*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order that the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the same soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment, to which he belongs is serving *(a)*, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .
J.K.

(a) If necessary, substitute "under orders to serve."

App. III

FORM N

Army Form C. 392A.

Order for Removal of Soldier undergoing Detention for Embarkation.

To the commandant or chief officer of the detention barrack at

Whereas [*No.—Rank—Name,*] of the regiment, is now in your custody undergoing a sentence of detention passed by court-martial *(a)*.

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment to which he belongs is serving *(b)* and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .

J.K.

FORM O

Army Form C. 393.

Order for Transfer of Soldier from one Prison (or Detention Barrack) to another.

To the governor or chief officer of prison (*or* detention barrack) at

Whereas [*No.—Rank—Name*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and convey him in military custody in such manner as may be directed by military authority, to the prison (*or* detention barrack) at there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .

D.E.

(a) If necessary, substitute "awarded by his commanding officer."
(b) If necessary, substitute "under orders to serve."

App. III

FORM P

Army Form C. 393A.

Order for transfer of a person subject to Military Law as a Soldier undergoing Detention from one Detention Barrack to another.

Whereas [*No.—Rank—Name*], of the regiment, is now in your custody, undergoing a sentence of detention passed by court-martial *(a)*;

I, the undersigned, being the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody, and convey him in military custody in such manner as may be directed by military authority, to the detention barrack at , there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at this day of , 19 .

D.E.

FORM Q *(b)*

Army Form C. 396.

Form of order for temporary custody in Prison or Lock-up.

To the governor or chief officer of prison at *(c)*.

Whereas [*No.—Rank—Name*], of the regiment, is now a soldier in military custody.

Now therefore, I, the undersigned, the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody, and detain him until you receive a further order from me, but not longer than seven days, and for so doing this shall be your warrant.

Signed at this day of , 19 .

J.K.

(a) If necessary, substitute "awarded by his commanding officer."

(b) This form can be used only in the case of a soldier as defined by the Army Act.

(c) Substitute, if necessary, "officer in charge of the police station [or *other place*] at

FORM R

App. III

Form of Commitment to Detention Barrack for safe custody while awaiting Trial by, or Sentence of, Court-Martial. Army Form B. 72.

To the officer or non-commissioned officer in charge of the detention barrack at

Whereas [*No.—Rank—Name*], of the regiment, [has been remanded for trial by court-martial] *(a) or* [was on the day of , 19 , tried by court-martial for the offence of], and is awaiting [trial] *(a) or* [the promulgation of the finding and sentence of the court].

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby, in pursuance of the King's Regulations for the Army, enabling me in this behalf, order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

You will take care that the said soldier wears his regimental clothing and necessaries, that he is allowed to exercise during a reasonable portion of each day in association, if possible, but that he is kept apart from soldiers undergoing sentences, and that he receives the ordinary rations and messing of a soldier. He will not be required to perform any duty otherwise than as provided in the aforesaid Regulations for soldiers who are under close arrest.

Signed at this day of , 19 .

(Signature)

FORM S

Form of Releasing Order in case of Confinement in Detention Barrack for safe custody while awaiting Trial by, or Sentence of, Court-Martial. Army Form B. 94.

To the officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to deliver over the soldier [*No.—Rank—Name*], of the regiment, now in your custody for safe custody, pursuant to committal by his commanding officer, to the non-commissioned officer of the escort herewith attending to receive him.

Signed at this day of , 19 .

(Signature)

Commanding Officer of the above soldier.

(a) NOTE.—The forms should be altered to meet cases of confinement before and after the trial respectively by erasing the words not applicable.

App. III

Army Form O. 1797.

FORM T

Order for the Removal in Military Custody of a Deserter or Absentee without leave awaiting Escort

To the governor or chief officer of prison.

Whereas [*No.—Rank—Name*], of the regiment, is now in your custody as a deserter or absentee without leave awaiting escort, I, the undersigned, being
do hereby order you to deliver the said prisoner to the escort producing this authority.

Signed at this day of , 19 .

D.E.

FORM U

Form of Commitment of Person guilty of Contempt of a Court-Martial under s. 28 *of the Army Act*

To the officer or non-commissioned officer in charge of the prison [*or* detention barrack] at

Whereas a court-martial for the trial of , of which I, the undersigned, am president, was on this day sitting at and of the Battalion, Regiment, was guilty of contempt of the court by using insulting language [*or* by using threatening language], [*or* by causing an interruption in the proceedings of such court, *or as the case may be*] namely by [*here describe the act of which the offender was guilty*].

And whereas the said court did order the above-named offender to be imprisoned [*or* to undergo detention] for days.

Now, therefore, the court doth order you to receive the said offender into your custody for safe custody, and for so doing this shall be your warrant.

Signed at this day of , 19 .

(Signature) A.B.,
President of the above Court-Martial.

Rules for Field Punishment

RULES FOR FIELD PUNISHMENT MADE UNDER SECTION 44 OF THE ARMY ACT

1. A court-martial, or a commanding officer, may award field punishment for any offence committed on active service, and may sentence an offender to such punishment for a period not exceeding, in the case of a court-martial, 3 months, and in the case of a commanding officer, 28 days. F. P. Rules.

2. Where an offender is sentenced to field punishment he may, during the continuance of his sentence, unless the court-martial or the commanding officer otherwise directs, be punished as follows:—

(a) He may be kept in irons, *i.e.*, in fetters or handcuffs, or both fetters and handcuffs; and may be secured so as to prevent his escape.

(b) Straps or ropes may be used for the purpose of these rules in lieu of irons.

(c) He may be subjected to the like labour, employment, and restraint, and dealt with in like manner as if he were under sentence of imprisonment with hard labour.

3. Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or to leave any permanent mark on the offender; and a portion of a field punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

4. Field punishment will be carried out regimentally when the unit to which the offender belongs or is attached is actually on the move, but when the unit is halted at any place where there is a provost marshal, or an assistant provost marshal, the punishment will be carried out under that officer.

5. When the unit to which an offender under sentence of field punishment belongs or is attached is actually on the move, such offender shall march with his unit, carry his arms and accoutrements, perform all his military duties as well as extra fatigue duties, and be treated as a defaulter.

(Signed) DERBY.

The War Office,
13th October, 1923.

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of Section 44 of the said Act.

(Signed) H. F. OLIVER
A. D. BOYLE

Admiralty,
19th October, 1923.

Form of Application for a Court-Martial

Army Form B. 116.

Regiment.

Station Date 19

Application for a Court-Martial.

SIR,

I have the honour to submit charge against No. of the under my command, and request you will obtain the sanction of that a Court-Martial may be assembled for his trial at

The case was investigated by *(a)*

A Court of Inquiry was held on *(b)* (date) at (Station).

President } Ranks, names and corps.
Members }

The accused is now at His General Character is *(c)*

I enclose the following documents *(d)*:—

1. Charge-Sheet (in duplicate) *(e)*.
2. Summary of Evidence, original *(f)* and copy. copies.
3. Original Exhibits *(g)*.
4. List of witnesses for the prosecution and defence (with their present stations or addresses) *(g)*.
5. List of Exhibits *(h)*.
6. Correspondence *(g)*.
7. Statement as to character (A.F. B.296) and regimental and company, etc., conduct sheets of accused *(g)*.
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial [R.P. 14 (B)] *(h)*.

I have the honour to be,
Sir,
Your obedient Servant,
Signature of Commanding Officer

To

MEDICAL OFFICER'S CERTIFICATE

I certify that No. , Regiment, is* to undergo trial by Court-Martial.

Signature of the Medical Officer

*Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence [R.P. 19 (B) (iii)].

(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges; otherwise to be struck out [R.P. 19 (B) (iii)].

(c) To be filled in by the Commanding Officer.

(d) Any items not applicable to be struck out.

(e) One copy to be sent to the President; one copy to be filed with the application for trial.

(f) Original summary of evidence to be sent to the President.

(g) 3, 4, 6, and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(h) 5 and 8 to be sent to the President.

[If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.]