THE ARMY ACT

[44 and 45 Vict. c. 58]

ss.1-3

An Act to consolidate the Army Discipline and Regulation Act, 1879, *and the subsequent Acts amending the same**

Preliminary

Short title of Act.

1. This Act may be cited for all purposes as the Army Act.

Mode of bringing Act into force.

2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force or continuing the same.

Note.

For explanation of the reasons for bringing this Act into force annually by a separate Act, see Ch. II, paras. 16 and 33.

Division of Act.

3. This Act is divided into five parts, relating to the following subject-matters; that is to say.

Part I—Discipline;

Part II—Enlistment;

Part III—Billeting and impressment of carriages;

Part IV—General provisions;

Part V—Application of military law, saving provisions, and definitions.

Part I

DISCIPLINE

Crimes and Punishment

Offences in respect of Military Service

PART I

s. 4. Offences in relation to the enemy punishable with death.

4. Every person subject to military law[1] who commits any of the following offences; that is to say,

(1) Shamefully abandons[2] or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend; or

* The amendments to the Act made by the Army and Air Force (Annual) Acts, the T.R.F. Act, 1907, the Air Force (Constitution) Act, 1917, and the Territorial Army and Militia Act, 1921, are incorporated in accordance with the directions in 22 Geo. v, c. 22, s. 15.

(2) Shamefully casts away[3] his arms, ammunition, or tools in the presence of the enemy; or

(3) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice[4] sends a flag of truce to the enemy; or

(4) Assists the enemy with arms, ammunition, or supplies,[5] or knowingly[6] harbours or protects an enemy not being a prisoner; or

(5) Having been made a prisoner of war, voluntarily[7] serves with or voluntarily aids the enemy; or

(6) Knowingly[6] does when on active service[8] any act calculated to imperil the success of His Majesty's forces or any forces co-operating therewith, or any part of any such force.

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

NOTE

1. *Subject to military law.*—For an enumeration of persons so subject see Part V, and introductory observations thereto.

2. *Shamefully abandons, etc.* This offence can only be committed by the person in charge of the garrison, post, etc., and not by the subordinate under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and munitions, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore an offence under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in s. 6 (2) *(e)* or *(h)*, where it has reference to the position of an individual.

Particulars of a charge under the first part of this paragraph must detail some circumstances which make the abandonment in a military sense shameful.

3. *Shamefully casts away.* The particulars of the charge must show the circumstances which make the act in a military sense shameful (see *e.g.* specimen charge-sheet No. 1, p. 715). The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

4. *Treacherously or through cowardice.* The particulars of the charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under s. 5 (4).

5. *Supplies.* This would include the taking any steps to restore a supply of water cut off by our forces.

6. *Knowingly.* Evidence should if possible be given that the accused knew the person harboured or protected to be an enemy; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances. A similar observation applies to "knowingly" in (6).

7. *Voluntarily.* Proof of "serving with" or "aiding" without any visible sign of compulsion appears to be sufficient to constitute a *prima facie* case justifying a conviction if no rebutting evidence is given by the defence.

8. For definition of *active service*, see s. 189.

PART I

s. 5.
Offences in relation to the enemy not punishable with death.

5. Every person subject to military law who on active service commits any of the following offences; that is to say,

(1) Without orders[1] from his superior officer leaves the ranks in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or

(2) Without orders[1] from his superior officer, wilfully destroys or damages any property; or

(3) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin His Majesty's service when able to rejoin the same; or

(4) Without due authority[1] either holds correspondence with, or gives intelligence to,[2] or sends a flag of truce to the enemy; or

(5) By word of mouth, or in writing, or by signals, or otherwise spreads reports calculated to create unnecessary alarm or despondency[3]; or

(6) In action, or previously to going into action, uses words calculated to create alarm or despondency[3]; or

(7) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,[4]

shall, on conviction by court-martial, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

NOTE.

1. *Without orders; without due authority.* As soon as *prima facie* evidence negativing "orders" or "authority" is given, a court may convict unless the accused proves that he had orders or authority.

2. *Gives intelligence to.* A man must be taken to intend the natural consequences of his actions, and the paragraph appears to be wide enough to cover the case of intelligence reaching the enemy through the capture or the republication (*e.g.*, by relatives or newspapers) of letters, sketches, photographs, etc. Everyone connected with the forces should recognize the grave danger of assisting the enemy by gossip, whether verbal or written, as to plans, prospects, operations, numbers, etc. As to "injurious disclosures" generally, see s. 36, and the Official Secrets Acts 1911 and 1920 as set out on p. 895 *et seq.* See also K.R. 521, 522.

3. Para. (5) The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create unnecessary alarm or despondency. A similar remark applies to a charge under para. (6). It is not necessary to aver or prove that the reports were false, indeed the truth may increase the offence; nor is it necessary to show that any effect was actually produced by the reports spread or words used; it could, however, seldom be expedient to try an officer or soldier under this section for expressions which could not be shown to have had some effect. The offence under para. (5) may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country.

4. Paragraph (7) is confined to acts, neglect, omissions or which show cowardice, and the particulars of the charge must be framed accordingly (*see, e.g.*, specimen charge-sheet No. 4, p. 715). It must be shown that the accused, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service or by the requirements of the case as applicable to the position in which he was placed at the time. Misbehaviour of any kind not evidencing cowardice cannot be charged under this paragraph.

PART I

s. 6. Offences punishable more severely on active service than at other times.

6.—(1) Every person subject to military law who commits any of the following offences[1]; that is to say,

[*Para. (a) transferred to subs. (2) by A. and A.F. (A) Act,* 1928.]

[*Paras. (b), (h) and (k) transferred to subs. (2) by A. and A.F. (A.) Act,* 1930.]

[*Paras. (c), (d) and (g) transferred to subs. (2) by A. and A.F. (A.) Act,* 1928.]

[*Paras. (e) and (f) transferred to subs. (2) by A. and A.F. (A.) Act,* 1925. *Subs (2) renumbered (3) by A. and A.F. (A) Act,* 1928.]

(*i*) Treacherously makes known the parole, watchword, or countersign to any person not entitled to receive it; or treacherously gives a parole, watchword, or countersign different from what he received[6]; or

[*Para.* (*j*) *transferred to subs.* (2) *by A. and A.F.* (*A.*) *Act*, 1925. *Subs.* (2) *renumbered* (3) *by A. and A.F.* (*A*) *Act*, 1928.]

[*Para.* (*k*) (i) *transferred to subs.* (2) *by A. and A.F.* (*A*) *Act*, 1928.]

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service be liable if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2) Every person subject to military law who commits any of the following offences; that is to say,

(*a*) Leaves his commanding officer to go in search of plunder[8]; or

(*b*) Forces a safeguard[9]; or

(*c*) Forces or strikes[9A] a sentinel; or

(*d*) Breaks into any house or other place[10] in search of plunder[11]; or

(*e*) Being a soldier acting as sentinel sleeps or is drunk on his post[7], or

(*f*) Without orders from his superior officer, leaves his guard, piquet, patrol or post[2]; or

(*g*) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever[3], intentionally[4] occasions false alarms in action, on the march, in the field, or elsewhere[5]; or

(*h*) Being a soldier acting as sentinel, leaves his post[7] before he is regularly relieved,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(3) Every person subject to military law who commits any of the following offences; that is to say,

(*a*) By discharging firearms, drawing swords, beating drums, making signals, using words or, by any means whatever, negligently occasions false alarms in action, on the march, in the field or elsewhere[12]; or

(*b*) Makes known the parole, watchword, or countersign to any person not entitled to receive it; or, without good and sufficient cause, gives a parole ,watchword, or countersign different from what he received[13]; or

PART 1
—
s. 6.

(c) Impedes the provost marshal[14] or any assistant provost marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost marshal, or, when called on, refuses to assist in the execution of his duty the provost marshal, assistant provost marshal, or any such officer, non-commissioned officer, or other person or

(d) Does violence to any person bringing provisions or supplies to the forces; whether His Majesty's forces or forces co-operating therewith; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving[15]; or

(e) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to any such force as aforesaid, contrary to any orders[16] issued in that respect,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. The punishment for the offences here mentioned varies very widely according as the offences are committed on active service or not on active service; and where a man is charged with committing any of them on active service, those words must always be inserted in the charge. For the definition of *active service*, see s. 189.

2. *Post.* As used with respect to an individual this word refers to the position or place in which it may be the duty of an officer or soldier to be, especially when under arms; and with respect in particular to a sentry, it applies to the spot where the sentry is left to the observance of his duties by the officer or N.C.O. posting him; or to any limits specially pointed out as his beat. In determining what, in any particular case, is a post, the court will use their military knowledge. See note 7 below.

The place in which the person was posted is material and should be stated in the charge.

3. The particulars of the charge must set out exactly the signal made or the words used. It means other than words are used they must be specified briefly in the particulars of the charge.

4. *Intentionally.* See note 6 to s. 4 and Ch. VII, para. 23.

5. Where reliance is placed on the word "elsewhere," the place should be specified in the statement of the offence.

6. Although treachery must be averred in a charge under this paragraph, and want of good and sufficient cause in a charge under subs. (3) *(b)*, the particulars of the charge need not detail the circumstances of the treachery or of the absence of good and sufficient cause. Upon proof that the accused made known the watchword to a person not entitled to receive it, or gave a watchword different from that which he received, the court will be at liberty to infer the treachery or the absence of good and sufficient cause, unless the accused can show that he acted from good cause and not treacherously. The particulars of the charge must aver that the person was not entitled to receive the watchword.

Watchword will include any authorized pass-word not being parole or countersign which might, for example, be adopted for a particular emergency.

7. *Post.* See note 2 above. The fact of the sentry not being regularly posted is immaterial if he is charged with an affence committed while on his post. When, however, he leaves his post and commits an offence, it is always necessary to prove that he has been regularly posted. A soldier is liable, if, being one of the guard or body furnishing the sentry for the post, he has undertaken the duty of sentry, even though not posted in the regular way by a N.C.O. A sentry found drunk even a

short distance from his post should be charged with leaving his post; he cannot properly be charged with being drunk on his post, though he may be charged with drunkenness, the particulars of the charge showing that he was on duty at the time. As to "stablemen," see K.R. 623.

8. This paragraph having regard to the special military significance of the term "plunder," is applicable only to offences committed on active service. For meaning of "commanding officer" see Ch. XI, para. 6.

9. *Safeguard.* A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house, cellar, or other property under his especial care as to force the whole party. A man posted solely to control traffic is not a "safeguard" for the purposes of this provision.

9A. An accused charged under this section with striking a sentinel could not properly be found guilty of using or offering violence to a sentinel under s. 56 (4A) See note 1B to that section.

10. The "other place" should be specified in the charge.

11. *Plunder.* See above note 8.

12. See notes 3 and 5 above. This paragraph applies only to false alarms among the troops occasioned negligently.

13. See note 6 above. This paragraph only differs from subs. (1) *(i)* in the omission of the treacherous character of the offence.

14. *Provost marshal.* As to appointment and duties of provost marshals see s. 74, and Ch. IV, para. 40. As s. 74 only provides for the appointments of provost marshals and assistant provost marshals abroad, a person should not be charged under this paragraph when the offence is committed in the United Kingdom; in such cases the charge should be laid under s. 8 or s. 9 (if applicable), or under s. 40. The court may exercise their military knowledge as to whether a person was a provost marshal, assistant provost marshal or a person legally exercising authority under or on behalf of the provost marshal; but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost marshal or assistant provost marshal, or was not legally exercising the above-mentioned authority.

15. See Ch. XIV, para. 413 (footnote). It is frequently of the highest importance to conciliate the inhavitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence which in other circumstances would be trivial, may require severe punishment, as for instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the army. As an offence under the paragraph will really be a civil offence when not committed on active service, a person should not be charged under this paragraph when the offence is committed in the United Kingdom or in any other place where there is a civil court competent conveniently to deal with the case (see Ch. VII, para. 3). On the other hand, on active service, offences which, if committed in the United Kingdom, would be tried by a civil court, may be better tried under this enactment. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

16. The particulars of the charge must show how the act charged was irregular and contrary to orders.

Mutiny and Insubordination

Mutiny and sedition.

7. Every person subject to military law who commits any of the following offences; that is to say,

(1) Causes or conspires with any other persons to cause any mutiny or sedition[1] in any of His Majesty's military, naval, or air forces (including any Dominion Force); or

(2) Endeavours to seduce any person in any such force as aforesaid, from allegiance to His Majesty, or to persuade any person in any of such force as aforesaid, to join in any mutiny or sedition[2]; or

(3) Joins in, or being present[3] does not use his utmost endeavours[4] to suppress, any mutiny[5] or sedition in any such force as aforesaid; or

PART I — ss. 7, 8.

(4) Coming to the knowledge of any actual or intended mutiny or sedition in any such force as aforesaid does not without delay inform his commanding officer[6] of the same.

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

NOTE.

1. See as to these offences, Ch. III, paras. 5-7. A man might be tried under this paragraph for conspiring to cause a mutiny though the conspiracy proved abortive, and no mutiny took place.

2. Civilians who endeavour to seduce any person serving in His Majesty's forces by sea, land or air, from allegiance to His Majesty, or to incite any such person to commit any traitorous or mutinous practice, are liable on conviction by a civil court to penal servitude for life under 37 Geo. III, c. 70, as amended by 7 Will. IV and 1 Vict. c. 91. The Incitement to Disaffection Act, 1934 (24 and 25 Geo. 5, c. 56), makes further provision for the prevention, detection and punishment of endeavours to seduce members of His Majesty's forces from their duty or allegiance.

3. Doubts might well arise whether men present when a mutiny was being contrived or had actually begun were actually joining it or not. This paragraph provides that if they are present and do not use their utmost endeavours to suppress it, they will be equally guilty as if they took that active part which constitutes joining in a mutiny. Consequently, men present on parade, or present accidentally, or induced by false pretences to attend a meeting, where a mutiny is begun or contrived, will be guilty of an offence under this paragraph although they took no active part, and therefore can hardly be said to have joined in the mutiny. If a doubt exists as to whether any individual did or did not take such an active part as to have joined in the mutiny, he may be charged in alternative charges under para. (1) and this paragraph.

4. This does not necessarily mean the utmost of which a man is capable, but such endeavours as a man might be reasonably and fairly expected to make.

5. Each one of a body of men not marching, or not coming from their barrack room when duly ordered, is guilty of mutiny, if he cannot show that his disobedience was occasioned solely by reason of compulsion.

6. This expression will include any person having a military command over the person who has knowledge of the mutiny, or sedition, and is not limited by R.P. 129; see Ch. XI, para. 6. A private soldier, for example, would properly inform his sergeant, and information so given would be held to be given to his commanding officer within the meaning of this section.

Striking or threatening superior officer.

8.—(1) Every person subject to military law who commits any of the following offences[1]; that is to say,

Strikes or uses or offers any violence[2] to his superior officer,[3] being in the execution of his office.[4]

shall, on conviction by court-martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

(2) Every person subject to military law who commits any of the following offences[1]; that is to say,

Strikes or uses or offers any violence[2] to his superior officer[3] or uses threatening or insubordinate language[5] to his superior officer,

shall, on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. See s. 56 (4A.), (4B), (4C), under which an accused charged with striking may be found guilty of using or offering violence; if charged with using violence, may

be found guilty of offering violence; and if charged with using threatening language, may be found guilty of using insubordinate language.

2. *Offers any violence.* The words include any defiant gesture or act which if completed would end in actual violence, but do not extend to an insulting or impertinent gesture or act from which violence could not result. For example, a soldier throwing down his arms or his equipment on parade, or throwing away his cap or belt in an impertinent manner, but in such a direction that they could not strike a superior, could not be deemed to offer violence within the meaning of this enactment. So also a man shaking his fist, or even drawing a bayonet, or otherwise making a show or violence against a superior, behind the bars of a cell or at such a distance that striking him was at the moment impossible, is not guilty of offering violence. On the other hand, throwing a missile would be "using" or "offering" violence according to the results, and pointing a loaded firearm at a superior would be "offering" violence. Pointing an unloaded firearm should be charged under s. 40, unless threatening or insubordinate language is used.

If the violence is used in self defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reason to believe it was necessary for his actual protection from injury, and that he used no more violence than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence.

Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted.

3. *Superior officer.* This expression in this section means not only a superior in rank as defined by s. 190 (7), but also a senior in the same grade where that seniority gives power of command according to the usuages of the service, but one private soldier can never be the "superior officer" of another. The court should be satisfied, before conviction, that the accused knew the person with respect to whom the offence was committed to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware of his being his superior officer. Where the accused is charged with an offence against a superior officer who is of the same grade, evidence must be adduced to show that the latter is senior to the accused.

A military policeman is not, as such, the superior officer of a private soldier. When a soldier, who is arrested for drunkenness, strikes an N.C.O. (being his superior officer) of the military police and is brought to trial, the convening officer will consider according to the particular circumstances, whether it is necessary or expedient to charge the soldier with the graver offence of striking his superior officer, or whether the case would be met by charging the accused with one of the less serious offences specified in s. 10 (2) or (3).

See generally as to offences against superiors, K.R., 619.

4. *In the execution of his office.* It is difficult accurately to define these words, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior is or is not in the execution of his office. An officer in plain clothes may undoubtedly be in the execution of his office; but where the officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the soldier at the time of offering the violence that the person assaulted was an officer, which is not the case where the officer is in uniform. On the other hand, there may be circumstances in which an officer in uniform is not in the execution of his office. It may be taken in general that striking or using violence to any superior officer by a soldier over whom it is at the time the duty of that superior officer to maintain discipline, would be striking or using violence to him in the execution of his office.

5. *Threatening or insubordinate language.* Where the charge is for using threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed.

Expressions used merely for exculpation would not be punishable under this section. It has been ruled that "expressions, however offensive to a superior, that are used (1) in the course of a judicial inquiry, (2) by a party to that inquiry, and (3) upon a matter pertinent to and *bona fide* for the purposes of that inquiry, as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge."

Expressions used *of* a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under s. 40, and not under this section, but the use of threatening or otherwise insub-

ordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior constitutes an offence of "using insubordinate language" under this section.

The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior.

As to the use of coarse and abusive language by a man when drunk, see Ch. III, paras. 47, 48; and for general observations on insubordinate language, see Ch. V., para. 71.

Improper language which does not amount to insubordinate language, or cannot be proved to have been used to a superior officer, must be charged under s. 40.

Disobedience to superior officer.

9.—(1) Every person subject to military law who commits the following offence; that is to say.

Disobeys[1] in such manner[2] as to show a wilful defiance of authority any lawful command[3] given personally[4] by his superior officer[5] in the execution of his office,[6] whether the same is given orally, or in writing, or by signal, or otherwise.

shall, on conviction by court-martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

(2) Every person subject to military law who commits the following offence; that is to say,

Disobeys[1] any lawful command[7] given by his superior officer,[5] shall, on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

If he commits such offence not on active service, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

1. The disobedience must be immediate or proximate to the command, and actual non-compliance must be proved. A man who says "I will not do it" does not necessarily disobey. A man who when ordered to do a duty at a future time says "I will not do it," does not thereby commit an offence under this section, though he may be liable under s. 8 (2). Ch. III, para. 11.

An omission arising from misapprehension or forgetfulness is not an offence under this section. Nor is the act of a soldier who declines to sign his account upon the ground that they are incorrect. Nor is failure to obey a command where obedience would be physically impossible.

Religious scruples, however *bona fide*, are no excuse for neglect or refusal to obey orders.

2. *Disobeys in such manner..any lawful command.* See Ch. III, paras. 10-14. The particulars of the charge must specify the command, and state that it was given personally, and must show the manner in which the disobedience showed a wilful defiance of authority. The particulars should also show how the superior officer was in the execution of his office (see note 4 to s. 8, and specimen charge-sheets Nos. 19 and 22, pp. 718-9), but the court may make use of their military knowledge for determining whether the superior officer was in the execution of his office, and whether he was a superior officer who by virtue of his office was authorized to give such a command.

3. *Lawful command.* The command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay, or prevent a military proceeding. Thus, a command given by an officer to his soldier servant to perform some domestic office not relating to military duty is not a command within the

meaning of this section. A soldier who refuses to take a letter relating to private theatricals upon the order of an N.C.O. does not disobey a lawful command.

With regard to the performance of duties while under arrest, see K.R. 540.

A convalescent patient may lawfully be ordered to assist the hospital staff by doing such fatigue work as he may be fit for, or for the good of his health to occupy himself with some prescribed form of handiwork.

A soldier may lawfully be ordered to have his hair cut.

A civilian cannot give a "lawful command" to a soldier employed under him, *e.g.*, in a pay office; but it may well be the soldier's duty as such to do the act indicated, apart from any order, and, if so, he may be punished for not doing so under s. 40.

As to orders to undergo medical treatment, see s. 18 (3) and note.

As to disobedience of general or garrison orders, see s. 11.

It was held in *Warden* v. *Bailey* (1815) 4 M. & S. 400, that insubordinate discussion (with other N.C.Os.) of an illegal order was a breach of good order and military discipline.

4. A command does not cease to be given "personally" because it is given to a number of men at one time.

5. For the meaning of the expression "superior officer," see note 3 to s. 8.

6. *In the execution of his office.* See note 2 above, and note 4 to s. 8.

7. *Disobeying lawful command.* See note 3 above.

To establish an offence under this sub-section, it is not requisite to prove that the command was given personally by a superior. It is sufficient to show that it was given by the deputy or agent of a superior, whom, according to the usages of the service or otherwise, the accused might reasonably suppose to have been duly authorized to notify to him the command of his superior. But it must be a specific command to an individual, and must be given as being the command of a superior by virtue of his office or otherwise was authorized to give such a command.

An officer refusing to go into hospital when ordered could be charged under this sub-section.

Insubordination.

10. Every person subject to military law who commits any of the following offences; that is to say,

(1) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes or uses or offers violence to any such officer[1]; or

(2) Strikes or uses or offers violence to any person, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer[2]; or

(3) Resists an escort whose duty it is to apprehend him or to have him in charge[3]; or

(4) Being a soldier, breaks out of barracks, camp, or quarters,[4] shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. A person may be charged under this paragraph whether the officer who ordered him into arrest was an inferior or superior rank, but when the officer was of superior rank, the offender may be charged under s. 8 or s. 9. Only officers should be charged under this paragraph.

2. It will be observed that a charge may be laid under this paragraph for assaulting a civilian policeman, if the person committing the assault is subject to military law, and has been placed in the policeman's custody by an officer, warrant officer, or N.C.O.

3. The resistance may be passive. A man lying down and refusing to move, if physically able to move, "resists." Threats and a threatening attitude which in fact deter an escort from arresting a man may amount to "resisting" the escort.

The particulars of the charge should specify the nature of the resistance; (see specimen charge-sheet No. 26, p. 719). The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge. Breaking away from an escort is not by itself an offence under this section, but may be charged under s. 22.

4. *Breaks out of barracks, etc.* This offence consists in a soldier quitting barracks, etc., at a time when he has no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a C.O. in determining whether to deal with it as a mere breach of discipline under this paragraph, or to reserve it for trial as amounting to desertion. The particulars of the charge must show that the absence from barracks, etc., was without permission, or otherwise unlawful.

If the charge be for breaking out of barracks, it must be proved that the accused left the confines of the barracks as charged, and so also if the charge is for breaking out of camp. A charge of breaking out of quarters would hold good in the case of a man quartered in one part of a barrack and improperly leaving that part for another part where he had no right to be.

A soldier who breaks out of barracks, camp or quarters, and remains absent for some time should, if brought to trial by court-martial, be charged only with desertion or absence without leave (s. 12 or s. 15); and if he was a defaulter at the time, the fact should be stated in the particulars of the charge. See K.R. 649.

Neglect to obey garrison or other orders.

11. Every person subject to military law who commits the following offences; that is to say,

neglects to obey any general or garrison or other orders,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression "general orders" in this section shall not include the King's Regulations for the Army or any order in the nature of a regulation published for the general information and guidance of the army.

NOTE.

The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental or of a like nature. Disobedience of a specific order in the nature of a command must be dealt with under s. 9, and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under s. 40.

Ignorance of this order is no excuse if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. A copy of the order contravened must be produced on oath to the court and the court will make a record in the proceedings of its having been so produced; a written order cannot be proved by oral testimony. Evidence must also be given to show that the order was duly posted (see K.R. 74 and 1602) or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Disobedience of a K.R. may be punished under s. 40, but if a K.R. is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished under this section.

The offence of concealment of venereal disease by a soldier is to be dealt with under this section. K.R. 529.

Desertion, Fraudulent Enlistment, and Absence without Leave

PART I

s. 12. Desertion.

12.—(1) Every person subject to military law who commits any of the following offences; that is to say,

(*a*) Deserts[1] or attempts to desert[2] His Majesty's service; or

(*b*) Persuades, endeavours to persuade, procures or attempts to procure, any person subject to military law to desert from His Majesty's service.

shall, on conviction by court-martial—

if he committed such offence when on active service[3] or under orders for active service, be liable to suffer penal servitude or such less punishment as is in this Act amended; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment or such less punishment as is in this Act mentioned; and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.[4]

(2) Where an offender has fraudulently enlisted once or oftener, he may, for the purposes of trial for the offence of deserting or attempting to desert His Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.[4]

(3) For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section[4].

NOTE.

1. See Ch. III, paras. 17-26; K.R. 581-597.

Upon a charge of desertion the particulars should state, and the prosecution should prove, both the date when the absence began, and the date when it ended (by return, surrender, apprehension, or re-enlistment). It is not sufficient to allege and prove absence "on or about" a certain date, or "from some date subsequent to......"

To establish desertion it is necessary to prove some circumstance justifying the inference that the accused intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for service abroad or service in aid of the civil power. If the basis of the charge is an intent to avoid embarkation, or some other special duty or service, the particulars should contain an allegation to this effect.

In order to establish in evidence that a soldier has deserted or attempted to desert "when under orders for embarkation," the original or a certified true copy of orders detailing the accused for embarkation must be produced by a witness on oath, and evidence must be given that the orders were duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted

PART I — s. 12.

with their contents (see K.R. 1099, 1100). This would not, however, exclude proof of verbal orders for embarkation given by a C.O. in an emergency.

Personal warning and acknowledgment of such warning in accordance with K.R. 1099 should also be proved whenever possible.

If a man warned for a draft overstays his "draft leave," even though he does not know the exact date fixed for sailing, it will be open to the court, if the circumstances warrant it, to infer that he intended to escape the important service on which he was ordered and to convict him of desertion.

A person charged with desertion may be found guilty of attempting to desert, or of being absent without leave, and a person charged with attempting to desert may be found guilty of desertion, or of being absent without leave (s. 56 (3) (4); see also in connection with findings of absence without leave, note 1 to s. 161).

As to forfeiture of prior service on conviction for desertion or fraudulent enlistment, see ss. 79 (2), 84 (2), and notes; as to forfeiture of pay on conviction for desertion, see s. 138 (1) and P.W. 879 *(a)*; as to liability to general service or transfer on conviction or confession of desertion or fraudulent enlistment, see s. 83 (7); as to liability to transfer of soldier delivered into military custody or committed by a court of summary jurisdiction as a deserter see s. 83 (8); as a descriptive reports of deserters, escorts, and generally, see K.R., 581-597; and as to inquiry into absence and confession of desertion or fraudulent enlistment, see 72, 73, and R.P. 125.

Any person who falsely represents himself to any authority to be a deserter may be sentenced by a civil court of summary jurisdiction to imprisonment, with or without hard labour, for any period not exceeding three months (s. 152); see also as to punishment by a like court of persons inducing officers or soldiers to desert, s. 153; and as to apprehension of deserters, s. 154.

As to a false statement by a soldier to his C.O. that he has been guilty of desertion or fraudulent enlistment, see s. 27 (3).

As to desertion by men of the Territorial Army, see T.R.F. Act, s. 20.

When under K.R. 616 *(b)* a superior officer directs the case of an offender against whom a charge of desertion has been preferred to be summarily disposed of, he should order the offence to be disposed of as one of absence without leave.

2. *Attempt to desert.* To establish an attempt to desert, some act which, if completed, would constitute desertion, as above described, must be proved. A mere intention to desert does not amount to an attempt to desert.

3. *On active service.* See note 1 to s. 6.

4. If the accused is put on his trial for two offences of desertion, or for fraudulent enlistment and desertion, and it is desired that the higher punishment allowed for a second offence should be awarded, the charges must be on separate charge-sheets, and the trials distinct, though they may be held before the same court. To enable the punishment of penal servitude to be awarded, the court must, of course, be a general court-martial, or, if on active service, a field general court-martial. For the general principles to be adopted in connection with the placing of charges in separate charge-sheets, see note 1 to R.P. 62.

The case is similar where the charge is for fraudulent enlistment under s. 13; but in that case, if he has deserted first, and fraudulently enlisted afterwards, he cannot be awarded the higher punishment unless he has served between the date of the desertion and the date of the fraudulent enlistment (s. 13 (2) (3)).

For example, if a soldier deserted on the 1st October, 1920, and was apprehended, convicted, and punished, and after undergoing his punishment returns to the ranks, and on the 10th March, 1923, fraudulently enlists, then, on conviction for such fraudulent enlistment, he can be sentenced to penal servitude, just as if the former conviction for desertion had been a conviction for fraudulent enlistment. If, however, a soldier who deserted on the 5th January, 1923, and is not appregended, abandons his intention of permanantly quitting the service, and fraudulently enlists on the 15th July, 1923, then, although he may be convicted both of the desertion and the fraudulent enlistment, he cannot be sentenced to penal servitude for the fraudulent enlistment, as the desertion was his absence "next before the fraudulent enlistment," and the exception in s. 13 (3) applies.

Where the desertion and fraudulent enlistment form in effect one transaction, the man should not as a rule be tried for both offences.

Fraudulent enlistment.

13.—(1) Every person subject to military law who commits any of the following offences; that is to say,

(a) When belonging to either the regular forces, or the territorial army when embodied,[1] without having obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist or enrol, enlists[2] or enrols himself in the regular forces[3] or in any force raised in India, Burma, or a colony; or

(b) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrols himself, or enlists in the territorial army or in any of the reserve forces, or in the Air Force, or enters the Royal Navy,[4]

shall be deemed to have been guilty of fraudulent enlistment,[5] and shall, on conviction by court-martial, be liable—

(i) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and

(ii) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2) Where an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.[6]

(3) Where an offender is convicted of the offence of fraudulent enlistment, then for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting or attempting to desert His Majesty's service may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not upon his conviction for that fraudulent enlistment be reckoned as a previous offence of deserting or attempting to desert.[6]

NOTE.

1. The particulars of the charge must specify the force to which the accused belonged at the time of his enlistment. A member of the Territorial Army enlisting when the Territorial Army is not embodied, cannot be charged under this section, though he may be charged under s. 33 for making a false answer.

2. A copy or duplicate of the attestation paper is proof of enlistment (s. 163 (1) (a)).

3. This sub-section covers the case of a soldier of the Royal Marines who enlists in the regular forces while a deserter or an absentee from one of His Majesty's ships. See proviso *(a)* to s. 179 (15).

4. Subs. (1) *(b)* covers the case of a soldier who enters the Royal Navy or enlists in the Royal Air Force, but subs. (1) *(a)* does not cover that of a sailor or airman who enlists in the Army. Such cases can be dealt with under s. 33.

PART I
—
ss. 13-15.

5. For forfeiture of service on conviction for fraudulent enlistment, see ss. 79, 84 (2) and 161.

Where a soldier is charged with fraudulent enlistment, by reason of which he has obtained a free kit of necessaries, the receipt of that free kit must be mentioned in the particulars of the charge and (unless the accused pleads guilty) proved in evidence in order to enable the court to sentence him to a deduction from his pay as compensation for the free kit of necessaries, but the charge of fraudulently obtaining a free kit of necessaries cannot by itself be maintained; see R.P. 13 (F), K.R. 624, and R.P., App. I, note as to use of Forms of Charges (23), p. 701. The issue of a free kit of necessaries may be proved by a copy of a record thereof in the regimental books (s. 163 (1), *(g)* and *(h)*).

6. As to conviction for two offences, and the punishment for the second offence, see note 4 to s. 12.

For reference to further provisions of the Act as to fraudulent enlistment and desertion, see note 1 to s. 12. See also Ch. III, paras. 26 and 27.

Assistance of or connivance at desertions.

14. Every person subject to military law[1] who commits any of the following offences; that is to say,

(1) Assists[2] any person subject to military law to desert His Majesty's service; or

(2) Being cognizant of any desertion or intended desertion of a person subject to military law, does not forthwith give notice[3] to his commanding officer,[4] or take any steps in his power[5] to cause the deserter or intending deserter to be apprehended.

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

NOTE.

1. As to similar offences by civilians, see s. 153.

2. It must be proved that the accused knew that the assistance given by him was for the purpose of desertion.

3. *Does not forthwith give notice.* The time at which the accused became cognizant of the desertion, and, if he gave notice to his C.O., the time at which he gave notice, are material, and should be specified in the charge.

4. *Commanding officer.* This includes any person having military command over the accused. The court may use their military knowledge in determining whether the person is for this purpose a commanding officer or not. See Ch. VI, para. 10, and note 6 to s. 7.

5. If the charge is under the latter part of (2), the particulars must allege the steps which it was in the power of the accused to take in order to cause the deserter, or intending deserter, to be apprehended.

Absence from duty without leave.

15. Every person subject to military law who commits any of the following offences; that is to say,

(1) Absents himself[1] without leave[2]; or

(2) Fails to appear[2] at the place of parade[3] or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity[2] quits the ranks; or

(3) Being a soldier, when in camp or garrison or elsewhere is found beyond any limits fixed or in any place prohibited by any general garrison or other order,[4] without a pass or written leave from his commanding officer[5]; or

(4) Being a soldier without leave from his commanding officer,[5] or without due cause,[2] absents himself from any school when duly ordered to attend there,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. *Absents himself.* See Ch. III, paras. 17-24; as to the apprehension of absentees without leave, see s. 154; see also note 3 to s. 22 with regard to a soldier who escapes from arrest and then absents himself without leave. For forfeiture of pay on conviction for absence without leave, see ss. 137 and 138, and the Pay Warrant.

A soldier tried for desertion or attempted desertion may, under s. 56, be found guilty of absence without leave; but if only charged with absence without leave he cannot be convicted of desertion or attempted desertion. When a soldier has been absent without leave for 21 *clear* days a court of inquiry will be assembled (s. 72). See also K.R. 581 *et seq.*; 742; R.P. 125.

The absence must be from the place where it is his duty to be, and where he ought to be found if wanted. Usually it must be absence from his barrack, camp or station, but if his duty is to be in one part of the barrack, and he cannot be found when wanted, his absence from a part only of the barrack may amount to absence without leave.

The particulars should state the date when the absence began, and the date when it ended (by return or arrest). If the hour of his absence is material for the purpose of proving a day's absence (see s. 138 and note, and s. 140), the hours of his departure and return must also be stated in the particulars.

Involuntary absence due, for example, to illness or arrest by the civil power, is not ordinarily an offence under this section; but inability to return owing to drunkenness (which is an offence against the Act) is no excuse. Where the absence was originally voluntary and subsequently becomes involuntary, the length of the absence without leave must be reckoned only to the time when the absence becomes involuntary. Conversely, absence originally involuntary, may become an offence under this paragraph if the person charged fails to return to duty at the earliest possible moment.

As soon as an absentee is taken into custody (either civil custody, or open or close arrest), whether on surrender or on apprehension, his absence ceases to be voluntary; K.R. 567. If, however, he is merely ordered (*e.g.*, by an assistant provost marshal or railway transport officer) to rejoin his unit at once, his absence without leave continues until he so rejoins.

In cases where a soldier on leave has lost his return ticket or has not sufficient funds to purchase a railway ticket, and is consequently unable to rejoin his unit before the expiration of his leave, the delay in rejoining may be dealt with, subject to the discretion of the officer disposing of the case, as absence without leave, notwithstanding that the soldier may have reported to the local military or police authorities.

If an officer is told that orders as to reporting will be sent to him at home, it is his duty to ask for orders should none reach him within a reasonable time. Otherwise he may be treated as absent without leave after the date when any honest and reasonable man would have recognized that such orders would normally have arrived.

Leave of absence is not effective until it is notified to the applicant. A person who goes away in expectation of his application being granted, but without waiting to know the result of it, may be convicted of absence without leave, although in fact the leave asked for has been granted.

A member of the Territorial Army, who, while out for annual training in camp, absents himself without leave, would be liable under this section. See also T.R.F. Act. s. 20.

2. In charges under this section the court may look to the accused to give evidence of his "leave," "urgent necessity" or "due cause," as soon as the prosecution have given evidence establishing his absence, failure to appear, etc., and raising the inference that he had no leave, etc.

3. The particular parade should be specified, so that the accused may be able to show, if he can, that he was not by order or custom, or for other reasons, bound to attend that parade. It must be proved that the accused had actual or constructive notice of the time and place appointed by the C.O. But the place for the parade need not have been specifically mentioned if it can be proved that it was well understood and known to the accused. Such a charge can seldom be preferred with safety unless orders stating both the time and place of parade can be produced; and if any

difficulty arises the charge should be laid under para. (1), if the evidence will support the charge.

A soldier absent without leave is not also liable to trial for failing to attend parades, etc., during the period of his absence, but he may be tried on alternative charges for both offences. A soldier absent from parade owing to drunkenness should be charged under s. 19 and not under this paragraph.

4. Ignorance of an order, of which he ought to be aware, although it may mitigate the punishment, does not exculpate the accused. But misapprehension reasonably arising from want of clearness in the order may be a ground of exculpation. (See also note to s. 11.)

5. Any officer having command over the accused and authority to grant leave will be a commanding officer within the meaning of paragraphs (3) and (4). This matter can therefore be determined by the military knowledge of the court.

Disgraceful Conduct

Scandalous conduct of officer.

16. Every officer who, being subject to military law, commits the following offence; that is to say,

behaves in a scandalous[1] manner, unbecoming the character of an officer and a gentleman,

shall, on conviction by court-martial, be cashiered.[2]

NOTE.

1. Scandalous conduct may be either of a military or social character. But a charge of a social character is not to be preferred under this section, unless it is of so grave a nature as to render the officer deserving of being cashiered, and therefore scandalous in respect of his military character. Social misconduct which is not so grave as to bring scandal on the service should not be made the ground of a charge against an officer, but may well form the subject of reproof and advice on the part of his C.O. or some other superior officer.

The addition of an alternative charge under s. 40 will meet a case where the evidence, as ultimately given before the court, may justify a more lenient view of the case.

As a rule a charge should not be preferred under this section in the case of an act on neglect which amounts to any one of the specific offences dealt with in ss. 4 to 15 and 17 to 39. Thus, in cases of drunkenness, whether on duty or not on duty, the charge should be preferred under s. 19, and in cases of disgraceful conduct, as provided for in s. 18.

2. It is important to note that in case of a conviction under this section, cashiering is the only punishment which can be awarded by the court; (see, however, s. 57 with regard to commutation or remission of such a sentence).

Fraud by person in charge of property.

17. Every person subject to military law who commits any of the following offences; that is to say,

Being charged with or concerned in the care of distribution of any public, regimental money or garrison property, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such property.

shall, on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

NOTE.

At home stations, in all cases of fraud and theft the charge and summary of evidence must be submitted to the Judge-Advocate-General before the trial is ordered. (K.R. 630.)

The meaning of "theft," "fraudulent misapplication" and "embezzlement" is dealt with in Ch. III, paras. 30-35; see also s. 190 and (33A) Ch. VII, paras. 50-55. See specimen charges Nos. 43-47, pp. 722-3. Under s. 56, a person charged with theft may be convicted of embezzlement or fraudulent misapplication, and if charged with embezzlement he may be convicted of theft or of fraudulent misapplication.

This section does not apply to ordinary thefts or to such thefts as are dealt with in s. 18 (4), but to those more serious offences committed by persons in a position of trust in relation to public, regimental or garrison property, where placed under their charge.

The particulars of the charge must show in detail that the accused was charged with or concerned in the care or distribution of the property alleged to have been stolen, fraudulently misapplied or embezzled (see specimen charge-sheet No. 43, p. 722); but the court may use their military knowledge to determine that the accused, if holding a particular office, was, by virtue of his office, so charged or concerned. A sentry posted over a place containing public property would not be "charged with" the care of the property within the meaning of this section.

The expression "charged with" means officially charged with, that is to say, in virtue of the public office which the accused formally holds. A corporal entrusted by a sergeant for his own convenience with public property should not be charged under this section, although he might be convicted under s. 18.

If the charge is for fraudulent misapplication or embezzlement, it should allege that the property was improperly applied for the use of the accused himself or some other person (as the case may be), and not for a public purpose. If no evidence is forthcoming as to the particular mode of misapplication, the court may, in the absence of explanation from the accused, infer that the property was misapplied from the fact of its not having been properly applied.

Each instance of theft, embezzlement or fraudulent misapplication should be in a separate charge.

A mere error or irregularity in accounts, or a mistaken misapplication of property, does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for the benefit of himself or somebody else; and this must be particularly recollected in the case, for example, of a N.C.Os. accounts getting into confusion through the neglect or carelessness of superiors.

As to holding a court of inquiry on discovery of loss of stores, etc., see K.R. 737, 738; and as to restitution of stolen, etc., property, see s. 75.

Property of the Navy, Army and Air Force Institutes is not "public" or "regimental" property for the purposes of this section. This property is, however, specifically dealt with in s. 18 (4).

It is not clear at what moment rations issued to a soldier cease to be "public" property. *R.* v. *Immer* (1917) 13 Cr. App. Rep. 22; *Moyan* v. *Caldwell* (1919) 35 T.L.R. 381; but if he improperly disposes of them, he can be charged under s. 40, and a civilian recipient under s. 156, without laying the property in anyone.

A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards earning badges as a recruit. (See s. 190 (18), and P.W., 965.)

See also notes to s. 18 (4).

18. Every person subject to military law[1] who commits any of the following offences; that is to say,

Disgraceful conduct.

(1) Malingers[2] or feigns[3] or produces disease or infirmity[4], or

(2) Wilfully maims[4a] or injures himself or any other person subject to military law, whether at the instance of that person or not, with intent to render himself or that person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service[4]; or

(3) Is wilfully guilty of any misconduct,[5] or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces[5] or aggravates disease or infirmity, or delays its cure[4]; or

PART I — s. 18.

(4) Steals,[6] embezzles or fraudulently misapplies[7] or receives, knowing it to have been stolen or embezzled, any property belonging to a person subject to military law,[8] or belonging to any regimental band, regimental or garrison mess or regimental or garrison institution,[9] or to the Navy, Army and Air Force Institutes, or any public property;[10] or

(5) Is guilty of any other offence[11] of a fraudulent nature[12] not before in this Act particularly specified, or of any other disgraceful conduct [13] of a cruel, indecent[14] or unnatural kind,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.[15]

NOTE.

1. By the A. & A.F. (A.) Act, 1925, this section, which formerly related only to soldiers, was made applicable to every person subject to military law; hence officers can now be tried under this section for the offences therein mentioned.

2. To *malinger* is to pretend illness or infirmity which does not exist, in order to escape duty.

3. To *feign* disease or infirmity means that the accused person exhibits appearances resembling the genuine symptoms which, to his knowledge, are not due to such disease or infirmity, but have been produced artificially for purposes of deceit; *e.g.*, simulating fits or mental disease.

4. Paras. (1)-(3). The charge should show in what way an accused person has malingered, or what disease or infirmity he has feigned or produced, or what particular injury he has been committed, or of what misconduct or wilful disobedience he has been guilty In a case under para. (2), evidence will have to be given of the intent, but it would be sufficient to raise a presumption of intent if the act were shown to have been done wilfully and not accidentally.

4A. Unless it is clear from the evidence available that an accused wilfully inflicted a bodily hurt which will of necessity create a permanent impairment of future fighting abilities, a charge of "wilfully injuring" under this paragraph must be preferred and not a charge of "wilfully maiming".

5. The misconduct must be with the intent of producing or aggravating the disease, or delaying its cure, as the case may be. To produce disease is wilfully to cause genuine disease to develop; *e.g.*, by the infection of microbes or poisonous drugs. The involuntary production, aggravation, or prolongation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct, does not render a person liable under this paragraph. Nor would a person incur liability under it who refuses to undergo a surgical operation.

A soldier cannot be punished for disobedience of an order to be vaccinated, or for refusing to be innoculated, or to allow an anaesthetic to be administered.

6. For definition of *steals* see s. 190 (33A). Where an accused is charged with theft, the ownership of the property alleged to have been stolen should be clearly proved in evidence, and its identity established (where possible) by production and identification in court; if not produced, its non-production should be accounted for.

It is not possible under this paragraph to support a charge of stealing the property of a person who was in fact dead at the time of the theft.

7. See note to s. 17; Ch. III, paras. 30-39; Ch. VII, para. 50, *et seq.*

Under s. 56, a person charged with stealing may be found guilty of embezzlement or a fraudulent misapplication; or if charged with embezzlement, may be convicted of stealing or of fraudulent misapplication.

8. If a soldier steals the greatcoat of a comrade, he can be charged with stealing it either as being public property or as being the property of a person subject to military law; for although the greatcoat is owned by the public, the comrade has a "special property" in it by reason of his lawful possession.

It has been ruled that a branch of the Royal Army Temperance Association is not a regimental institution within the meaning of this paragraph.

10. If it turns out that the property belongs to some person or persons not included in the category contained in this paragraph, the accused must be acquitted, as the offence could in that case only have been charged under s. 41.

The value of articles in respect of which the offender should be sentenced to stoppages must always be stated in the particulars of the charge; (see R.P. 13 (F) and note, and K.R. 626.

11. A charge under this paragraph for anything that is an offence under any previous enactment of the Act will be bad.

12. *Of a fraudulent nature.* The particulars must show that there was fraud in the act with which the accused is charged; irregularity in accounts due to incompetence or ignorance of book-keeping will not be sufficient.

The following are examples of offences which may be charged under this paragraph—With intend to defraud, presenting for signature a pay and mess roll containing entries known to be false; passing a worthless cheque or "flash" note; charging money for railway warrants, tickets or concession vouchers to which an officer or soldier is entitled free of charge.

A reservist who has wrongfully enlisted cannot be charged with obtaining reserve pay by false pretences or fraud.

13. *Disgraceful conduct.* The particulars of the charge must specify the details of the particular act or acts alleged to constitute the disgraceful conduct.

14. *Of an indecent kind.* Offences of an indecent kind against children and young persons of the female sex should be charged under s. 41 and not under this section. The expediency of trying such offences before a civil court should be considered in each case, and where they are committed against natives or of a colony, the cases should usually be dealt with by a civil court if this course can reasonably be followed. Where trial by court-martial is proposed, the charge and summary of evidence must, at home stations, be submitted to the Judge-Advocate-General before trial is ordered (K.R. 630), and a judge-advocate should be appointed in all such cases, whether at home or abroad, in order that the court may have the benefit of his advice, particularly with regard to the danger of accepting the uncorroborated evidence of witnesses who are shown to be accomplices. (See Ch. VI, para. 45.)

15. A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards earning badges as a recruit. (See s. 190 (18), and P.W. 965.)

Drunkenness

Drunkenness.

19. Every person subject to military law who commits the following offence; that is to say,

The offence of drunkeness,[1] whether on duty or not on duty, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding five pounds[2]:

Provided that, where the offence of drunkeness is committed by a soldier not on active service or on duty, the sentence imposed shall not exceed detention for a period of six months, with or without the addition of the aforesaid fine.

NOTE

1. See generally as to this offence Ch. III, paras. 42-48, and s. 46 (2) (3), and note. Witnesses should be required to state their reasons for their opinion that an accused was drunk.

2. Drunkenness is the only military offence triable by court-martial or C.O. for which a fine may be imposed. The fine, if awarded by court-martial, cannot exceed five pounds; if by a C.O. it cannot exceed two pounds (s. 46 (2) (b); K.R. 579).

Offences in relation to Persons in Custody

Permitting escape of person in custody.

20. Every person subject to military law who commits any of the following offences; that is to say,

PART I

ss. 20, 21.

(1) When in command of a guard, piquet, patrol, or post, releases without proper authority, whether wilfully or otherwise, any person committed to his charge[1]; or

(2) Wilfully or without reasonable excuse[2] allows to escape[3] any person who is committed to his charge,[4] or whom it is his duty to keep or guard,

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE

1. In a charge under para. (1), if proof is given that the person in custody was released, the onus is on the accused to show proper authority. The court may use their military knowledge with respect to whether the authority alleged was or was not sufficient.

2. In a charge under para. (2), if there is a doubt as to the accused having acted *wilfully*, he should be charged with having acted *without reasonable excuse*, or he mae be charged with having acted wilfully, and it will be open to the court, under thy provisions of s. 56 (5), to find that he acted without reasonable excuse. A man commits this offence *wilfully* by any act or omission intended to allow the escape of the person committed to his charge, or whom it was his duty to guard or keep. See Ch. VII, para. 23.

3. Where an escort consisting of a corporal and a private lose the soldier in their charge, the corporal is liable to conviction unless he can prove that the escape took place in circumstances against which he could not reasonably guard. The private would be guilty, upon proof that he shared in the wilful act or negligence of the corporal, or that the soldier while committed to his charge during the temporary and necessary absence of the corporal was allowed to escape, unless he could show that he used all reasonable means to guard against the escape. In the latter case the corporal would not be guilty if he could show that his temporary delegation of his duty to the private was occasioned by some necessary cause, and that he took reasonable precautions for the safe custody of the soldier during his absence.

4. A deserter or absentee without leave who surrenders himself, and who is being conducted by an N.C.O. to rejoin his unit (K.R. 709), is not "committed to the charge" of the N.C.O. conducting him within the meaning of this section.

Irregular arrest or confinement;

21. Every person subject to military law who commits any of the following offences; that is to say,

(1) Unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation[1]; or

(2) Having committed a person to the custody of any officer, non-commissioned officer, provost marshal, or assistant provost marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter to the officer, non-commissioned officer, provost marshal, or assistant provost marshal, into whose custody the person is committed, an account in writing[2] signed by himself of the offences with which the person so committed is charged;

(3) Being in command of a guard, does not as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence so far as known to him;

and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,

shall, on conviction by court-martial, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE

1. The prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement to trial or brought his case before the proper authority for investigation. If these are proved it will lie on the accused to prove the necessity for keeping the person in question in custody without taking the steps mentioned.

2. See note to s. 45; and as to entry of charge in guard report, K.R. 544.

Escape from confinement.

22. Every person subject to military law who commits the following offence; that is to say,

Being in arrest or confinement,[1] or in prison or otherwise in lawful custody,[2] escapes,[3] or attempts to escape,

shall, on conviction by court-martial, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE

1. As to arrest and confinement, see Ch. IV, paras. 1-18.

2. A soldier in open arrest is "in lawful custody."

A man undergoing field punishment (though in lawful custody) is not "in arrest."

An accused may be convicted under this section for escaping from *any* lawful custody, *e.g.*, from a civilian who under s. 154 has arrested him as a deserter.

3. An escape may be either with or without force or artifice, and either with or without the consent of the custodian.

A soldier who escapes from arrest and then absents himself without leave may legally be charged with, and convicted of, both offences; but as a rule it is preferable to charge only the absence, alleging in the particulars (as increasing the gravity of the offence) that it was committed "when in arrest."

Offences in relation to Property

Corrupt dealings in respect of supplies to forces.

23. Every person subject to military law who commits any of the following offences; that is to say,

(1) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or

(2) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of His Majesty's forces, (including any Dominion Force),

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

PART I — s. 24. Deficiency in to equipment.

24. Every soldier who commits any of the following offences[1]; that is to say,

(1) Makes away with,[2] or is concerned in making away with whether by pawning, selling, destruction, or otherwise howsoever),[3] his arms, ammunition, equipments, instruments, clothing,[4] regimental necessaries, or any horse of which he has charge, or any public property issued to him for his use or entrusted to his care for military puropses[5]; or

(2) Loses by neglect[6] anything before in this section mentioned[5]; or

(3) Makes away with (whether by pawning, selling, destruction, or otherwise howsoever) any military or air force decoration[7] granted to him; or

(4) Wilfully injures[8] anything before in this section mentioned, or any property belonging to a comrade, or to an officer[9] or, to any regimental band, regimental or garrison mess, or regimental or garrison institution, or to the Navy, Army and Air Force Institutes, or any public property; or

(5) Ill-treats any horse or other animal used in the public service,

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

NOTE

1. As to a charge under this section, see K.R. 625-629; R.P. App. I; note as to use of Forms of Charges, para. (23), p. 701. As to liability of civilian pawnbroker, etc., see s. 156.

2. *Making away with* is distinct from theft, as it applies only to goods in a man's own possession, and which, therefore, he cannot in law steal. Unless there is some positive act of pawning, sale, etc., a charge for making away with should not be preferred, but a charge of losing should be preferred under para. (2). See K.R. 625.

3. This paragraph shows clearly that, whether arms are pawned, sold, destroyed, or otherwise made away with, the military offence is the same, namely, the making away with them; but the degree of the offence may differ according to whether they have been pawned, sold, or destroyed, or otherwise made away with, and the punishment awarded may vary accordingly.

4. *Clothing* includes clothing supplied to a man in hospital.

5 A charge under paras. (1) or (2) of making away with, etc., property not mentioned in para. (1) would be bad, though if the act amounted to stealing or embezzlement it would be punishable under s. 18, or s. 41, or if there was proof of any wilful act or neglect, the soldier might, in some circumstances, be charged with an offence under s. 40.

6. This is not intended to punish a soldier for a deficiency in his kit occasioned by accident or mere carelessness but for loss by culpable neglect. On the other hand, the fact that a man has not got his arms, regimental necessaries, etc., at a time when it was his duty to have them, is *prima facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part.

In a trial for an offence under this paragraph, the certified copy of the record in the regimental books, on A.F. B.115, showing that certain articles were deficient, is *prima facie* evidence that they were deficient. If no evidence except A.F. B115 is obtainable, the prosecution are justified in proceeding on that alone, and if no evidence is given on the part of the accused to disprove the facts stated in A.F. B.115, the court may convict. Where, however, the accused gives or produces evidence in contradiction of the declaration of the court of inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce evidence, if possible, in support of their case in so far as such articles are concerned. For such purposes, the court might, if necessary, grant an adjournment under R.P. 65 (A); but when for any reasonable cause—such as lapse of time since the deficiency arose, and no witnesses

consequently being available to rebut the evidence of or produced by the accused—the court must use their discretion as to their finding in respect of the articles in question In all cases where A.F. B115 is not produced at the trial, evidence must be produced to show that some previous specified date the accused had been in possession of the articles alleged to be deficient. In cases of desertion or absence without leave, the form will usually show as missing some articles which the man in fact brings back with him. The court must not, of course, convict him in respect of articles so returned.

7. *Decoration*. See s. 190 (18). Losing by neglect a decoration is not an offence.

8. *Wilfully injures*. A charge for injuring the property here mentioned must be laid under this section, and not under s. 41. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the arms, etc., or was mere carelessness. In the later case no offence under this section would be committed. The principles to be observed in estimating the loss of or damage to equipment are shown in Equipment Regulations, Part I, 1923, para. 104. See also s. 138 (4) and note and R.P. 13 (F) and note.

9. As to the disqualification of an officer having a personal interest in the case for sitting on a court to try an offence under this paragraph, see R.P. 19 (B) (v) and note.

Offences in relation to False Documents and Statements

Falsifying official documents and false declarations.

25. Every person subject to military law who commits any of the following offences; that is to say,

(1) In any report, return, muster roll, pay list, certificate, book, route, or other document[1] made or signed by him, or of the contents of which it is his duty[2] to ascertain the accuracy—

(*a*) Knowingly makes or is privy to the making of any false or fraudulent statement[3]; or

(*b*) Knowingly makes or is privy to the making of any omission with intent to defraud[4]; or

(2) Knowingly and with intent to injure any person, or knowingly and with intent to defraud,[4] suppresses, defaces, alters, or makes away with any document which it is his duty[2] to preserve or produce[5]; or

(3) Where it is his official duty[2] to make a declaration respecting any matter, knowingly makes a false declaration,[5]

shall, on conviction by court-martial, be liable to suffer imprisonment or such less punishment as in this Act mentioned.

NOTE

1. The "other document" here contemplated is one executed by the accused in his capacity as an officer or soldier, and not in some civil capacity.

2. The court may use their military knowledge in determining any question as to the duty of the accused in a case arising under this section.

3. A trivial error in a report should not, in the absence of fraud or bad faith, be made the ground of a charge under para. (1) (*a*).

4. In a charge under para. (1) (*b*) or para. (2) involving an intent to defraud, it will not be necessary to show an intent to defraud the government or a particular individual, so long as an intent to defraud is shown.

It will be noted that the making of an omission with intent only to deceive is not made an offence under para. (1) (*b*); nor is the alteration, etc., of a document an offence under para. (2) if it is effected only with an intent to deceive.

5. The particulars of a charge under para. (2) or (3) should show why it was the accused's duty to preserve the document or to make the declaration; but where the

situation of the accused is proved, the court may use their military knowledge to infer his duty; *e.g.*, in the cases dealt with in specimen charge-sheets Nos. 74 and 75 (p. 728), the court might use their military knowledge to infer from the fact that the accused was a company quartermaster-sergeant that it was his duty to preserve the documents in question.

Para. (3) does not include statements in a summary of evidence or verbal statements.

Neglect to report, and signing in blank.

26. Every person subject to military law who commits any of the following offences; that is to say,

(1) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher; or

(2) Refuses or by culpable neglect omits to make or send a report or return which it his duty[1] to make or send,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE

1. The particulars must show that it was the duty of the accused to make the report or return, but where the situation of the accused is proved the court may use their military knowledge to infer his duty. See note 5 to s. 25. If the report or return was one for which the superior had no right to call, there is no punishment for a refusal to make it. The neglect must be something more than mere forgetfulness or mistake.

False accusation, or false statement.

27. Every person subject to military law who commits any of the following offences; that is to say,

(1) Being an officer or soldier, makes a false accusation[1] against any other officer or soldier, knowing such accusation to be false; or

(2) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts; or

(3) Being a soldier, falsely states to his commanding officer[2] that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the navy or air force, or has served in and been discharged from any portion of the regular forces, reserve forces, or auxiliary forces, or the navy or air force; or

(4) Being a soldier, makes a wilfully false statement to any military officer or justice[3] in respect of the prolongation of furlough.[4]

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

NOTE

1. A mere false statement, not involving an accusation (*e.g.*, a letter to a friend containing insinuations against an N.C.O.), is not within the meaning of this paragraph. (See also R.P. 39, note 4.)

2. *To his commanding officer.* It is not enough for the statement to be made merely to a superior officer; but the term "commanding officer" will include any one whose duty it would be under the K.R. or according to the custom of the service to deal with a charge of desertion or fraudulent enlistment, if it were made against the soldier. A written statement made to any person for the purpose of being laid before the C.O. is a statement to the C.O. As to a false confession of desertion made to any other authority, see s. 152.

3. *Justice.* A justice has power under s. 173 to extend furloughs in certain cases for a month.

4. This paragraph applies only to false statements made in order to obtain, or otherwise in respect of, a prolongation; it does not cover false excuses for overstaying leave made on return.

Offences in relation to Courts-martial

Offences in relation to courts-martial.

28. Every person subject to military law who commits any of the following offences[1]; that is to say,

(1) Being duly summoned or ordered to attend as a witness before a court-martial,[2] makes default in attending; or

(2) Refuses to take an oath or make a solemn declaration[3] legally required by a court-martial to be taken or made; or

(3) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or

(4) Refuses when a witness to answer any question to which a court-martial may legally require an answer; or

(5) Is guilty of contempt[4] of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance[5] in the proceedings of such court,

shall, on conviction by a court-martial, other than the court in relation to or before whom the offence was committed, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned:

Provided that where a person subject to military law[6] is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court if they think it expedient, instead of the offender being tried by another court-martial, may by order under the hand of the president, order the offender to be imprisoned, with or without hard labour, or, in the case of a soldier, to undergo detention for a period not exceeding twenty-one days.[7]

NOTE

1. An offence under this section is not triable by the court in relation to or before whom it was committed, except that for contempt of court by a person subject to military law the court may order him to be imprisoned, or, if he is a soldier, to undergo detention, for not more than 21 days (see proviso). If the offender is a soldier, he will, as a general rule, be sentenced to detention and not to imprisonment. For form of commitment, see Form U. p. 786.

As a rule courts should accept an apology sufficient to vindicate their dignity without resorting to extreme measures.

A civilian guilty of any of the offences mentioned in this section is punishable by a civil court under s. 126. See note 1 to that section.

2. See generally as to summoning and attendance of witnesses, R.P. 15, 75-78.

PART I

ss. 28-30.

3. A person refusing to take an oath must be given an opportunity of making a "declaration."

4. The court is formed when the members are assembled, even before they are sworn, and anything which would be a contempt after the court was sworn would be a contempt once the members are assembled.

5. The interruption or disturbance need not be caused within the precincts of the court itself, if the circumstances are such as to constitute a contempt of court.

6. S. 48 (6) which prohibits a district court-martial from trying an officer, would not exempt an officer guilty of contempt of such a court from liability to be committed to prison by the court under this proviso; but the correct course for the court would almost invariably be to adjourn and report to the proper authority.

7. The summary proceeding for contempt is not a trial, and the offence being as a rule committed in view of the court, opportunity should be given to the offender to offer any explanation of, or excuse for, his conduct, but no further inquiry will be necessary. The order of the court does not require confirmation.

To imprison or send to detention for contempt of court a person who is under trial, though legal, requires very exceptional circumstances to justify it; punishment so inflicted must immediately follow the contempt, and cannot be an addition to any sentence after conviction, or be ordered to commence at the date of the expiration of the punishment under the sentence. The court must adjourn until the expiration of the punishment inflicted for the contempt, and must record upon the proceedings the facts which have necessitated the order.

False-evidence.

29. Every person subject to military law who commits the following offence[1]; that is to say,

When examined on oath or solemn declaration before a court-martial[2] or any court[2a], or officer authorized by this Act to administer an oath, wilfully[3] gives false evidence,

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

NOTE

1. This section will be applicable to an accused person who applies to give evidence himself, but a charge should not be preferred against him except in a very flagrant case.

As ss. 46 (6), 47 (4), 70 (5) (6), and R.P. 3, 4, 9 (C), 125 (D), 125A(C), provide that evidence may be given on oath before a court of inquiry, or a C.O., or an authority dealing summarily with a charge under s. 47, or an officer taking a summary of evidence, a person subject to military law who wilfully gives false evidence on oath before a court or officer duly authorized to administer an oath, is guilty of an offence under this section. The evidence before a court of inquiry upon an absentee (s. 72) and upon a recovered prisoner of war must be given on oath or declaration (R.P. 125A(C)).

2. The proceedings of the court-martial before which the false swearing is alleged to have taken place are not admissible as evidence that the accused swore as charged. The member of the court who recorded the proceedings, or some other person who heard the evidence given, must prove this fact by oral evidence. The lawful custodian of the proceedings (or his deputy) should, however, attend the court with the proceedings for a witness who recorded them may use them to "refresh his memory." The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter sworn. See Ch. III, para 56, and Ch. VII, para. 72.

2A. See note 3A to R.P. 125A with respect to evidence required in a case of alleged false swearing before a court of inquiry.

3. Accidental or trifling mistakes or discrepancies in evidence will not be made the subject of a charge under this section.

Offences in relation to Billeting

Offences in relation to billeting.

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting[1]); that is to say,

PART I — ss. 30, 31.

(1) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse[4] is billeted; or

(2) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or

(3) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses[4] have been billeted, or to the making up and transmitting of an account of the money due to such person; or

(4) Wilfully demands[2] billets which are not actually required for some person or horse[4] entitled to be billeted; or

(5) Takes or knowingly suffers to be taken from any person any money or reward for excusing or relieving any person from his liability in respect of the billeting or quartering of officers, soldiers or horses[4], or any part of such liability; or

(6) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty; or

(7) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse[4], not duly billeted upon him in pursurance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall, on conviction by court-martial,[3] be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE

1. The provisions as to billeting are contained in Part III, ss. 102-111, and ss. 119-121.

2. *Wilfully demands.* The demand constitutes the offence, and it is immaterial whether the billet is actually obtained or not.

3. See s. 111 as to the jurisdiction of magistrates to deal with officers or soldiers guilty of offences under this section.

4. The provisions of this section relating to offences connected with the billeting of horses apply also in the case of vehicles billeted under the provisions of section 108A (3A). *See* Forms of Charges in R.P., Appx. I on page 711.

Offences in relation to Impressment of Carriages, etc.

Offences in relation to the impressment of carriages, etc., and their attendants.

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages[1]); that is to say,

(1) Wilfully demands any carriages, animals, vessels, food, forage, or stores which are not actually required for the purposes authorized by this Act; or

(2) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment of sums due for carriages or as regards the weighing of the load; or

PART I — ss. 31, 32.

(3) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages to travel agains the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry; or

(4) Does not discharge as speedily as practicable any carriage, animal, or vessel, furnished in pursuance of the provisions of this Act relating to the impressment of carriages; or

(5) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled, to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person; or

(6) Ill-treats or permits such person in charge to be ill-treated; or

(7) Uses or offers any menace to or compulsion on a constable to make him provide any carriage, animal, vessels, food, forage, or stores which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty to relation to the providing of carriages, animals, vessels, food, forage, or stores, or tending to induce him to do anything contrary to his said duty; or

(8) Forces any carriage, animal, vessel, food, forage, or stores from the owner thereof,

shall, on conviction by court-martial[2] be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE

1. The provisions as to the impressment of carriages, etc., are contained in Part III, ss. 112-121.

2. As to the jurisdiction of magistrates to deal with officers and soldiers guilty of these offences, see s. 118.

Offences in relation to Enlistment

Enlistment of soldier, airman, or sailor discharged with ignomity or disgrace.

32.—(1) Every person having become subject[1] to military law, who is discovered to have committed the following offence; that is to say,

Having been discharged with disgrace[2] from any part of His Majesty's military or air forces, or having been dismissed with disgrace from the navy,[3] has afterwards enlisted[4] in the regular forces without declaring[5] the circumstances of his discharge, or dismissal,[6]

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.[7]

(2) For the purpose of this section, the expression "discharged with disgrace from any part of His Majesty's military or air forces" means discharged with ignominy, discharged for misconduct, or discharged on account of conviction for felony[9] or of a sentence of penal servitude.

NOTE

1. *Having become subject, i.e.*, in the case of the regular forces, having signed the declaration and taken the oath (s. 80 (4) (*b*)). The wording in this and the next section is different from that in other sections ("every person subject, etc., who commits," etc.), because at the moment of committing the offence the man is not actually subject to military law.

2. *Discharged with disgrace.* It has been ruled that the disgrace must be by reason of some misconduct after and not before the man's previous enlistment.

3. Where a person enlists who under s. 52 of the Naval Discipline Act, has been dismissed, but not dismissed with disgrace, the charge should be laid under s. 33.

4. *Enlisted.* The original or the duplicate attestation paper must be produced at the trial; (see s. 163 (1) (*a*)).

Failure to declare the circumstances of discharge, etc., is *prima facie* proved by the attestation paper showing answers to have been given inconsistent with such declaration.

6. A man who can show that when discharged he was not (from not having had a discharge certificate given him or for any other reason) made acquainted with the fact that his discharge was for one of the reasons constituting disgrace, ought not to be convicted under this section.

7. For a corresponding offence in the case of a man enlisting in the Territorial Army, see T.R.F. Act s. 11. No corresponding offence exists in the case of the Supplementary Reserve; a man enlisting in the Supplementary Reserve after having been discharged with disgrace from another part of His Majesty's forces, should usually be dealt with under s. 99, but if dealt with while subject to military law the charge may be laid under s. 33.

A person charged with improper enlistment under this section should not also be charged under s. 33 with "false answer" made on the occasion of such enlistment.

9. *Felony.* Theft is not necessarily a felony and when the theft which leads to a soldier's discharge is actually a felony the cause of discharge should be specifically worded "in consequence of having been convicted by the civil power of felony" in order that the discharge may come within the definition of "discharged with disgrace." In all cases of this kind, therefore, the copy of the record of civil conviction should be carefully scrutinized in order to ascertain whether the offence was a felony or a misdemeanour. As to what offences are felonies, see table at end of Ch. VII.

False answers or declarations on enlistment.

33. Every person having become subject[1] to military law who is discovered to have committed the following offence[2]; that is to say,

To have made a wilfully false answer[3] to any question[4] set forth in the attestation paper[5] which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested,

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

NOTE

1. *Having become subject.* See note 1 to the preceding section.

2. Men enlisting after being dismissed from the Navy as "objectionable," or in any other circumstances (except "with disgrace," as to which see s. 32 (1)) will be proceeded against under this section.

When a soldier who has improperly enlisted into the regular forces while belonging to the Army Reserve is tried by court-martial for his offence within three months of

PART I — ss. 33-35.

the date of his improper enlistment, but not otherwise, the words "and by his enlistment obtained a free kit of necessaries, value ," will be added to the particulars of the charge (see specimen charge-sheet No. 83, p. 730) and (unless the accused pleads guilty) proved in evidence, in order to enable the court to sentence him to stoppages of pay for the value of the kit as stated in the charge.

If the soldier is relegated to the Army Reserve after conviction by court-martial, the stoppages will be enforced, but if he is held to serve on his last attestation, the sentence of stoppages will be remitted.

If the soldier is relegated to the Army Reserve, without trial, within three months from the date of his improper enlistment from the Army Reserve, he will be required to make good the value of the free kit of necessaries in accordance with the provisions of the Clothing Regulations (K.R. 624).

3. The answer must be wilfully false; thus where a man might reasonably have been mistaken as to the fact of his having "served" where, for instance, he was discharged as unfit before he had done duty or worn a uniform, a conviction would not hold good.

A person charged with "fraudulent enlistment" (s. 13) or "improper enlistment" (s. 32) should not also be charged under this section with "false answer" made on the occasion of such enlistment.

4. The attestation paper, by a change made in 1930, emphasizes the serious nature of the offence of making a false answer as to age. But owing to difficulty of proof, it may seldom be practicable to prefer a charge in respect of this offence.

5. *Attestation paper*. The original or the duplicate must be produced at the trial. (See s. 163 (1) *(a)*).

As to attestation and attestation papers, see ss. 80, 94.

General offences in relation to enlistment.

34. Every person subject to military law who commits any of the following offences; that is to say,

(1) Is concerned in the enlistment for service in the regular forces of any man, when ke knows or has reasonable cause to believe such man to be so circumstanced[1] that by enlisting he commits an offence against this Act; or

(2) Wilfully contravenes any enactments or the regulations of the service in any matter relating to the enlistment or attestation of soldiers of the regular forces,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as in this Act mentioned.

NOTE

1. *So circumstanced, i.e.*, where he has been discharged with disgrace, so that he commits an offence under s. 32; or where he belongs to the regular forces, or otherwise, so that he is guilty of fradulent enlistment under s. 13; or where, having previously served, he again enlists without declaring the circumstances of his previous service, so that he commits an offence under s. 33, the attestation being part of the enlistment.

Miscellaneous Military Offences

Traitorous words.

35. Every person subject to military law who commits the following offence; that is to say,

Uses traitorous or disloyal words[1] regarding the Sovereign, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE

1. The words used must be set out in the charge; they may be either spoken, or written, or printed. It is not intended that mere violent or vulgar language used by a man under the influence of liquor should be punished under this section.

Injurious disclosures.

36. Every person subject to military law who commits the following offence; that is to say,

Whether serving with any of His Majesty's forces or not, without due authority,[1] either verablly or in writing,[2] or by signal or otherwise, discloses the numbers of position of any forces, or any magazines or stores thereof, or any preparation for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to His Majesty's service,[3]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.[4]

NOTE

1. The unauthorized communication of intelligence to the enemy on active service is punishable under s. 5 (4).

2. As to injurious disclosures by private letters, see note 2 to s. 5; and as to publishing military information, K.R. 522.

3. Particulars of a charge under this section must show how and when effects injurious to His Majesty's service were produced.

4. See also the Official Secrets Acts, 1911 and 1920, on p. 895, *et seq.*

Ill-treating soldier.

37. Every officer or non-commissioned officer[1] who commits any of the following offences; that is to say,

(1) Strikes[1A] or otherwise ill-treats any soldier[2]; or

(2) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,[3]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment or such less punishment as in this Act mentioned.

NOTE

1. This section applies to a warrant officer as if he were a N.C.O. See s. 182.

1A. Forcing or striking a soldier when acting as sentinel is punishable under s. 6 (2) *(c)*. An accused charged under this section with striking a soldier could not properly be found guilty of using or offering violence to a soldier under s. 56 (4A). See note 1B to that section.

2. As the word "soldier" includes N.C.O., it follows that the offence of one N.C.O. striking or ill-treating another who is not his superior falls within this section. Striking a superior officer is dealt with under s. 8. The case of one private soldier striking another should be dealt with under s. 40.

3. As to stoppages in respect of the amount detained, see s. 137 (3).

Duelling and attempting to commit suicide.

38. Every person subject to military law who commits any of the following offences; that is to say,

(1) Fights, or promotes, or is concerned in or connives at fighting a duel[1]; or

(2) Attempts to commit suicide,[2]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as in is this Act mentioned.

PART I

ss. 38-40

NOTE

1. An officer carrying a challenge is punishable under para. (1).
If death ensued, the surviving principal in the duel and both the seconds might be tried and convicted for murder.

2. A man should not be charged with attempted suicide unless the circumstances of the case make it clear that he seriously intended to take his life. A medical officer should invariably attend the taking of the summary of evidence, and give oral evidence, which should include his opinion as to the state of mind of the accused at the time of the commission of the alleged offence.

Refusal to deliver to civil power officers and soldiers accused of civil offences.

39. Every person subject to military law who commits any of the following offences[1] that is to say,

On application being made to him nelgects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,[2]

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE

1. These offences may be committed not only in the United Kingdom, but in any dominion or British possession where there is a civilian judicature. An officer or soldier to whom an application is made under this section should require to see the warrant or other authority for the delivery over or apprehension; and if none exists, no offence is committed by refusing the demand.

2. As to the cases in which a soldier of the regular forces is exempt from civil process, see s. 144 (1) and (2).

Conduct to prejudice of military discipline.

40. Every person subject to military law who commits any of the following offences; that is to say,

Is guilty of any act, conduct, disorder, or neglect to the prejudice of good order and military discipline,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other section of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

NOTE

See Ch. III, para. 60.

A charge under this section must recite its actual words, *i.e.*, there must be charged "conduct" (*or* "an act," *or* "disorder," *or* "neglect" *(as the case may be)*) "to the prejudice of good order and military discipline. But, of course, conduct, etc., is not brought within the scope of the section by merely applying it to the statutory language; and a court is not warranted in convicting unless of the opinion that the conduct, etc., proved was to the prejudice *both* of good order *and* of military discipline, having regard to its nature and to the circumstances in which it took place.

"Neglect" to be punishable under this section must be wilful or culpable, and not merely the result of forgetfulness, error of judgment, or inadvertence.

Attempts to commit "military" offences can, as a rule, be charged under this section, unless, as in the case of an attempt to desert (see s. 12 (1) *(a)*), special provision is made elsewhere.

A charge of displaying the white flag, where the evidence is not sufficient to justify a charge under s. 4 or s. 5, will be laid under this section: K.R. 620.

Words spoken "of and concerning" a superior must only be made the subject of a charge under this section where the speaker used them with a guilty intent. In some cases it may be necessary to add to the particulars of the charge words explaining the meaning which it is alleged that the language used was intended to convey.

The proviso to the section must not be interpreted as forbidding the addition in a proper case of an alternative charge under this section.

It is reasonably clear that a man—if guilty of anything—is guilty of one of the more serious offences mentioned in previous sections, a C.O. should not arrogate jurisdiction to himself by preferring a charge under this section: on the other hand, if there is real doubt whether one of the more serious offences has been committed, and the C.O. considers that the circumstances justify permit a less serious charge under this section being preferred, he may properly take the latter course: *Heddon* v. *Evans* (1919) 35 T.L.R. 642.

The following are a few instances of offences not uncommonly charged under this section:—

Giving a cheque which is subsequently dishonoured where there is no reasonable ground for supposing that it will be honoured on presentation.

Negligent performance of duties connected with money or stores resulting in a deficiency and loss.

Being in improper possession of public property or of property belonging to an officer or comrade (where there is no evidence of actual theft). See K.R. 621.

Being in some place away from his unit on a particular date when his duty required him to be with his unit.

Sleeping out instead of in billet.

Improperly using Government car and petrol for private purposes.

Borrowing money from subordinate.

Producing a medical certificate, knowing it not to be genuine.

Being in possession of a document purporting to be a genuine leave pass, knowing it not to be genuine.

Improperly wearing uniform or rank badges (or ribbons or medals) to which he is not entitled.

Giving false name to police.

Accepting gifts as an inducement for arranging or excusing duties.

Being unfit for duty by reason of previous indulgence in alcoholic stimulants.

Negligently wounding or injuring self.

Improperly obtaining money in return for railway warrant or ticket.

Improperly obtaining "concession vouchers."

Improperly using or obtaining railway warrants.

The Act recognizes no such offence as "making a frivolous complaint"; but the repetition of baseless complaints may amount to an offence under this section: so too may a complaint so framed as to be offensive or indicative of insubordination, etc.; see *Hedden* v. *Evans* (1919) 35 T.L.R. 642.

Offences punishable by ordinary Law[1]

Offences punishable by ordinary law of England.

41. Subject to such regulations[2] for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial,[3] and on conviction[4] to be punished as follows; this is to say,

PART I

ss. 41, 42.

(1) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2) If he is convicted of murder, be liable to suffer death; and

(3) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

(4) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

(5) If he is convicted of any offence not before in this section particularly specified, which when committed in England is punishable by the law of England, be liable, whether the offence is committed in England or elsewhere[4A] either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided that a person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony or rape committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within His Majesty's dominions[6], other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service[5] or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court;

NOTE

1. See Ch. VII generally as to offences punishable by the ordinary law, and as to the cases in which the jurisdiction given by this section should be exercised, see paras. 1-3 of that chapter. Subject to the proviso, this section in effect gives absolute jurisdiction to a court-martial to try a person subject to military law for any civil offence.

2. *Subject to such regulations*, etc. See the proviso to this section and s. 41A.

3. See specimen charge-sheets, Nos. 95-107, pp. 732-4.

As to reference to the Judge-Advocate General of cases of fraud, theft or indecency, see note to s. 17 and note 14 to s. 18.

4. Secs. s. 56 (6) (and note), which provides for an accused person, when tried by court-martial for a civil offence, to be found guilty of certain other offences.

4A. It should be noted that an accused can be charged under this section with a civil offence, wherever committed, provided that the offence would, if committed in England, be punishable by the law of England. Local laws and ordinances abroad are not part of the law of England. Consequently contraventions of their provisions cannot properly be laid as offences under this section. See R.P., App. I, s. 41 (5) on p. 713.

5. For definition of *active service*, see s. 189.

6. The expression 'His Majesty's dominions' here and throughout the Army Act includes all His Majesty's dominions inclusive (unless inconsistent with the context) of the Dominions as defined by s. 190 (23).

Saving for Jurisdiction of Civil Courts

41A. Nothing in this Act affects any jurisdiction of any civil court to try a person subject to military law for any offence.

Saving for jurisdiction of civil courts.

Redress of Wrongs

42. If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Army Council in order to obtain justice, who are hereby required to examine

Mode of complaint by officer.

into such complaint, and (if so required by the officer) through a Secretary of State make their report to His Majesty in order to receive the directions of His Majesty thereon.

NOTE

The right of complaint is in the first instance to the Army Council, but the officer may require the Army Council to report to the Sovereign through the Secretary of State. It is the custom of the service that a complaint should be forwarded through the C.O. of a unit; and an officer would not be justified in deviating from this course unless the C.O. should refuse, or unreasonaby delay, to forward it. In such case an officer, on addressing himself directly to the general in command or brigade commander, should apprise his C.O. of his doing so, and must observe in the channel of approach to the Army Council each intermediate gradation of command in so far as he is concerned so to do. An officer should indicate specifically whether his complaint is to the Army Council or the Sovereign.

As regards complaints to the Sovereign, although the Army Council are required to examine into the complaint, they are not debarred from expressing their own view of the case, and even an expression of opinion by an intermediate authority may in some cases suffice to render further steps unnecessary. An officer should not be disposed to push to extremes his right to bring his complaint before the Sovereign.

This section does not limit the right of the Sovereign to receive complaints, but only controls the manner in which officers thinking themselves wronged are to approach the Sovereign.

An exception to the general rule laid down in this section is to be found in K.R. 100 (see also K.R. 508) to the effect that if any officer or soldier desires to bring any grievance to the notice of an inspecting officer he is to be afforded an opportunity of doing so.

When two or more officers are lent to or are seconded for service with a civil Department of State, etc., and one of them in the course of his employment, and solely in his capacity as an official of the civil Department, etc., does an act by which the other feels aggrieved, the officer who considers himself wronged cannot make a complaint under this section, but can only complain to the head or other proper authority in the civil Department, etc., in which both officers are employed, or have recourse to any other civil remedy that may be open to him. Such a wrong does not fall within the scope of this section.

Speaking generally, the section is not available to seconded officers in respect of matters arising in the course of seconded employment while they are outside the immediate jurisdiction of the Army Council, *e.g.*, the terms and conditions of their employment.

European officers of the Indian Army on attaining substantive rank higher than that of lieutenant-colonel cease to belong to the Indian Army, and their right of complaint then comes under this section. The right of complaint of European officers of the Indian Army not above the substantive rank of lieutenant-colonel is under s. 180.

A false accusation or false statement made on preferring a complaint under this section is punishable under s. 27 (1) (2).

Mode of complaint by soldier

43. If any soldier thinks himself wronged in any matter[1] by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer,[2] and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the prescribed general officer or brigadier[3] or, in the case of a soldier serving in India, to such officer as the Commander-in-Chief of the Forces in India with the approval of the Governor-General of India in Council may appoint; and every officer to whom a complaint is made in pursurance of this section

PART I — ss. 43, 44.

shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

NOTE

1. Complaints may be made respecting any matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matters by which they think themselves wronged. A complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section—that is to say, first to the captain and then to the C.O. It is only where the captain refuses or unnecessarily delays to redress or forward the complaint that a direct application can be made to the C.O.; and it is only if the C.O. similarly refuses or delays that a direct application can be made to the prescribed officer. The captain, in the one case, and the C.O. in the other, ought to be informed of the application being made to his superior. See K.R. 508.

In addition to the right of complaint under this section, a soldier has rights of complaint to inspecting officers under K.R. 100 and 508. See note to. s. 42.

A false accusation or false statement made on preferring a complaint under this section is punishable under s. 27 (1) (2): but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. As to the repetition of baseless complaints, or the submission of complaints in disrespectful language, see note to s. 40.

2. The C.O. to whom the complaint is made will usually be the C.O. as defined in R.P. 129, but if the complaint is made to any other officer, that officer should receive it and should at once forward it to the C.O. of the complaining soldier as defined by that rule, and the complaint will then be dealt with as properly made.

3. *Prescribed general officer or brigadier;* see R.P. 126 (A).

Punishments

Scale of punishments by courts-martial.

44. Punishments[1] may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers,[2] according to the scale following:

(*a*) Death[3];

(*b*) Penal servitude[4] for a term not less than three years;

(*c*) Imprisonment,[5] with or without hard labour, for a term not exceeding two years;

(*d*) Cashiering[6];

(*e*) Dismissal[6] from His Majesty's service;

(*f*) Forfeiture in the prescribed manner of seniority of rank,[7] either in the army or in the corps to which the offender belongs, or in both; or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for the purposes of promotion;

(*g*) Severe reprimand, or reprimand;

(*gg*) Stoppages[8].

In the case of soldiers,[9] according to the scale following:

(*h*) Death[3];

(*j*) Penal servitude[4] for a term not less than three years;

(*k*) Imprisonment,[5] with or without hard labour, for a term not exceeding two years;

PART I

s. 44.

(kk) Detention[10] for a term not exceeding two years;

(l) Discharge with ignominy from His Majesty's service[11];

(m) In the case of a non-commissioned officer, reduction [13] to the ranks or to a lower grade, or forfeiture, in the prescribed manner, of seniority of rank[12];

(mm) In the case of an non-commissioned officer, severe reprimand or reprimand[14];

(n) Forfeitures,[15] fines [16] and stoppages.[17]

Provided that—

(1) Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act[18] as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment;

(1A) For the purposes of commutation and revision of punishment, detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment;

(1B) An offender under this Act shall not be subject to imprisonment or detention for more than two consecutive years, whether under one or more sentences[19];

(2) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment[20];

(2A) The Army Council may restore the whole or any part of any lost seniority or forfeited service in the case of an officer who may perform good and faithful service, or who may otherwise be deemed by the Army Council to merit such restoration;

(3) An officer or a non-commissioned officer when sentenced to forfeiture or seniority of rank and an officer when sentenced to forfeiture of all or any part of his service for the purposes of promotion may also be sentenced to be severely reprimanded or reprimanded;

(4) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from His Majesty's serivce[21];

(5) Where a soldier on active service[22] is guilty of any offence, it shall be lawful for a court-martial to award for that offence such field punishment[23] other than flogging or attachment to a fixed object, as may be directed by rules to be made from time to time by a Secretary of State, and such field punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb;

(6) In addition to or without any other punishment in respect of an offence committed by a soldier on active service,[22] it shall be lawful to a court-martial to order that the offender forfeit all ordinary pay[23A] for a period commencing on the day of the sentence and not exceeding three months[24];

PART I — s. 44.

[*Provisos (7) and (8) repealed.*]

(9) All rules with respect to field punishment made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament;

(10) For the purpose of commutation of punishment the field punishment above mentioned shall be deemed to stand in the scale of punishments next below detention;

(11) In addition to or without any other punishment in respect of any offence, an offender convicted by court-martial may be subject to forfeiture of any deferred pay, service towards pension, naval, military or air-force decoration or naval, military, or air-force reward[26] in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1893, or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts;

(12) In addition to or without any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorized by this Act[26] to be made from his ordinary pay;

(13) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict or cause to be inflicted on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorized by this Act.[27]

NOTE

1. See generally K.R. 652-656 as to the principles to be observed by a court-martial in awarding sentence.

2. An officer cannot be tried by district court-martial, nor can a district court-martial award a sentence of death or penal servitude; s. 48 (6).

3. *Death.* As to notifying accused that a sentence of death has been passed, see note *(b)*, R.P., App. II, p. 762.

4. *Penal servitude.* See as to the execution of a sentence of penal servitude, ss. 58-62, and notes. A soldier sentenced to penal servitude may in addition be sentenced to be discharged with ignominy; (proviso (4)).

It is competent for a court-martial in cases where it is authorized to impose a term of penal servitude, to award penal servitude for life (except in cases under s. 41 (5) for which a maximum sentence of penal servitude has been fixed by law—see table at end of Ch. VII) or for any term not less than three years.

5. *Imprisonment.* As to rules for awarding terms of imprisonment in days, months or years, as the case may require, see K.R. 654. As to execution of a sentence of imprisonment, see ss. 63-67, and notes; as to the date from which a sentence is to be reckoned, see s. 68 (1); and as to the limitation of sentences of imprisonment, see proviso (1B).

A soldier convicted by court-martial of an offence under ss. 17, 18 (4), 18 (5), or 41, whom it is not desired to retain in the Army, should be sentenced to imprisonment, but in case he is convicted of such offence, or of any other military offence, and it is desired to retain him in the Army, he should be sentenced to detention. K.R. 652 lays down principles as to when imprisonment, and when detention, ought to be awarded.

A soldier sentenced to imprisonment may in addition be sentenced to be discharged with ignominy; proviso (4)).

6. "Cashiering" is a more ignominous form of "dismissal."

Sentences of cashiering and dismissal do not take effect until promulgation, and such sentences have the effect of cashiering or dismissing the accused, not only from the Army, but also from any other service in which he may hold His Majesty's commission.

7. *Forfeiture in the prescribed manner of seniority of rank.* See R.P. 47.

Temporary rank is a "rank" and not merely an appointment. The substantive rank is not merged in the temporary rank, and a court-martial can order loss of seniority in either, or in both of the ranks.

An officer or a N.C.O. when sentenced to forfeiture of seniority of rank and an officer when sentenced to forfeiture of service for the purposes of promotion may also be sentenced to be severely reprimanded or reprimanded; (proviso (3)).

8. *Stoppages.* See proviso (12) and s. 137 (2).

9. The expression "soldier" includes a warrant officer, but s. 182 contains certain modifications, as regards warrant officers.

A warrant officer when tried by district court-martial may only be sentenced to the following punishments:—

To be severely reprimanded or reprimanded; or

To such forfeitures, fines and stoppages as are allowed by this Act (see s. 138);

and, either in addition to or in substitution for any of these punishments—

To be dismissed from the service; or

"If he was originally enlisted as a soldier but not otherwise, to be reduced to the ranks, or, in any case

To be reduced to a lower grade; or

To be reduced to an inferior class of warrant officer (if any): or

To be reduced to the bottom or any other place in the list of the rank which he holds."

When tried by other than a district court-martial, a warrant officer may be sentenced to any punishment which a district court-martial can award, and, either in addition to or in substitution for any such punishment, to any other punishment to which a soldier (including a N.C.O.) is liable under this section.

10. *Detention.* See Ch. III, para. 64, and Ch. V, para. 106. As to the execution of a sentence of detention, see ss. 63-67.

A soldier sentenced to three months' detention, or upwards, is liable in commutation thereof, either wholly or partly, to general service, and to transfer to any corps; s. 83 (7).

11. *Discharge with ignominy.* See also proviso (4). A discharge with ignominy takes effect, not from the date of sentence or promulgation, but from the date when discharge is formally carried out in accordance with the regulations relating to discharges.

12. *Forfeiture in the prescribed manner of seniority of rank.* See R.P. 47. See also note 7 above.

The power to forfeit seniority of rank in the case of N.C.Os. is intended to meet cases in which reduction to a lower grade would be too severe. As indicating the relative severity of a sentence of reduction and one of forfeiture of seniority, it is to be noted that a sergeant of twenty years' service who is sentenced to be reduced to the ranks loses all right to pension as a N.C.O., and is only entitled to pension as a private soldier, although he may have held the rank of sergeant for (say) twelve years. On the other hand, the effect of a sentence of forfeiture of seniority of rank is that his seniority in the rank he holds is alone affected. Thus, if a sergeant who was promoted to that rank on the 19th April, 1920, were sentenced to take rank and precedence as if his appointment to that rank bore date the 21st June, 1922, he would, on the latter date, while having only one day's service to count for seniority, still count continuous service for all other purposes in the rank of sergeant from the 19th April, 1930.

13. *Reduction.* Service in the lower grade will reckon from the date of signing the original sentence, whether the punishment in question was a revised sentence, or a mitigation by the confirming officer from a more severe sentence. As to the reduction of warrant officers, see note 9 above, and of warrant officers in the Indian forces, s. 180 (2) (*f*) as regards temporary rank (see note 3 to s. 183).

A court-martial does not deal with acting or lance rank; a sentence reducing a corporal (acting sergeant) to corporal or lance-corporal is inoperative.

14. *Severe reprimand or reprimand.* (N.C.O.)

Although lance or acting rank is not cognizable in the sentence of a court-martial, nevertheless a soldier holding any such appointment, being a N.C.O., may be sentenced by court-martial to be severely reprimanded or reprimanded. See note 6 to s. 183.

PART I — s. 44.

15. *Forfeitures: i.e.*, those mentioned in provisos (6) and (11) of this section. Forfeitures of service towards discharge under ss. 79 (2), 84, and 161 are consequential and cannot be awarded by sentence of court-martial.

Except as regards long service and good conduct pay (P.W., 1931, article 998B) and good conduct badges (P.W. 964), there is at present no provision contained in any Royal Warrant providing for the forfeitures by sentence of court-martial of military decorations or military rewards as defined by s. 190 (18) and (19). No such forfeitures can therefore be ordered by a court-martial. (See P.W. 1147.) Neither can a court-martial deal with naval or air force decorations.

As to restoration of forfeited service, see the proviso to ss. 79 (2) and 161, and note 4 to s. 84.

16. *Fines.* These are not authorized to be imposed for any military offence except drunkenness, and cannot exceed, if imposed by a court-martial, five pounds, or, if imposed by a C.O., two pounds; ss. 19, 46 (2) *(b)*, and K.R. 579.

17. *Stoppages.* See proviso (12). S. 138 sets out the cases in which penal deductions or stoppages may be made from the ordinary pay of a soldier; and s. 139 provides for their remission.

18. *Subject to the other regulations of this Act, etc.* Provisos (2), (3), (4), (6), (11), and (12) specify the particular instances in which more than one punishment may be given.

19. By virtue of this proviso a man cannot be subjected to imprisonment or detention, whether under one or more sentences, for more than two consecutive years. (See also K.R. 653.) Any period passed in military custody under a sentence or imprisonment by the civil power between two periods of imprisonment, or of detention, or between a period of imprisonment and one of detention (or *vice versa*), is to be reckoned as part of the term of confinement.

The proviso does not apply to a fresh offence committed after release.

A man whose sentence has expired is not in custody whilst returning to his unit, and if immediately after rejoining he commits an offence and is rearrested, he may be sentenced by court-martial to two years' imprisonment or detention, for at no intervening period since the expiration of his previous sentence has he been undergoing any sentence.

Escape from prison or detention, even for a single day, breaks the continuity of the confinement, and time must be calculated afresh from the date on which the man is returned to prison, detention barrack, or military custody. If he is re-captured and kept in military custody to be tried for some fresh offence (*e.g.*, his escape from imprisonment or detention) and his original sentence is still current, he is not merely "in arrest pending trial" but is actually serving his original term (see s. 63). Therefore at his trial a court-martial cannot award a full two years' imprisonment or detention, but must deduct therefrom the period spent in custody since his re-arrest.

See K.R. 561 *(b)* (iv) for provisions as to consecutive awards of detention by a C.O.; the same provisions are held to be applicable also to awards of field punishment (which is not expressly mentioned).

20. Care must be taken to comply with this provision; a sentence of penal servitude *and* to be cashiered is incorrect, as cashiering should *precede* penal servitude.

21. It will be observed that this does not apply in the case of a soldier sentenced to detention.

22. For definition of *active service*, see s. 189.

Whenever an accused was at the date of his offence on active service, this fact should always be stated in the charge-sheet so that the court may be in a position to give effect to provisos (5) and (6). Nevertheless, where the troops in the country where the court sits are all on active service, the court may take judicial notice of such fact though not expressly averred; *cf.*, R.P. 12 (C).

23. The following conditions are essential to the legality of field punishment:—

The offender must be on active service.

The punishment must be in conformity with the Field Punishment Rules; see the Rules at p. 787.

23A. For definition of "ordinary pay" *see* notes 2 to ss. 137 and 138.

24. Forfeiture of pay under this provision can only be ordered in case of an offence committed by a soldier on active service. If the soldier is at the time liable to any penal deductions from pay, the order only affects the balance of the pay remaining after those deductions: see s. 138, proviso *(c)*.

25. As to these forfeitures, see P.W. 979, 1031, 1147, and note 15 above.

26. *Authorized by this Act.* See ss. 137 and 138.

27. One effect of this provision is to make it illegal for an officer prisoner of war placed by the captor State in charge of other prisoners to impose on them—even in compliance with express orders—any punishment not sanctioned by this Act.

ARREST AND TRIAL

Arrest[1]

Custody of persons charged with offences.

45. The following regulations shall be enacted with respect to persons subject to military law when charged[2] with offences punishable under this Act:—

(1) Every person subject to military law when so charged[2] may be taken into military custody: Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report[3] of the necessity for further delay shall be made by his commanding officer[4] in manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody;

(2) Military custody[5] means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement;

(3) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody any officer (though he be of higher rank) engaged in a quarrel, fray, or disorder; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm or branch of the service;

(4) An officer or non-commissioned officer commanding a guard, or a provost marshal or assistant provost marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost marshal, or assistant provost marshal into whose custody the person is committed, an account in writing,[6] signed by himself, of the offence with which the person so committed is charged[2]

(5) The charge[2] made against every person taken into military custody shall without unnecessary delay be investigated[7] by the proper military authority,[8] and, as soon as may be, either proceedings shall be taken for punishing the offence, or such persons shall be discharged from custody.[9]

NOTE

1. See generally as to arrest and confinement, and release therefrom. Ch. IV, paras. 1-18; and K.R. 533-540.

PART I

s. 45.

It will be convenient to give a summary of the provisions for preventing a person from being kept in custody without his case being dealt with by the proper authority.

An officer or N.C.O. who commits a person into custody should sign and deliver to the officer or N.C.O. into whose custody such person is committed, a written account (termed "the charge") of the officer with which the person so committed is charged. He should, if possible, do this at the time of committal, but at any rate must do so within 24 hours after that time. See ss. 21 (2), 45 (4). If the "charge" is not delivered at the time of committal, a verbal report to the same effect is to be made (K.R. 536), but non-delivery of the "charge" will not excuse a refusal to receive an offenced into custody. The officer or N.C.O. into whose custody the accused is committed, must give in writing to the officer to whom he may be ordered to report the name and offence of the accused, as far as known to him, and the name and rank of the person by whom he is charged (s. 21 (3)); and, if so requested by the person committed, he shall inform such person of the rank and name of the person preferring charges against him or ordering his arrest, and shall also give him a copy of the charge report as soon as he himself receives it. The report mentioned must be made immediately upon relief from guard or duty, if relieved within 24 hours after the person's committal, and in any case within those 24 hours. It must be accompanied by the "charge," if he has received it; and should be made by an entry in the guard report, and he should send the "charge," or a copy thereof, to the C.O. of the accused (K.R. 536). If he has not received the "charge," he must mention the circumstance in his report, and if the "charge" is not delivered within 24 hours, the commander of the guard must make a further report to the superior authority, who, if evidence sufficient to justify the retention in custody of the accused is not forthcoming, will, at the expiration of 48 hours from the time of committal, order him to be released (K.R. 536). A C.O. who has received the report of the committal of an accused person becomes responsible (s. 45 (5)) for having the case investigated without delay. This delay, under R.P. 2, is not to exceed 48 hours without the case being reported to the officer to whom application would be made to convene a court-martial for the trial of the person charged.

If eight days elapse without the case being disposed of summarily and without a court-martial being ordered to assemble, the special report required by s. 45 (1), as explained by R.P. 1, must be made, and a similar report is required to be forwarded every eight days; and this report will have to be sent by the C.O. even though the fault of the delay lies with the officer to whom the report is to be made. This special report is not required on active service. If undue delay occurs in convening a general or district court-martial, a report has to be made in due accordance with R.P. 17 (C).

When an officer or warrant officer is placed under arrest, the C.O., unless he dismisses the charge, should report the case, without delay, to superior authority.

With reference to the above observations, it must be recollected that in reckoning the time fixed by the R.P., Sunday, Good Friday, and Christmas Day are, as a general rule, excluded (R.P. 135 (A)), but this is not the case in reckoning the days fixed by sections of the Act, *e.g.*, ss. 21, 45 (1).

2. The "charge" referred to in this section, in s. 46 (1), and in R.P. 3, 4 and 8 is distinct from that referred to in R.P. 11 (B). The latter, in the case both of officers and soldiers, is the formal charge preferred by the C.O. and set out in the written charge-sheet, if and when it is decided to send the case for trial. The former is simply a complaint that an offence has been committed.

3. *Special report.* See R.P. 1.

4. The C.O. in this section means the C.O. as defined by R.P. 129; see K.R. 526.

5. *Military custody.* This expression is here restructed by the opening words of the section to the military custody of persons when charged with offences, and does not apply to persons in military custody undergoing sentence. See K.R. 533-540.

6. *An account in writing.* The absence of a written charge does not, however, invalidate an arrest. *Heddon* v. *Evans* (1919), 35 T.L.R. 642.

7. As to the conduct of the investigation, see Ch. IV, paras. 19-29; R.P. 2-8 and notes; K.R. 542-554.

8. *Proper military authority.* All charges against N.C.Os. and soldiers should be investigated in the first instance by the Company, etc., commander, who, in all

cases where a private soldier is concerned, and in certain cases where a N.C.O. is concerned, may either dispose of the case himself or reserve it for the C.O. (see K.R. 542, 565); and, where the case is so reserved, the C.O. must give the decision under s. 46 (1).

9. As to offences in relation to this section, see s. 21.

Summary disposal of Charges[1]

Power of commanding officer.

46.—(1) The commanding officer[1] shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge,[2] if he in his discretion thinks that it ought not to be proceeded with, but where he thinks the charge ought to be proceeded with, he may take steps for bringing the offender to court-martial, or, in the case of an officer below the rank or field officer or of a warrant officer,[3] may refer the case to be dealt with summarily by a general officer or brigadier under the provisions of this Act, or in the case of a soldier[4] may deal with the case summarily.

(2) Where he deals with a case summarily,[5] he may—

(*a*) Award to the offender detention[6] for any period not exceeding twenty-eight days; and

(*b*) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding two pounds[7] either in addition to or without any other punishment; and

(*c*) In addition to or without any other punishment may order the offender to suffer any deduction from his ordinary pay[8] authorized by this Act to be made by the commanding officer; and

(*d*) In the case of an offence by a soldier (not being a non-commissioned officer) on active service, may award to the offender field punishment[9] within the meaning of section forty-four of this Act for any period not exceeding twenty-eight days, and may in addition to, or without any other punishment, order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding twenty-eight days[9]; and

(*e*) In addition to or without any other punishment may award such other punishment[10] as he is for the time being authorized to award, so however that a minor punishment shall not be awarded for any offence for which detention exceeding seven days is awarded.

(3) Where the charge is against a soldier for drunkenness[11] the commanding officer shall deal with the case summarily unless the offence was committed on active service or on duty, or after the offender was warned for duty, or unless by reason of the drunkenness the offender was found unfit for duty, or unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months; but nothing in this subsection shall affect the jurisdiction of any court-martial or the right of the soldier to be tried by a district court-martial.

[*Certain words omitted from subsection* 3 *by* 46 *Vict. c.* 6, s. 4.]

(4) [*This subsection was repealed by A.A.* 1910].

PART I

s. 46.

(5) [*This subsection was repealed by A. and A.F. (A.) Act,* 1921.]

(6) Provided that in every case where the commanding officer has power to deal with the case summarily, the accused person may demand that the evidence against him should be taken on oath,[12] and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7) An offender shall not be liable to be tried by court-martial where the charge has been dismissed or the offence has been dealt with summarily[13] by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by a court-martial.[14]

(8) Where a commanding officer has power to deal with a case summarily under this section, and, after hearing the evidence, considers that he may so deal with the case, he shall, in every case where the award or finding involves a forfeiture of ordinary pay,[15] and in every other case, unless he awards no other punishment than one of the minor punishments referred to in this section, ask the soldier[16] charged whether he desires to be dealt with summarily or to be tried by a district court-martial, and if the soldier elects to be tried by a district court-martial[17] the commanding officer shall take steps for bringing him to trial by a district court-martial, but otherwise shall proceed to deal with the case summarily[18].

(9) The power of dealing summarily with a case may be delegated by a commanding officer to any officer under his command in accordance with and subject to the King's Regulations for the Army[19]:

Provided that such officer shall not have power to inflict any punishment other than a minor punishment, or such fines for drunkenness as may be provided for by those Regulations.

NOTE

1. See Ch. IV, paras. 31-38; R.P. 2-7, and notes; K.R. 542-568. As to meaning of *commanding officer*, see R.P. 129 and note; K.R. 526.

2. A C.O. may dismiss the charge, whether the accused is an officer or a soldier; and he should do so if, in his opinion, the evidence does not show that some offence under this Act has been committed, or if, in his discretion, he thinks the charge ought not to be proceeded with. (R.P. 4 (A)).

3. A C.O. cannot, as such, inflict "punishment" upon an officer. Nor does his power under this section to deal summarily with a soldier extend to a warrant officer (s. 182 (1)), or to a civilian who is subject to the Act (s. 184 (2)). See s. 47 with regard to summary disposal of charges against officers and warrant officers.

4. *In the case of a soldier.* "Soldier" includes a N.C.O., whether permanent or acting, but the K.R. restrict the powers of a C.O. in dealing with N.C.Os. (K.R. 558, 559), who are only subject to the following summary and minor punishments—:

Any deduction from ordinary pay allowed by s. 138 (4), subject to the right of the N.C.O. to elect trial by court-martial;

Reprimand or severe reprimand; } No right to elect trial by court-
Admonition; } martial.

A N.C.O. holding any appointment or acting rank or lance rank may be ordered by the C.O., either for an offence or otherwise, to revert to his permanent rank or to any intermediate acting or lance rank, the N.C.O. having no right to elect trial by court-martial; (s. 183 (c); K.R. 559; and see note 15 below.)

By s. 183 (1), the obligation (under subs. (3) of this section) to deal summarily with certain cases of drunkenness does not apply to a N.C.O. charged with drunkenness.

If a N.C.O. is reduced to the ranks by sentence of court-martial, and whilst serving in the ranks is awarded a summary or minor punishment by his C.O., such award is valid although at a later date the proceedings of the court-martial are quashed.

5. The summary and minor punishments which a C.O. can award in the case of a private soldier are set out in K.R. 560. Briefly they are as follows:—

Summary punishments (subject to the soldier's right to elect., previous to the award, to be tried by court-martial)

Detention.—Up to 28 days; but if the C.O. is below the rank of field officer, then with certain exceptions, only up to 7 days;

Fine.—For drunkenness only, and not exceeding two pounds. For the prescribed scale of fines, see K.R. 579;

Deductions from pay.—As authorized by s. 138 (4) (6), (subject to approval of G.O.C. if amount of proposed deduction exceeds four pounds);

Field punishment.—Up to 28 days (on active service only);

Forfeiture of pay.—Up to 28 days (on active service only).

Minor punishments (the soldier having no right to elect trial by court-martial)—

Confinement to barracks.—Up to 14 days;

Extra guards and piquets.—Only to be ordered as a punishment for minor offences or irregularities when on, or parading for, these duties;

Admonition.

K.R. 561 lays down when more than one of the above punishments may be awarded.

6. Detention awarded by a C.O. up to 7 days will be awarded in "hours"; K.R. 561 *(b)* (ii). As to commencement of term of detention, see R.P. 6, and K.R. 561 *(b)* (iv). A C.O. cannot by one or more sentences award detention for more than 28 consecutive days (K.R. 561 *(b)* (iv). A C.O. cannot inflict a sentence of imprisonment.

7. For scale of fines for drunkenness, mode of recovery, etc., se K.R. 579, 580, and as to punishment for simple drunkenness, K.R. 577.

8. *Deduction from ordinary pay.* See ss. 138-140 and notes.

9. Field punishment is awarded in "days," never in "hours."

Forfeiture of pay commences as from the day of award. When, therefore, it is desired to order forfeiture of pay for a period in excess of the field punishment awarded, *e.g.*, 10 days' field punishment and an additional forfeiture of 14 days' ordinary pay, it will be necessary to award the offender 10 days' field punishment with forfeiture of 24 days' pay, as pay is forfeited for the period of field punishment awarded.

A C.O. cannot by one or more sentences award more than 28 days' consecutive forfeiture of pay or field punishment; but this does not prevent him awarding such sentences as 28 days' forfeiture to a man who has just undergone 14 days' detention or field punishment, or 28 days' detention or field punishment to one who has just undergone 14 days' forfeiture; in such cases it is the Royal Warrant which in effect causes the period of forfeiture to exceed 28 days.

10. *Minor punishment.* See K.R. 558 *(b)*, 560 *(b)*, and notes 4 and 5 to this section.

11. Certain cases of drunkenness a C.O. must deal with summarily (unless the accused elects trial under subs. (8) of this section), except where the offender is a N.C.O. (s. 183 (1)); but he *may*, if he thinks fit (subject to such election), deal summarily with any case of drunkenness, though the offence was committed in the special circumstances mentioned in this sub-section. See K.R. 575.

12. Every charge must be heard in the presence of the accused. Witnesses will not be sworn unless he requires it, but he must have full liberty of cross-examination, to call witness and make any statement (R.P. 3, 4).

13. *Dealt with summarily.* If a C.O., contrary to K.R. 547 (which requires him to refer to superior authority certain offences), through inadvertence and with a full knowledge of the facts, dismisses the charge or deals with any offence summarily, his award is legal and the offender cannot be tried by court-martial for that offence.

14. *Acquitted or convicted by a civil court or a court-martial.* See note to s. 157. Nor can a man acquitted or convicted of an offence by a civil court or court-martial be tried by court-martial for the same offence; ss. 157, 162 (6). Where a soldier has been acquitted, or the charge has been dismissed, or where he has been convicted or summarily punished for an offence which is substantially the same as some other

PART I — ss. 46, 47.

offence, he ought not to be summarily punished by his C.O. or tried for such other offence. If, for example, he has been acquitted, or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot afterwards be tried for desertion. Nor can a man convicted by a court-martial of an offence be afterwards sentenced by his C.O. to stoppages for damage caused by that offence.

15. Lance and acting rank is a matter to be dealt with entirely by a C.O., hence a C.O. can deprive a soldier of acting or lance rank and revert him to his permanent rank without giving him the option of trial by district court-martial, even though such deprivation will involve a lower rate of pay. See also Ch. IV. para. 26, and note 6 to s. 183.

Where a case of absence without leave is dealt with summarily by a company, etc., commander acting as commanding officer, he must, of course, comply with the provisions of this sub-section, and should in every case, before awarding any punishment, inform the soldier of the number of days pay he forfeits under the P.W. in respect of his absence, and ask him whether he wishes to be tried by district court-martial.

16. A C.O. must never omit to ask the question prescribed by this subsection, otherwise he acts without jurisdiction and any award of punishment would be invalid.

17. Where an accused elects trial by court-martial, he may, if his C.O. thinks the circumstances of the case warrant it, be at once released from arrest pending trial: K.R. 552 *(a)*. He is to be given on the following day an opportunity of reconsidering his decision to be tried by court-martial: K.R. 552 *(b)*. The fact that he so elects should be noted (in red ink) on the top of the application formand of the charge-sheet. This serves *(inter alia)* to notify the court that the C.O. did not consider the case to be one deserving of a more severe punishment than he himself could have awarded. (*cf.* K.R. 652 *(c)*.)

18. The officer commanding a military hospital is temporarily the commanding officer of patients therein, and can investigate charges against them and apply for a court-martial. See also K.R. 1350.

R.P. 6 (B) prohibits a C.O. from increasing a punishment after he has once made his award, which is complete when the man has quitted his presence. This rule applies in the case of minor as well as other punishments. But a C.O. can at any time before the punishment has been completed, mitigate or remit a minor or a summary punishment. As to entry of his award, see K.R. 544.

Awards by a C.O. which appear to be illegal or excessive can be reviewed by superior authority under R.P. 10.

19. See K.R. 542 *(d)*, 565.

Power to deal summarily with charges against officers and warrant officers.

47.—(1) Any of the following authorities shall have power to deal summarily[1] with a charge against an officer below the rank of field officer or against a warrant officer referred for the purpose, or for trial by court-martial,[2] under the foregoing section of this Act, that is to say, any general officer or brigadier authorized to convene a general court-martial, and any officer (not under the rank of major-general) appointed for the purpose by the Army Council, and also in the case of a force on service out of the United Kingdom the general or air officer commanding the force and any officer (not under the rank of major-general) appointed for the purpose by him.

(2) The authority having power to deal summarily with the case may, with or without hearing the evidence, dismiss the charge, if he in his discretion thinks that it ought not to be proceeded with, or, where he thinks the charge ought to be proceeded with, take steps for bringing the offender to a court-martial or may, after hearing the evidence, or, if the accused consents thereto in writing, after reading a summary or abstract of the evidence, deal with the case

summarily by awarding in the case of an officer[3] one or more of the following punishments[4]:—

(a) Forfeiture of seniority of rank[5] either in the army or in the corps to which the offender belongs, or in both, or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for the purposes of promotion;

(b) Severe reprimand or reprimand;

and in the case of a warrant officer[3] one or more of the following punishments—

(a) Forfeiture in the prescribed manner of seniority of rank;[6]

(b) Severe reprimand or reprimand;

(c) Any deduction authorized by this Act to be made from his ordinary pay[7],

(3) Where the authority having power to deal summarily with the case considers that he may so deal with the case, he shall, unless he awards a severe reprimand, or a reprimand, in every case ask the accused whether he desires to be dealt with summarily or to be tried by a court-martial, and if the accused elects to be tried by a court-martial, take steps for bringing him to trial by a court-martial, but otherwise shall proceed to deal with the case summarily.

(4) In every case where an authority has power to dispose of a case summarily, and decides so to do, the accused may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(5) An offender shall not be liable to be tried by court-martial where the charge has been dismissed or the offence has been dealt with summarily under this section, and shall not be liable to be punished by a general officer or brigadier under this section for any offence of which he has been acquitted or convicted by a competent civil court or by a court-martial.

NOTE

1. This section obviates the necessity for trying by court-martial a junior officer or a warrant officer who commits some offence which is not of a serious nature but yet cannot be overlooked. (See K.R. 546 as to the offences with which the authorities specified in this section may deal.) Where an officer or a warrant officer is ordered to be summarily dealt with under this section, he should be given a copy of the summary (or abstract) of the evidence not less than twenty-four hours before the trial. R.P. 9 (A).

2. An authority can act under this section not only if asked to do so but also if the case has been remanded for the purpose of the trial of the offender by court-martial. Even if asked to deal summarily with the case, he can, if he thinks it desirable, convene a court-martial. If on perusal of the summary (or abstract) of evidence and other documents he thinks fit, he can at once, without bringing the accused before him, either dismiss the case or order a court-martial, or he can decide to hear the evidence with a view to dealing summarily with the case. The accused may demand that the evidence be given on oath. After hearing the evidence the authority herein specified can still dismiss the case or order a court-martial, or he can deal summarily with it subject to the right of the accused to claim trial by court-martial under subs. (3).

3. When an officer or warrant officer of the Royal Air Force seconded, lent or attached to the Army is summarily dealt with under this section, the discretion of the authority.

so dealing with the case is regulated by K.R. 557, and he will not, in the case of an officer, award the punishment of forfeiture of seniority of rank in the Royal Air Force, or of service for promotion in that force; nor, in the case of a warrant officer, forfeiture of seniority of rank in the said force.

4. Awards under this section which appear to be illegal or excessive can be reviewed by the authorities specified in R.P. 10.

5. *Forfeiture of seniority of rank*—(officers). See R.P. 47. See also K.R. 555 and 556, which limit the power of an authority acting under this section.

6. *Forfeiture in the prescribed manner of seniority of rank*—(warrant officers). See R.P. 47.

7. For definition of "ordinary pay" see note 2 to s. 138.

Courts-Martial

Preliminary Note

The principal enactments which govern the convening, composition, and procedure of courts-martial are contained in this group of sections (ss. 48-56). The remainder of the law will be found in the supplemental provisions of the Act as to courts-martial (ss. 122-130) and as to evidence (ss. 163-165) and in the Rules of Procedure. S. 49 provides for the convening of the exceptional tribunal of a field general court-martial to try offences committed on active service, and offences against the inhabitants of, or residents in, countries out of the United Kingdom, which it is not practicable to try by an ordinary court. Certain questions relating to jurisdiction of courts-martial are dealt with in ss. 157-162.

See Ch. V for general explanation of the constitution and practice of courts-martial; and for details see the Rules of Procedure and notes.

K.R. 546 specifies the offences which an authority under s. 47 may dispose of, and K.R. 547 specifies the offences which a C.O. is empowered to dispose of without reference to superior authority; K.R. 615 and 634 point out the general rules under which different classes of offences should be dealt with by a lower or higher tribunal.

General and district courts-martial.

48. The following rules are enacted with respect to general courts-martial and district courts-martial:—

(1) A general court-martial shall be convened by His Majesty or some officer deriving authority to convene a general court-martial immediately or mediately from his Majesty[1];

(2) A district court-martial shall be convened by an officer authorized to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorized to convene general courts-martial[2];

(3) A general court-martial shall consist of[3] not less than five officers, each of whom must have held a commission during not less than three whole years,[4] and of whom not less than four must be of a rank not below that of captain;

(4) A district court-martial shall consist of[3] not less than three officers, each of whom must have held a commission during not less than two whole years[4];

(5) The minimum number mentioned in this section for a general or a district court-martial shall be the legal minimum[5] for that court-martial;

(6) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid, any offence,

under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished[6] by either a general or district court-martial;

(7) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer;

(8) Sentence of death[7] shall not be passed on any person without the concurrence of two-thirds at the least of the officers serving on the court-martial by which he is tried;

(9) The president[8] of a court-martial, whether general or district, shall be appointed by order of the authority convening the court, but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed[9] in the order convening the court and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial, and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed[9] in the order convening the court and to be conclusive, a captain is not, having due regard to the public service, available.

(10) If it becomes necessary to convene a court-martial under this Act at any place where in the opinion of the convening officer the necessary number of military officers is not available to form such a court, or where in his opinion such a necessary number could not be made available without serious injury to the interests of the service, such opinion to be expressed[9] in the order convening the court, and to be conclusive, then the said convening officer may, subject to any directions which may be given by the Army Council and with the consent of the proper air force authority, nominate any air force officer to preside over the court, or nominate as members of the court any necessary number of air force officers in addition to or in lieu of military officers;

Provided that no air force officer shall be qualified to perform any function in relation to such court-martial unless he is of equal seniority and equivalent rank to that which would have been required by the provisions of this Act if he had been a military officer;

NOTE

1. Power to convene general courts-martial is given by warrant; see s. 122, and Ch. V, paras. 5-9.

2. The power to convene district courts-martial is not given specifically by warrant, but is an incident of the power to convene general courts-martial; in other words, an officer authorized to convene general courts-martial may either himself convene, or delegate to other officers power to convene, district courts-martial (s. 123) As to the duty of an officer before convening a court, and as to speedy convening of court, see Ch. V, paras. 20-22, and R.P. 17.

PART I
—
ss. 48, 49.

3. As to the composition, etc., of courts-martial, see R.P. 19, 20 and 21, and K.R. 642-644.

Air-force officers properly attached or lent to, or seconded for service with, the Army, can sit on a court-martial; so also can an Army chaplain if holding a commission, but he is not qualified to preside.

4. A court would have no jurisdiction if each member has not held a commission for the required period, or if its composition differed in any respect from that detailed in the convening order.

5. A convening officer can increase beyond the legal minimum the number of officers to sit on a court-martial, but cannot decrease the number below that minimum; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void.

6. In the case of a warrant officer, a district court-martial can only award the punishments specified in s. 182 (2) *(a)*.

7. As to the duty to notify to an accused that sentence of death has been passed, see note *(b)*, R.P., App. II, p. 762.

8. As regards the appointment of president and members, see K.R. 644. The convening officer cannot himself preside or, indeed, be a member of the court (s. 50 (2)). The duties of the president are laid down in R.P. 59; he must be appointed by name. As regards the members and waiting members, the number and ranks and units to which they belong may alone be mentioned, or they may be mentioned by name, and in cases where units cannot be specified (*e.g.* R.E., R.A.S.C.), they should be named.

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of a commanding officer of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused. K.R. 642.

Where the accused is a warrant officer, the president must not, in any case, be under the rank of captain; s. 182 (4).

9. *Such opinion to be expressed, etc.* If the opinion is not duly expressed, the court will be improperly constituted, and its proceedings invalid.

Field general courts-martial.

49.—(1) Where a complaint is made to any officer in command of any detachment or portion of troops in any country out of the United Kingdom, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that an offence has been committed by any person subject to military law,

then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorized to convene general courts-martial, to convene a court-martial, in this Act referred to as a field general court-martial,[1] for the trial of the person charged with such offence, provided as follows:—

(*a*) An officer in command of a detachment or portion of troops not on active service shall not convene a field general court-martial for the trial of any person, unless that person is under his command, nor unless the offence with which the person is charged is an offence against the property or person of an inhabitant of, or resident in, the country in which the offence is alleged to have been committed;

(*b*) A field general court-martial shall consist of not less than three officers, unless the officer convening the same is of opinion that three officers are not available having due regard to the public service, in which case the court-martial may consist of two officers;

(*c*) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president,

who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain;

(*d*) Where a field general court-martial consists of less than three officers, the sentence shall not exceed such field punishment as is allowed by this Act, or imprisonment.

(2) Section forty-eight of this Act except paragraph (10) thereof shall not apply to a field general court-martial, but sentence of death[2] shall not be passed on any person prisoner by a field general court-martial without the concurrence of all the members.

(3) A field general court-martial may, notwithstanding the restrictions enacted by this Act[3] in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer, and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence. Provided always, that no sentence of any such court-martial shall be executed until confirmed[4] as provided by this Act.

NOTE

1. The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary general court-martial. A field general court-martial can try any offence committed on active service, except the civil offences of treason, murder, manslaughter, treason-felony or rape committed in the United Kingdom; but where troops are not on active service it can only be convened out of the United Kingdom for the trial of offences against the property or person of some inhabitant of, or resident in, the country. See R.P. 105-123 and notes.

If troops on board a ship (not commissioned by His Majesty) are on active service, the O.C. troops can convene a field general court-martial for trial of an offender on board; (see also as to such troops, s. 188).

2. As to notifying accused that a sentence of death has been passed, see note (*b*), R.P. App. II, p. 762.

3. *Restrictions enacted by this Act.* See s. 41 proviso. It has been held that the opening words of the proviso to s. 41 amount to a prohibition against the trial by any court-martial of the civil offences of treason, murder, manslaughter, treason-felony or rape if committed in the United Kingdom.

4. As to confirmation of sentence, see s. 54 (1) (*d*), and R.P. 120.

Courts-martial in general.

50.—(1) The officers sitting on a court-martial may belong to the same or different corps,[1] or may be unattached to any corps, and may try persons belonging or attached to any corps.

(2) The officer who convened a court-martial shall not, save as is otherwise expressly provided[2] by this Act, sit on that court-martial.

(3) Any of the following persons, that is to say, a prosecutor or witness for the prosecution of any accused, or the commanding officer[3] of the accused within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges[4] on which an accused is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such accused, nor shall he act as judge-advocate at such court-martial.[5]

NOTE

1. If an officer is competent to sit on a court-martial, he is *qualified* to sit on any court of the same description, and a convening officer may, by arrangement, avail himself of the services of an officer not otherwise under his orders. See note 1 to

PART I

ss. 50, 51.

R.P. 20. A general or district court-martial must, so far as seems to the convening officer practicable, be composed of officers of different corps, R.P. 20 (A); and see as to the trial of a member of the auxiliary forces, R.P. 20 (B). The definition of corps in s. 190 (15) includes the Royal Marines.

2. *Save as otherwise expressly provided.* See s. 49 (1) (c), which enables the convening officer of a field general court-martial to preside, if it is impracticable to appoint another officer.

3. *Commanding officer.* This includes any officer who has been the commanding officer of the accused, within the meaning of s. 46 and R.P. 129, at any time between the date on which the charge against the offender is made and the date of trial inclusive, irrespective of the fact that he did not deal with the case in question.

4. *Investigated the charges.* The officer who investigated is usually the C.O. of the accused; when he is not, he is equally excluded by these words. He has been defined as meaning the officer who, in a judicial capacity, sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer through whose hands the charges passed merely formally or ministerially. R.P. 19 (B) (iii), however, adds to the list of disqualified officers the officer who took down the summary of evidence, the company, etc., commander who conducted the preliminary inquiry, any member of a court of inquiry which may have dealt with the case, and any member of a previous court-martial which tried the accused in respect of the same offence.

Special attention is drawn to R.P. 19 (B) (iii), and to the note on p. 742, relating to the action to be taken in order to prevent officers who have served upon courts of inquiry, regarding the offence about to be tried, from sitting on courts-martial for the trial of the offence.

5. A member of the court or a judge-advocate is a competent witness for the defence, but not for the prosecution. In the case of a field general court-martial, an officer is disqualified by R.P. 106 (D) for serving if he is provost marshal, assistant provost marshal, or prosecutor, or a witness for the prosecution.

Challenges by accused.

51.—(1) An accused about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president[1], whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the accused makes no reasonable objection.[2]

(2) Every objection made by an accused to any officers shall be submitted to the other officers appointed to form the court.

(3) If the objection is to the president,[1] such objection, if allowed by one third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the accused to object.

(5) If the objection is to a member other than the president and is allowed by one half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(6) In order to enable an accused to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the accused on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question

shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

NOTE

1. This section gives the accused an absolute right to a new president, if his challenge to the president is allowed by one-third of the officers appointed to form the court. A challenge to the president must be dealt with first; see R.P. 25 (E).

2. As to challenges generally, see R.P. 25 and note; as to adjourning for the purpose of appointing fresh members, and the power to convene another court, R.P. 18; and as to challenges where a court is being sworn to try several persons, R.P. 71 (A) (B).

Administration of oaths.

52.—(1) An oath in the prescribed form[1] shall be administered by the prescribed person[2] to every member of every court-martial[3] before the commencement of the trial.

(2) An oath in the prescribed form or forms[4] shall be administered by the prescribed person[5] to the judge-advocate or person officiating as judge-advocate (if any), and also to every officer in attendance on a court-martial for the purpose of instruction (if any), and also to every shorthand writer or interpreter (if any) in attendance on the court-martial.[3]

(3) Every witness before a court-martial[3] shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form.[6]

(4) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection, or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form,[7] and for the purposes of this Act such solemn declaration shall be deemed to be an oath.[8]

NOTE

1. *Prescribed form.* See R.P. 26 (A) and App. II, pp. 762-3.

The oath taken by members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information, they may happen to possess), and in their capacity of judges to administer justice duly; as well as to keep secret the votes of members, and (until confirmed or except as permitted by instructions of the Army Council) the sentence of the court.

The oath taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial.

2. *Prescribed person.* See R.P. 26 (B).

3. As to swearing of members, witnesses, etc., in the case of a field general court-martial, see R.P. 111.

4. *Prescribed form or forms.* See R.P. 27 and App. II, pp. 762-3.

5. *Prescribed person.* See R.P. 27.

6. The form of oath for a witness is set out in R.P., App. II, p. 763; and the person to administer it is prescribed by R.P. 82.

7. The form of solemn declaration is set out in R.P., App. II, p. 763; and the person before whom such declaration may be made is described by R.P. 28.

PART I — ss. 52, 53.

8. The practice followed in the law courts of any Dominion, colony or foreign country as to the mode of swearing or taking the affirmation of natives should usually be adopted.

For punishment of perjury committed by a witness subject to military law, see s. 29; by a civilian, see s. 126 (2).

Procedure.

53.—(1) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2) If after the commencement of the trial the president dies or is otherwise unable to attend,[1] and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3) If, on account of the illness of the accused[2] before the finding, it is impossible to continue[3] the trial, a court-martial shall be dissolved.

(4) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried again.[4]

(5) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared[5] of all other persons.

(6) The court may adjourn[6] from time to time.

(7) The court may also, where necessary, view[7] any place.

(8) In the case of an equality of votes on the finding the accused shall be deemed to be acquitted.[8] In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote.

(9) When a court-martial recommends a person under sentence to mercy, such recommendation shall be attached to and form part[9] of the proceedings of the court, and shall be promulgated and communicated to the person under sentence, together with the finding and sentence.

NOTE

1. *Unable to attend.* The court cannot proceed at all without a president; and in the event of his absence must adjourn until he can attend, or until a new president is appointed by the convening authority: see R.P. 65 (B).

2. *Illness of the accused.* A medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

3. *Impossible to continue.* This means to continue within a reasonable time having regard to all the circumstances.

4. It may frequently be inexpedient to convene a fresh court for a retrial under this provision, especially where the accused has been for some time under arrest or in confinement.

5. *Cause the court to be cleared.* If more convenient the court may withdraw for deliberation: see R.P. 63.

6. *Adjourn.* See as to adjournment, R.P. 65.

7. *View.* The convening officer cannot depute a selection of members to view a place, as the view must be in open court (R.P. 63 (B)), *i.e.*, in the presence of all the members, the prosecutor, and the accused.

8. *Acquitted*. In such a case the acquittal must be pronounced at once in open court, and if it relates to all the charges the accused must be released; s 54 (3).

9. As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with, and as part of, the finding; see R.P. 49.

Where, in a recommendation to mercy, a court expressed an opinion inconsistent with the guilt of the person under sentence, for instance, where the charge was for striking a superior, and the court stated their opinion that the accused "did not intend to strike," it was held that it must be treated as an acquittal, the intent being an element of the offence.

As to the exceptional character of recommendations to mercy see Ch. V., para. 84.

Confirmation, revision, and approval of sentences.

54.—(1) The following authorities shall have power to confirm[1] the findings and sentences of courts-martial; that is to say,

(*a*) [*This paragraph was repealed by A. and A.F. (A) Act*, 1920.]

(*b*) In the case of a general court-martial, His Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from His Majesty;

(*c*) In the case of a district court-martial, an officer authorized to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorized to convene general courts-martial;

(*d*) In the case of a field general court-martial, an officer authorized to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part, or, where the offence was committed on active service, any such officer as may under the rules made in pursuance of this Act be authorized to confirm the findings and sentences of the field general court-martial awarding the sentence. Provided that a sentence of death or penal servitude awarded by a field general court-martial shall not be carried into effect, unless it has been confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of his sentence.

(2) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision[1] once, but not more than once,[2] and it shall not be lawful for the court on any revision to receive any additional evidence; and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also.[3] In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on the revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.[4]

(3) The finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation[5] or be subject to be revised, and shall be pronounced at once in open court, and if it relates to the whole of the offences the accused shall be released.

PART I — s. 54.

(4) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where a member of a court-martial becomes confirming officer he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority; and where a court-martial is held in a colony,[6] and there is no such superior authority in that colony, the governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned. Provided that where a member of a field general court-martial trying an accused would but for his being a member of the court have power to confirm the finding and sentence of the court, and is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(5) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly, and refer such finding and sentence or the part not confirmed to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purposes of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed[7] by an authority authorized to confirm the same.

(7) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service,[8] be carried into effect, unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony.

(8) Sentence of death when passed in India[9] or Burma in respect of the offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General, or as the case may be, by the Governor of Burma.

(9) When a person subject to military law is convicted of manslaughter, or rape, or any other civil offence[10] under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India[9] by the Governor-General, or, if he has been tried in Burma[9], by the Governor of Burma, or, if he has been tried in a colony,[6] by the governor of the colony.

NOTE

1. For details as regards officers empowered to confirm courts-martial and those to whom the power may be delegated, see ss. 122, 123, and notes.

As to confirmation and revision generally, see Ch. V, paras. 87-98, and as to field general courts-martial, R.P. 120 and note. Confirmation is complete when the

proceedings are promulgated. At any time before promulgation the confirming authority may cancel his minute of confirmation and order a revision.

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

2. A court cannot be re-assembled more than once for revision, whether of finding or of sentence.

3. Where a finding on being sent back for revision is varied in any material respect by the court, a new sentence (not, however, necessarily differing from the original sentence) must be passed, for on the original finding being revoked, the sentence based upon it falls. Where a new sentence is not passed, the accused is not legally under any sentence. If a sentence only is sent back for revision, and (contrary to subs. (2)) additional evidence is received, the revised sentence is illegal, though the finding will stand.

4. The effect is that revision, except for curing legal defects in the finding or sentence, can only be used for acquitting the accused on any charge or charges or mitigating the sentence, inasmuch as revision can only be ordered in case of conviction, and if it is ordered the sentence cannot be increased. See R.P. 51 and note.

Where an accused is arraigned upon two alternative charges and is found guilty upon one of them, a finding of "not guilty" must be entered upon the other, and such a finding should be formally entered at once. (See, however, R.P. 35 (C).) Even if it is not so entered, the accused cannot be convicted upon that charge on a revision, though the finding of guilty on the first charge has not been confirmed. As a court on revision cannot increase the sentence, they cannot, as a rule, substitute *two* punishments for *one*; (*cf.* note 6 to s. 57).

A confirming officer cannot substitute a special finding on any charge for the court's finding; he can only confirm, send back for revision, or refuse to confirm the finding. (See R.P. 54 (C) and 55 as to confirmation of invalid or informally expressed sentences.)

5. The Act, by declaring that an acquittal on a charge shall not require confirmation, makes the decision of the court on that charge, both as regards the facts and the law, absolute. As to comments by the confirming officer in the case of an acquittal, see R.P. 51 (A) and K.R. 662 and 664.

6. *Colony*. See the definition in s. 190 (23A).

7. The result of this sub-section is that if a finding of conviction is not confirmed it is invalid (see also R.P. 120 (A) and Ch. V, para. 87); consequently there is no conviction, and the accused has not been convicted by a court-martial for the purpose either of any subsequent trial or of any entry in the conduct book. See s. 157 and note, and R.P. 55 and 56.

Confirmation of the sentence alone implies confirmation of the finding also, but is not the correct mode of recording confirmation.

It has been ruled that confirmation ought to be withheld in the following cases:—

Where the provisions of ss. 48, 50, 51, or 52 relating to jurisdiction have been contravened.

Where evidence of a nature prejudicial to the accused has been wrongfully admitted.

Where the accused has been unduly restricted in his defence.

Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding, with the words omitted, fails to disclose an offence of which the court could have legally convicted.

Where a special finding of guilty fails to disclose an offence of which the court might have legally convicted.

Where the charge is bad in law, even when the accused has pleaded guilty.

Where there has been such a deviation from the Rules of Procedure that injustice has been done to the accused.

8. *Active service*. See the definition in s. 189.

9. For definitions of *India* and *Burma*, see s. 190 (21) (21A).

10. *Civil offence*. See s. 41.

55. [Section 55 was repealed by A.A.A. 1893.]

Conviction of less offence permissible on charge of greater.

56[1].—(1) An accused charged before a court-martial with stealing[1A] may be found guilty of embezzlement or of fraudulently misapplying property.

PART I — s. 56.

(2) An accused charged before a court-martial with embezzlement[1A] may be found guilty of stealing or fraudulently misapplying property.

(3) An accused charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4) An accused charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(4A) An accused charged before a court-martial with striking may be found guilty of using or offering violence.

(4B) An accused charged before a court-martial with using violence may be found guilty of offering violence[1B].

(4C) An accused charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) An accused charged before a court-martial with any offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a lesser degree of punishment.[2]

(6) Where an accused is charged before a court-martial with a civil offence and the charge is one upon which, if he had been tried by a civil court in England for such an offence committed in England he might have been found guilty of any other offence, the court-martial shall have power to find him guilty of that offence.[3]

NOTE

1. Alternative charges should not be preferred in the cases provided for in subs. (1) to (4C) of this section, but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient to prefer alternative charges, the more serious offence being placed first in order (see note 6 to R.P. 35). See R.P., App. I, note as to use of Forms of Charges (6), p. 699.

Except in the cases specified in this section a court has no power to find a person guilty of any offence other than that with which he is charged in the statement of the offence (see notes to R.P. 13). A court, however, may (as allowed by R.P. 44 (E)) find a person guilty of a charge with the exception of certain words or with certain immaterial variations, and this finding will be valid so long as in its reduced or varied form it discloses the offence which forms the subject of the charge.

1A. This applies only where the charge is laid under s. 17 or s. 18 (4). See, however, subs. (6) regarding such offences when charged as civil offences under s. 41.

1B. This applies only where a charge of striking is laid under a section of the Act (*i.e.*, s. 8 (1) and (2) or s. 10 (1) and (2) which itself makes punishable the use or offer of violence as well as striking. It does not apply to charges of striking laid under s. 6 (2) *(c)* or s. 37 (1), as those sections do not create any offences of using or offering violence and consequently do not prescribe any punishment for the use or offer of violence.

2. *E.g.*, a man charged with striking his superior officer in the execution of his office may be convicted of striking his superior officer; or a man charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or a man charged with wilfully allowing the escape of a person in custody may be found guilty of allowing his escape without reasonable excuse. The converse, of course, is not allowed; that is to say, a person charged with an offence cannot be convicted of a greater offence of the same class.

8. Some examples of charges for civil offences upon which an accused person, if tried by a civil court, could be found guilty of certain other offences, are set out below. For other examples see Table of Offences at end of Ch. VII.

Murder......manslaughter.

Assault occasioning actual bodily harm......common assault.

Burglary......larceny in dwelling house to the value of £5, or housebreaking.

Indecent assault......common assault.

Robbery with violence......robbery, assault with intent to rob, larceny.

Wounding with intent to murder......unlawful wounding.

Unlawful wounding......common assault.

Any felony or misdemeanour......attempt to commit same.

Stealing motor vehicle......taking without owner's consent (provided the stealing is laid as a civil offence under s. 41 and not under s. 17 or 18).

EXECUTION OF SENTENCE

Commutation, Remission and Suspension of Sentences

Commutation and remission of sentences.

57.—(1) The confirming authority[1] may, when confirming[2] the sentence of any court-martial, mitigate[3] or remit[4] the punishment thereby awarded, or commute[5] such punishment for any less punishment or punishments[6] to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned, or, if such punishment is cashiering awarded for an offence under section sixteen of this Act, then for dismissal from His Majesty's service or such less punishment as is in this Act mentioned. The confirming authority may also suspend for such time as seems expedient the execution of a sentence.[7]

(2) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate[3] or remit[4] the punishment thereby awarded, or to commute[5] such punishment for any less punishment or punishments[6] to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned or, if such punishment is cashiering awarded for an offence under section sixteen of this Act, then for dismissal from His Majesty's service or such less punishment as is in this Act mentioned; that is to say,

(*a*) As respects offenders in whatever place they may for the time being be, His Majesty or the Army Council, or any prescribed officer[8], or, except in the United Kingdom, the officer, not below the rank of field officer or corresponding rank, commanding the body of the forces to which the offender belongs or the command within which they are serving, whether such officer is an officer of the navy, army or air force;

[*Paras.* (*b*) (*c*) *and* (*d*) *repealed by A. and A.F.* (*A*) *Act*, 1937.]

Provided that the power given by this sub-section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorized by such confirming authority or other superior military authority to exercise such power.

[*Sub-section* (3) *transferred to Sub-section* (2) *by A. and A.F.* (*A*) *Act*, 1937].

(4) An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.

(5) The provisions of this Act with respect to an original sentence of penal servitude, imprisonment or detention shall apply to a sentence of penal servitude, imprisonment, or detention imposed by way of commutation.

NOTE

PART I — s. 57.

1. See Ch. V, paras. 38-93; as to mitigation of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see R.P. 54 (A). See also as to duty of confirming officer, K.R. 659-665; and as to review of sentences in execution, see Part II of "Instructions regarding Suspension and Review of Sentences awarded by Courts-Martial" on pp. 801-3.

2. The powers conferred by this section may be exercised by the confirming authority, as such, under subs. (1), only when confirming the sentence. After promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the above powers can only be exercised in the manner prescribed in the latter parts of the section.

3. *Mitigation* is awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence.

4. *Remission* may be remission of the whole or of part of the sentence; thus a sentence of imprisonment with hard labour may be remitted altogether, or a portion of the term, or the hard labour may be remitted. As a notification of remission of imprisonment or detention, see K.R. 704.

The confirming authority cannot remit such forfeitures of pay as follow automatically (under the P.W.) upon the *finding* of the court.

5. *Commutation* is changing the description of punishment by awarding a punishment lower in the scale of punishments in s. 44, as imprisonment in lieu of penal servitude, or dismissal in lieu of cashiering, or detention in lieu of imprisonment; but the effect of s. 44 (1A) is that imprisonment can only be commuted to an equal or shorter term of detention, *e.g.*, the commutation of six months' imprisonment to seven months' detention would be illegal.

The confirming authority as such cannot commute a punishment into general service; s. 83 (7) and note.

6. The earlier part of the section allows an authority to commute a punishment "for any less punishment *or punishments*" to which the offender might have been sentenced; the latter parts of the section omit the words "or punishments" but these words have been held to be implied in the words "such less punishment." There is no standard of comparison between one punishment and two or more punishments, and as it is necessary that the commuted sentence should be less than the original sentence, the validity of the commutation of one punishment to two or more punishments is liable to be questioned on that ground. It is illegal to commute part of a punishment by substituting another punishment. Thus, where a court passed a sentence of detention but omitted to pass a sentence of stoppages of pay which would have been valid, a portion of the detention cannot be commuted to stoppages.

The penal servitude, imprisonment, or detention, under commutation, must commence on the date of the original sentence, even though that sentence was not one of penal servitude, imprisonment, or detention, as the case may be.

If a confirming authority purports (by way of commutation) to substitute for a valid sentence a sentence which the court has no power to award, neither the original sentence—since it has been commuted—nor the new sentence—since it is illegal—can stand. The conviction, however, remains good.

Where a term of imprisonment, detention, or field punishment is reduced in length by mitigation or remission, automatic forfeiture of pay under s. 138 and Royal Warrant is governed by the term actually undergone—not by that originally imposed. So, too, pay is not automatically forfeited whilst a sentence is "suspended."

7. Suspension of the execution of a sentence can only take effect after confirmation. A suspension under *this* section does not postpone the commencement of any term of penal servitude, imprisonment or detention; but see further as to suspension of sentences, s. 57A. See also Ch. V., paragraph 97.

8. *Prescribed officer*. See R.P. 126 (B).

s. 57A. Power to suspend sentences.

57A.[1]—(1) Where a soldier is sentenced to penal servitude, imprisonment or detention,[2] the confirming authority to whom the sentence is submitted for confirmation may, when confirming the sentence, direct that the soldier be not committed to prison or detention barracks until the orders of a superior military authority have been obtained.

(2) A superior military authority may in the case of any soldier so sentenced—

(a) direct that a committal to prison or detention barracks shall not be issued until his orders have been obtained;

(b) suspend the sentence[3] whether or not the soldier has already been committed to prison or detention barracks.

(3) Where a sentence of penal servitude, imprisonment or detention is suspended under this section before the soldier has been committed to prison or detention barracks, the soldier if in custody, shall be released, and, notwithstanding anything in this Act, the sentence shall not begin to run until the soldier is ordered to be committed to prison or detention barracks under that sentence.

(4) Where a sentence of penal servitude, imprisonment or detention is suspended under this section after the soldier has been committed to prison or detention barracks, he shall be released and the currency of the sentence shall be suspended from the day on which he is released until he is again ordered to be committed to prison or detention barracks under the same sentence.

(5) Where a sentence has been suspended under this section, the case may at any time, and shall, at intervals of not more than three months, be reconsidered[4] by a competent military authority, and, if on any such reconsideration it appears to the competent military authority that the conduct of the soldier since his conviction has been such as to justify a remission[3] of the sentence, he shall remit it.[5]

(6) A superior military authority may, at any time whilst a sentence is suspended under this section, order that the soldier be committed[3] to prison or detention barracks, and from the date of such order[6] the sentence shall cease to be suspended.

(7) Where a soldier whilst a sentence on him is so suspended is sentenced to penal servitude, imprisonment or detention for a fresh offence, a superior military authority may direct that the two sentences shall either run concurrently or consecutively, so, however, that the aggregate term of imprisonment or detention served under two or more sentences of imprisonment or detention shall not exceed two consecutive years; provided that, where the sentence for such fresh offence is a sentence of penal servitude, then, whether or not that sentence is suspended, any previous sentence of imprisonment or detention which has been suspended shall be avoided.

(8) The powers conferred by this section shall be in addition to and not in derogation of any other powers as to the mitigation, remission, commutation, or suspension of sentences conferred by this

PART I — ss. 57A, 58.

Act, and a superior military authority under this section shall be an authority having power to mitigate, remit, or commute sentences of penal servitude, imprisonment or detention under subsection (2) of section fifty-seven of this Act.

(9) In this section—

The expression "superior military authority" means the Army Council and any general or air officer or brigadier whom the Army Council may appoint[7] for the purpose, or the officer (whether military or air force) in chief command of any force employed on active service out of the United Kingdom, and any general officer or brigadier whom he may appoint for that purpose;

The expression "competent military authority" means a superior military authority, or any general or other officer not below the rank of field officer duly authorized by a superior military authority.

NOTE

1. This section makes permanent and extends the provisions introduced by the Army (Suspension of Sentence) Acts 1915 and 1916, and the Naval, Military and Air Force Service Act, 1919, s. 2 (3)—now repealed. It only applies to sentences of penal servitude, imprisonment or detention; other sentences can be dealt with under s. 57. As to the principles and practice to be followed in dealing with sentences under this section, see "Instructions regarding Suspension and Review of Sentences awarded by Courts-Martial" on p. 795, *et seq.*

2. An N.C.O. sentenced by court-martial to penal servitude, imprisonment or detention is *ipso facto* reduced to the ranks, and the suspension of his sentence does not cancel or suspend the reduction. There is, however, no legal bar to a soldier receiving promotion or an appointment whilst under a suspended sentence.

3. An order for remission of sentence or committal to prison must be signed by the officer responsible for it; a minute of suspension may be signed by a staff officer "for" him, so long as it makes clear that the responsible officer himself considered the case and arrived at the decision.

4. Failure to reconsider a suspended sentence at the proper date has no effect upon the sentence; it can be subsequently reconsidered, and a further suspension or a committal may then be ordered.

5. The section does not contemplate the partial remission of a sentence; the only power of remission under subs. (5) is to remit the whole. Partial remission must be effected (if at all) under s. 57.

6. When a soldier under suspended sentence is committed to prison, etc., the sentence begins to run from the date of the order committing him, and not from the date of his reception into prison, etc.

7. The officers appointed to be superior military authorities under the section are notified from time to time in Army Orders. (See A.Os. 121 of 1928, 103 and 197 of 1929.)

Penal Servitude

Effect of sentence of penal servitude.

58. Where a sentence[1] of penal servitude is passed by a court-martial, the military convict[2] shall, as soon as practicable, be committed to a penal servitude prison[3] to undergo his sentence according to law;[4]

Provided that where the sentence was passed for an offence committed on active service,[5] the competent military authority[6] may order that any part of the sentence, not exceeding two years, shall be served in a military prison[7] in accordance with rules made for the purpose under this Act,[8] and in such case the provisions of this Act with respect to penal servitude (except those relating to the treatment of a military

convict on arrival at a penal servitude prison), shall, with respect to the part of the sentence to be so served, have effect as though for references to a penal servitude prison there were substituted references to a military prison.

NOTE

1. In the Army and Air Force (Annual) Act, 1926, the sections of the Army Act dealing with the execution of sentences and the nature and locality of the penal establishments in which those sentences are to be served (ss. 58-68 and 131-135) were redrafted to give effect to the recommendations of the Army Act Revision Committee, who had reported that the provisions, as they then stood, constituted a very confusing piece of legislation, and had given rise to great difficulties in practice. The redraft did not effect any substantial alteration of the law, except that of the addition of the proviso to this section which enables a soldier sentenced to penal servitude for an offence committed on active service to serve part of his sentence, not exceeding two years, in a military prison instead of in a penal servitude prison.

2. See generally as to a military convict, K.R. 676-679. For commencement of term of penal servitude, see s. 68 (1). For general provisions as to the forms of orders of military authorities, see s. 172.

3. *Penal servitude prison.* For definition see s. 68 (2) *(g)*.

4. When a person sentenced to penal servitude is dismissed or discharged from His Majesty's service, he ceases to be subject to military law, but the Army Act applies to him during the term of his sentence. See s. 158 (2).

5. *On active service.* For definition see s. 189.

6. *Competent military authority.* See s. 68 (2) *(h)* and R.P. 126 (C).

7. *Military prison.* For definition see s. 68 (2) *(d)*.

8. *Rules made for the purpose under this Act.* See s. 132 (2). The rules are contained in Rules for Military Detention Barracks and Military Prisons, and Rules for Military Prisons in the Field.

Place in which sentence to be served.

59. The penal servitude prison[1] to which a military convict is committed shall be a penal servitude prison in the United Kingdom, unless the convict—

(*a*) was sentenced in India, Burma, or colony,[2] and belongs to a class of persons with respect to whom the Secretary of State by declaration laid before both Houses of Parliament has declared[3] that by reasons of climate, place of birth, place of enlistment or otherwise, transfer to the United Kingdom would not be beneficial; or

(*b*) was enlisted in a colony,[2] and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the Governor of that colony that they may, if sentenced to penal servitude, be transferred to or kept in the colony and there undergo sentence,

in either of which cases he may undergo his sentence in India, Burma or the colony, as the case may require.

NOTE

1. *Penal servitude prison.* For definition see s. 68 (2) *(g)*.

2. For definitions of *India, Burma* and *colony*, see s. 190 (21) (21A) and (23A); see also s. 187 (2) as to the Channel Islands and Isle of Man; and as to a mandated territory, s. 187A.

3. Under this section the Secretary of State made a declaration dated 12th August, 1926, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of penal servitude:—

(1) By reason of climate:—
Asiatics and Africans.
Other persons of colour.

(2) By reason of place of birth:—
Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.

(3) By reason of place of enlistment:—
Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

Interim custody of military convict before arrival at penal servitude prison.

60.—(1) Until transferred to a penal servitude prison[1] a military convict—

(a) if in the United Kingdom, or a Dominion, the law of which does not provide for the civil custody of military convicts, or a foreign country,[2] shall be kept in military custody;

(b) if in India, Burma, or a Dominion, the law of which provides for the civil custody of military convicts, or a colony,[2] may be kept in military custody or in civil custody,[3] or partly in one description of custody and partly in the other, and may, by order of the competent military authority,[4] from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require.

(2) A military convict in India, or Burma, or a colony[2] may, whilst in civil custody in any prison, be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

NOTE

1. *Penal servitude prison.* For definition see s. 68 (2) *(g)*.
2. For definition of *foreign country,* see s. 190 (24); and for definitions of *India, Burma, Dominion* and *colony,* see s. 190 (21), (21A) and (23A). For the purpose of the provisions of the Act relating to the execution of sentences of penal servitude, the Channel Islands and Isle of Man are deemed to be colonies; s. 187 (2). As to a mandated territory, see s. 187A.
3. *Civil custody.* For definition see s. 68 (2) *(c)*.
4. *Competent military authority.* See s. 68 (2) *(h)* and R.P. 126 (D).

Committal, removal, release, etc., of military convict.

61.—(1) An order of the competent military authority[1] shall be a sufficient warrant for the committal[2] of a military convict to a penal servitude prison.[3]

(2) An order of the competent military authority[4] shall be a sufficient authority for the transfer of the military convict from military custody to civil custody[5] and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient until he is transferred to a penal servitude prison.

(3) A military convict at any time either before or after his arrival at a penal servitude prison, may, if his sentence is remitted,[6] be released by order of the competent military authority.[7]

(4) A military convict may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

NOTE

1. Subs. (1). *Competent military authority.* See s. 68 (2) *(h)* and R.P. 126 (F).
2. For form of order of commitment, see R.P., App. III, Forms A and B.
3. *Penal servitude prison.* For definition see s. 68 (2) *(g)*.
4. Subs. (2). *Competent military authority.* See. s. 68 (2) *(h)* and R.P. 126 (H).
5. For definition of *civil custody,* see s. 68 (2) *(c)*.

6. It should be noted that under this section the release of a military convict can only be ordered by a competent military authority if his sentence is remitted by an authority having power to do so under s. 57.

7. Subs. (3). *Competent military authority.* See s. 68 (2) *(h)* and R.P. 126 (I).

Treatment of military convict in penal servitude prison.

62. After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the same manner as an ordinary civil prisoner under sentence of penal servitude; and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

NOTE

Penal servitude prison. For definition see s. 68 (2) *(g)*.

Imprisonment and Detention

Effect of sentence of imprisonment or detention.

63.—(1) Where a sentence of imprisonment is passed by a court-martial, the military prisoner shall undergo the term of his imprisonment either in a military prison, or detention barrack, or in other military custody, or in a civil prison, or partly in one way and partly in another.

(2) Where a sentence of detention is passed by a court-martial or a commanding officer, the person on whom that sentence has been passed shall undergo the term of his detention either in a detention barrack, or in military custody, or partly in one way and partly in the other, but not in a prison.

NOTE

See generally as to soldiers under sentence, K.R. 680-690.

For general provisions as to forms of orders of military authorities, see s. 172. For commencement of term of imprisonment or detention, see s. 58 (1). As to the place in which sentence is to be served, see s. 64.

For definitions of *military prisoner, military prison, detention barrack,* and *civil prison,* see s. 68 (2) *(b), (d), (e),* and *(f),* respectively.

When a person sentenced to imprisonment or detention is dismissed or discharged from His Majesty's service, he ceases to be subject to military law, but the Army Act applies to him during the term of his sentence. See s. 158 (2).

Place in which sentence to be served.

64.—(1) Subject to the provisions of this section, a military prisoner or soldier under sentence of detention who was sentenced or is undergoing his sentence in the United Kingdom shall not be removed to a prison or detention barrack elsewhere, unless he was enlisted in a colony[1] and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the Governor of that colony that they may, if sentenced to imprisonment or detention, be transferred to the colony and there undergo sentence, in which case he may be removed to a prison or detention barrack in that colony.

(2) The competent military authority[2] may give directions for delivery into military custody of any military prisoner or soldier undergoing detention, and the removal[3] of such prisoner or soldier, whether with his corps or separately, to any place out of the United Kingdom where the corps or any part thereof to which for the time being he belongs is serving or under orders to serve.[4]

PART I

s. 64.

[*Subsections* (3) *and* (3A) *repealed by A. and A.F.* (*A.*) *Act*, 1935.]

(4) A military prisoner or soldier under sentence of detention shall—

(i) if he was sentenced in a Dominion, India or a colony[7], undergo his sentence either in that Dominion, India or that colony (as the case may be), or in the United Kingdom, or in such other place as may be prescribed[8];

(ii) if he was sentenced in a foreign country[5], undergo his sentence either in that country, or in any other foreign country in which the force with which he is serving may be, or in the United Kingdom, or in such other place as may be prescribed[8];

Provided that—

(*a*) if the term of his sentence exceeds twelve months, he shall be transferred as soon as practicable to a prison or detention barrack in the United Kingdom, unless—

(i) he belongs to a class of persons with respect to whom the Secretary of State by declaration laid before both Houses of Parliament has declared[9] that by reasons of climate, place of birth, place of enlistment or otherwise, transfer to the United Kingdom would not be beneficial; or

(ii) the court for special reasons otherwise orders; and any order which may be made under this provision by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence may be made by the authority commuting or remitting the sentence; and

(*b*) a military prisoner or soldier undergoing detention in India, or Burma or a colony shall not, for longer than is absolutely necessary, be detained in any civil prison other than a prison in respect of which arrangements have been made by the Secretary of State under this Act with the Governor-General of India, the Governor of a Province in India, the Governor of Burma, or the Governor of the colony.

NOTE

1. For definition of *colony*, see s. 190 (23A). As to the Channel Islands and Isle of Man, see s. 187 (2); as to a mandated territory, see s. 187A.

2. *Competent military authority.* See s. 68 (2) (*h*) and R.P. 126 (H).

3. See generally as to removal of soldiers under sentence, K.R. 691-703.

4. The object of this sub-section is to enable soldiers who are undergoing sentences of imprisonment or detention to be removed in custody for service abroad. Soldiers sentenced for military offences (desertion, for instance), may in many cases be given a fresh opportunity of recovering their characters by being at once removed to a station abroad. The section will prevent soldiers who are undergoing sentence for offences committed in order to avoid embarkation for service from achieving their object, but it gives no authority to commit such offenders to a prison or detention barrack on their arrival at a station abroad.

5. For definition of *foreign country*, see s. 190 (24).

7. For definitions of *Dominion*, *India*, *Burma*, and *colony*, see s. 190 (23) (21) (21A) and (23A). For the purpose of the provisions of the Act relating to the execution of sentences of imprisonment and detention, the Channel Islands and Isle of Man are deemed to be colonies; s. 187 (2). As to a mandated territory, see s. 187A.

8. *Or in such other place as may be prescribed.* See R.P. 130.

A soldier sentenced to imprisonment outside the United Kingdom may be removed to a prison in the United Kingdom, or as prescribed in R.P. 130 (A). A soldier sentenced to detention may be removed from any detention barrack to any other wherever situate, except that he cannot be removed from a detention barrack in the United Kingdom to a detention barrack elsewhere save as provided in subs. (1).

9. Under this section the Secretary of State made a declaration dated 12th August, 1926, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of imprisonment or detention:—

(1) By reason of climate:—
Asiatics and Africans.
Other persons of colour.

(2) By reason of place of birth:—
Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.

(3) By reason of place of enlistment:—
Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

Interim custody of military prisoner or soldier undergoing detention.

65. A military prisoner or soldier undergoing detention may, until he reaches the prison or detention barrack in which he is to undergo his sentence, be kept in military custody or in civil custody,[1] or partly in one description of custody and partly in the other, and may, by order of the competent military authority,[2] from time to time be transferred from military custody to civil custody, and from civil custody to military custody as occasion may require.

NOTE

1. For definition of *civil custody*, see s. 68 (2) *(e)*.

2. *Competent military authority*. See s. 68 (2) *(h)* and R.P. 126 (E).

Committal, removal, release, etc., of military prisoner or soldier undergoing detention.

66.—(1) An order[1] of the competent military authority[2] shall be a sufficient warrant for the committal of a military prisoner to prison or a detention barrack, or a soldier under sentence of detention to a detention barrack.

(2) An order[1] of the competent military authority[3] shall be a sufficient authority for the transfer of a military prisoner from prison to a detention barrack, or vice versa, or from one prison or detention barrack to another prison or detention barrack, or for the transfer of a soldier undergoing detention from one detention barrack to another, or for the delivery into military custody of a military prisoner or a soldier undergoing detention.

(3) A military prisoner or a soldier undergoing detention may at any time, if his sentence is remitted,[4] be released by order of the competent military authority.[5]

(4) A military prisoner or a soldier undergoing detention may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

NOTE

1. For forms of orders, see R.P. App. III.

2. Subs. (1). *Competent military authority*. See s. 68 (2) *(h)* and R.P. 126 (G).

3. Subs. (2). *Competent military authority*. See s. 68 (2) *(h)* and R.P. 126 (H).

4. It should be noted that under this section the release of a military prisoner or soldier undergoing detention can only be ordered by competent military authority if the sentence is remitted by an authority having power to do so under s. 57.

5. Subs. (3). *Competent military authority*. See s. 68 (2) *(h)* and R.P. 126 (I).

PART I
—
ss. 66-68.

Treatment and classification of prisoners in civil prisons.

67.—(1) A military prisoner while in a civil prison shall be confined, kept to hard labour, and otherwise dealt with in the same manner as an ordinary prisoner under a like sentence of imprisonment.

(2) Where the hospital or place for reception of sick persons in a prison or a detention barrack is detached from the prison or detention barrack, a military prisoner or a soldier undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require.

(3) Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, or sentenced to be discharged from the service with ignominy, a Secretary of State shall from time to time make rules[1] for the classification and treatment of such prisoners.

NOTE

1. See generally K.R. 680, 715; and Rules for Military Detention Barracks and Military Prisons.

Commencement of Sentence and Interpretation of Provisions as to Punishment

Commencement of sentence and interpretation of provisions as to punishments.

68.—(1) The term of penal servitude, imprisonment, or detention to which a person subject to military law is sentenced by a court-martial, whether the sentence has been revised or not, and whether the person is already undergoing sentence or not shall (save as otherwise expressly provided in this Act),[1] be reckoned to commence[2] on the day on which the original sentence and proceedings were signed[3] by the president of the court-martial.

(2) For the purpose of the provisions of this Act relating to penal servitude, imprisonment and detention unless the context otherwise requires and subject to the provisions of the next succeeding section, and

(*a*) The expression "military convict" means a person under sentence of penal servitude passed by a court-martial;

(*b*) The expression "military prisoner" means a person under sentence of imprisonment passed by a court-martial;

(*c*) The expression "civil custody" means the custody of the police or other lawful civil authority authorized to retain in custody civil prisoners, and includes confinement in a civil prison;

(*d*) The expression "military prison" means a building or part of a building set apart as such under this Act and includes (unless the Secretary of State otherwise directs) an air force prison;

(*e*) The expression "detention barrack" means a building or part of a building set apart as such under this Act, and includes (unless the Secretary of State otherwise directs) an air force detention barrack;

(f) The expression "civil prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined, and any prison in India, Burma or a colony in which European offenders so sentenced can for the time being be confined;

(g) The expression "penal servitude" means any prison or place in which a person sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, and any prison or place in India, Burma or a colony in which persons sentenced to penal servitude by a civil court in India, Burma or the colony can for the time being be confined;

Provided that where there is no such prison or place in a colony the expression "penal servitude prison" shall, as respects that colony, mean a civil prison;

(h) The expression "competent military authority" means in relation to persons—

(i) in the United Kingdom, the Army Council, and any prescribed officer[4];

(ii) in India, Burma, a Dominion or a colony any prescribed officer[4];

(iii) in a foreign country, the officer commanding the force to which the person under sentence belonged at the time of his being sentence, and any prescribed officer[4];

Provided that different officers may be so prescribed as the competent military authority for different purposes of the said provisions, and provision may be made by rules of procedure as to whether the competent military authority, in relation to any person under sentence, shall be the competent military authority in the place where the sentence was passed or the competent military authority in the place where that person may be.

NOTE

1. *Save as otherwise expressly provided in this Act.* See s. 57A with regard to suspension of sentences.

2. Under this section a term of penal servitude, imprisonment or detention under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal sertitude, imprisonment or detention, but must commence on the day on which the sentence is signed by the president of the court. If, therefore, the court desire to inflict (*e.g.*) six months' additional imprisonment on a prisoner already in prison undergoing six months' imprisonment, of which three months are unexpired, the court must award nine months, and similarly with respect to sentences of penal servitude and detention. The period of imprisonment or detention must, however, never exceed two consecutive years, whether under one or more sentences; s. 44, proviso (1B).

A term of penal servitude, imprisonment or detention awarded by way of commutation must commence on the date of the original sentence even though such sentence was one of a different character; s. 57 (5).

3. It is essential that the proceedings be dated as well as signed. When, however, a president, after recording the finding and sentence in his own handwriting, omitted to either sign or date the proceedings, it was ruled that even after confirmation he could sign them and date his signature as of the true date of the decision.

4. *Prescribed officer.* See R.P. 126.

PART I

Application of certain Provisions of Act in a Dominion

s. 68A.
Application of certain provisions of Act in a Dominion.

68A. The provisions of this Act relating to the execution of sentences shall in relation to a Dominion[1], the law of which provides for the provisional detention by the authorities of the Dominion of military convicts, military prisoners or soldiers sentenced to detention, or for the imprisonment of military prisoners in the prisons of the Dominion, have effect subject to the following modifications:—

(1) the expression "civil custody" shall include custody of the authorities of the Dominion, whether civil or not, and the expression "military custody" shall not include the custody of the military authorities of the Dominion;

(2) the reference in subsection (1) of section sixty-three to a civil prison shall be construed as including a reference to any prison of the Dominion in which a military prisoner under this Act can under the law of the Dominion lawfully be imprisoned;

(3) any provision which expressly or by implication confers a power or imposes a duty on any person to order the committal or transfer to civil custody of a military convict, military prisoner or soldier sentenced to detention, or the release or transfer from civil custody of such a convict, prisoner or soldier, shall be construed as also conferring a power or imposing a duty to take in appropriate cases the proper steps under the law of the Dominion to secure committal or transfer to, or transfer or release from, the custody of the authorities of the Dominion.

NOTE

1. For definition of *Dominion*, see s. 190 (23).

PART I

ss. 69, 70.

Miscellaneous

Articles of War and Rules of Procedure

Power of His Majesty to make Articles of War.

69. It shall be lawful for His Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever; Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act.

Power of His Majesty to make rules of procedure.

70.—(1) Subject to the provisions of this Act His Majesty may, by rules[1] to be signified under the hands of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them; that is to say,

(*a*) The assembly and procedure of courts of inquiry;

(*b*) The convening and consituting of courts-martial;

(*c*) The adjournement, dissolution, and sittings of courts-martial;

(*d*) The procedure to be observed in trials by court-martial;

(*e*) The confirmation and revision of the findings and sentences of courts-martial, and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a valid sentence for an invalid sentence of a court-martial;

(*f*) The carrying into effect sentences of courts-martial;

(*g*) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, imprisonment, or detention;

(*h*) Any matter in this Act directed to be prescribed;

(*i*) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law.

(2) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act.

(3) All rules made in pursuance of this section shall be judicially noticed.

(4) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliamant.

(5) The rules as to the procedure of courts of inquiry may provide for evidence being taken on oath and may empower courts of inquiry to administer oaths for that purpose.

(6) The rules as to the investigation of a charge may provide for a written summary of the evidence being taken on oath, and may empower a commanding officer or any officer, before whom he directs such summary to be taken, to administer oaths for that purpose.

NOTE

1. The "Rules of Procedure" made under this section must not (see subs. (2)) contain anything contrary to, or inconsistent with, any provision of the Act itself. Consequently, if any rule is found to conflict with some section of the Act, the statutory provision must prevail.

Command

Removal of doubts as to military command.

71.—(1) For the purpose of removing doubts[1] as to the powers of command vested or to be vested in officers and others belonging to His Majesty's forces, it is hereby declared that His Majesty may, in such manner as to His Majesty may from time to time seem meet, make regulations[2] as to the persons to be invested as officers, or otherwise, with command over His Majesty's forces, or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised.

(2) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in His Majesty.

NOTE

1. This section removes all doubts as to the power of His Majesty to regulate the command by officers of the regular forces over those forces, or over any portion of the auxiliary forces, and the command by officers of any portion of the auxiliary forces over any other portion of those forces, or over any portion of the regular forces.
2. The regulations are contained in K.R. 170-192.

Inquiry as to and Confession of Desertion

Inquiry by court on absence of soldier.

72.—(1) When any soldier has been absent without leave from his duty for a period of twenty-one days,[1] a court of inquiry may as soon as practicable be assembled,[2] and inquire in the prescribed manner[3] on oath or solemn declaration (which such court is hereby authorised to administer) respecting the fact of such absence, and the deficiency[4] (if any) in the arms, ammunition, equipments, instruments, regimental necessaries, or clothing of the soldier, or in any public property issued to him for his use or entrusted to his care for military purposes, and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare[5] such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the absent soldier shall enter in the regimental books[6] a record of the declaration of such court.[7]

(2) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion.

NOTE

1. In calculating the period of 21 days, the day on which the soldier became absent and the day on which the court is assembled must be excluded from the reckoning. If the court assembles a day too soon, the record of their declaration is not admissible in evidence.
2. In the event of a soldier being absent without leave for a period of 21 *clear* days (see preceding note), a court of inquiry must be assembled at once, unless before

such court of inquiry has been assembled it has come to the knowledge of the soldier's C.O. that the soldier has been apprehended or has surrendered. In that case no court of inquiry will be held, and the fact of his absence and the defficiency (if any) of his clothing, etc., must be proved by oral evidence at any subsequent court-martial (K.R. 742). No court of inquiry will be held in the case of absconded recruits.

3. *Prescribed manner.* See R.P. 124 and 125.

4. Before declaring any deficiency of arms, etc., the court will satisfy themselves by evidence that the absentee was in possession of the missing articles within a reasonable period before the date of absenting himself. They will record the values of the unexpired wear of all articles of government property found to be deficient. (K.R. 742.)

5. The declaration of the court should contain—

The date and place from which the soldier absented himself; and

The date of the deficiency (if any) of clothing, etc., and the place where it occurred.

The procedure of such a court is detailed in R.P. 125: under that rule and this section the witnesses will be sworn, but not the members of the court. As to the form of declaration, see notes to R.P. 125.

6. In order to make the record admissible in evidence it must be a record in the regimental books of the unit to which the soldier belonged at the time, signed by the C.O. thereof (s. 163 (1) (*g*)). See generally as to such record, K.R., 1620.

7. The actual proceedings of the court are not admissible in evidence. They should be destroyed as soon as recorded in the regimental books. See R.P. 125(E).

The record of the court's finding will be admissible, notwithstanding that the soldier had already surrendered or been apprehended, provided that such surrender or apprehension had not come to the knowledge of his C.O.

When a soldier who has been "struck off" as a deserter, upon the finding of the court, rejoins, the C.O., if satisfied that the evidence does not justify a charge of desertion, can legally deal with the case as one of absence without leave: but as a rule he should refer it to superior authority.

As to inquiry into absence from duty of a man of the Territorial Army, when subject to military law, see T.R.F. Act, s. 24 (4).

Confession by soldier of desertion or fraudulent enlistment.

73.—(1) Where a soldier signs a confession[1] that he has been guilty of desertion or of fraudulent enlistment, a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures[2] and the same deductions from pay[3] (if any) as a court-martial could award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order.

(2) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

(3) The competent military authority for the purposes of this section means the Army Council, or any prescribed general officer or brigadier,[4] or, in the case of India,[5] the Commander-in-Chief of the forces in India, or such officer as he, with the approval of the Governor-General, may appoint, and elsewhere outside the United Kingdom the general or other officer commanding the forces, subject in the case of India, or elsewhere outside the United Kingdom, to any directions given by the Army Council.

NOTE

1. Before accepting a confession of desertion or fraudulent enlistment signed by a soldier, care should be taken to ascertain that he fully understands the nature and consequences of his act. See K.R. 608-613.

2. If he has not completed 12 years' service, *i.e.*, the term of his original enlistment, he will forfeit the whole of his prior service, and be liable to serve for the original term of his enlistment, reckoned from the date of his trial being dispensed with; and the forfeited service can only be restored by the Army Council; s. 79 (proviso); see also K.R. 246. A soldier serving on a re-engagement at the time of confessing will forfeit all prior service rendered during the period of such re-engagement. See notes to ss. 79 and 84.

3. The deductions from pay are regulated by s. 138 and the P.W.

4. *Prescribed general officer or brigadier:* see R.P. 126 (J).

5. For definition of *India*, see s. 190 (21); and as to the Isle of Man and Channel Islands, see s. 187 (2).

Provost Marshal

Provost Marshal.

74.—(1) For the prompt repression of all offences which may be committed out of the United Kingdom, provost marshals[1] with assistants may from time to time be appointed by the general order of the general officer or brigadier commanding a body of forces.

(2) A provost marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority:

Provided that a provost marshal and his assistants shall, as respects any soldier in his or their custody and undergoing field punishment, have the same powers as the governor of a military prison.[2]

NOTE

1. See generally as to provost marshal, Ch. IV, para. 40.

2. *The governor of a military prison.* The powers of such a governor are prescribed by the rules made under s. 132.

Restitution of Stolen Property

Power as to restitution of stolen property.

75.—(1) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property,[1] and the property or any part thereof is found in the possession[2] of the offender, the authority confirming the finding and sentence of such court-martial, or the Army Council, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or the Army Council to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3) Moreover, where it appears to the confirming authority or the Army Council from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or the Army Council may, on the application

PART I — s. 75.

of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the said sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4) An order under this section shall not bar the right[3] of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.[4]

NOTE

1. The word "property" should be construed in a wide sense as including, *e.g.*, money; *cf.* s. 18 (4), and see Larceny Act, 1916, s. 46.

2. *Found in the possession.* This is not limited to property found "upon" the offender: if he occupies a house, property found in it is *prima facie* in his "possession."

3. The stealing or embezzlement of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or embezzled is the lawful owner of it.

4. An order upon this section cannot be made by the court; but the court should report to the proper authority any circumstances which appear to justify the making of an order.

If the offender is sentenced by the court to be placed under stoppages in respect of the property stolen or unlawfully obtained, allowance must be made in enforcing such stoppages for money found upon him and appropriated in restitution; see K.R. 655.

PART II

ss. 98-99.

Offences as to Enlistment

Penalty on unlawful recruiting.

98. If a person without due authority—

(1) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for the regular forces, or in relation to recruits for such forces; or

(2) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces; or

(3) Receives any person under any such advertisement as aforesaid; or

(4) Directly or indirectly interferes with the recruiting service of such forces,

he shall be liable on summary conviction[1] to a fine not exceeding twenty pounds.

NOTE

1. *On summary conviction*, *i.e.*, on conviction before a court of summary jurisdiction in the manner provided by the Summary Jurisdiction Acts. See s. 190 (34) and (35) and ss. 166 to 169.

Recruits punishable for false answers.

99.—(1) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice[1] before whom he appears for the purpose of being attested, he shall be liable on summary conviction[2] to be imprisoned with or without hard labour for any period not exceeding three months.

(2) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority,[3] to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.[4]

NOTE

1. "Justice" includes persons lawfully exercising authority under s. 94.

2. *On summary conviction*. See note to s. 98.

3. *Competent military autohrity.* See s. 101, and R.P. 128.

4. The effect of the section is that, if the offender has become subject to the Act, he can be prosecuted either before a court-martial or before a court of summary jurisdiction; but if he has not become so subject, then only before the latter.

The offender may be tried and punished in any place where he may for the time being happen to be (s. 159 as to courts-martial, and s. 166 as to civil courts of summary jurisdiction), as well as in the place where the offence was committed, that is to say, where he made the false answer.

A court of summary jurisdiction cannot entertain a charge of false answer on attestation when the answer was made more than six months before the time when proceedings are commenced. See Summary Jurisdiction Act, 1848, s. 11.

Under 6 Edw. VII. c. 5, s. 2, a person who uses, or gives for use, on enlistment a false statement as to character or previous enployment is liable on summary conviction to a fine not exceeding twenty pounds.

See K.R. 370 (iii) for discharge procedure.

Miscellaneous as to Enlistment

Validity of attestation and enlistment or re-engagement.

100.—(1) Where a person after his attestation on his enlistment or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act, and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not, until such person is discharged in pursuance of his claim, affect his position as a soldier in His Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge.

(2) Where a person is in pay as a soldier of the regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim, he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.[1]

(3) Where a person claims his discharge on the ground that he has not been attested or re-engaged, or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority,[2] who shall as soon as practicable submit it to the Army Council, and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

Note

1. The effect of this section is that if a person receives pay as a soldier of the regular forces without having been duly attested and enlisted, or without having been duly re-engaged (as the case may be), he may be treated for all purposes as subject to military law until he is formally discharged. It thus prevents a man who has actually served from suddenly repudiating his liability to the rules of the service, and thus evading punishment when charged with or sentenced for an offence.

If there was no attestation and enlistment (or no re-engagement), he may claim his discharge at any time.

If there was an attestation and enlistment (or a re-engagement), but only an irregular or illegal one, he may similarly claim his discharge at any time until he has received

pay "during three months." After that date his attestation and enlistment (or re-engagement) is presumed conclusively to be regular and valid.

2. *Competent military authority.* See s. 101, and R.P. 128.

Definition for purposes of Part Two of competent military authority and reserve.

101.—(1) Any act, authorised or required by this part of this Act to be done by, to, or before the competent military authority, may be done by, to, or before the Army Council, or any officer prescribed[1] in that behalf.

(2) For the purposes of this part of this Act the expression "reserve" means the first class of the army reserve force.[2]

NOTE

1. *Prescribed.* See R.P. 128.

2. The expression "army reserve force" means the army reserve under the Reserve Forces Act, 1882 (45 and 46 Vict., c. 48), s. 28: see Ch. XI, para. 17 *et seq.*

PART IV.

GENERAL PROVISIONS

Supplemental Provisions as to Courts-martial.

Royal Warrant required for convening and confirming general courts-martial.

122.—(1) His Majesty may, subject to the provisions of this Act, by any warrant or warrants[1] under His Sign Manual, in such form as His Majesty may from time to time direct, from time to time—

(*a*) Convene or authorize any qualified officer to convene a general court-martial for the trial under this Act of any person subject to military law; and

(*b*) Give a general authority to any qualified officer to convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command; and

(*c*) Empower any qualified officer to delegate to any officer under his command, not below the degree of field officer, a general

PART IV — s. 122.

authority to convene general courts-martial for the trial, under this Act, of such persons subject to military law as are for the time being under or within the territorial limits of his command; and

(*d*) Reserve for confirmation by His Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial; and

(*e*) Empower any officer for the time being authorized to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer; and

(*f*) Revoke any warrant for the time being in force, or any part of any warrant leaving the remainder in full force.

Provided that where it appears to His Majesty that, in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorized under this section to be delegated to a field officer.

(2) The same officer may or may not be appointed convening and confirming officer.

(3) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to His Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions, and conditions as to such officer may seem fit.

(4) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer.

(5) Any warrant of His Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means any officer not below the rank of a field officer commanding for the time being any body of the regular forces, either within or without His Majesty's dominions; it also includes the Governor-General of India, the Governor of Burma and a Governor of any colony on whom the command of any part of His Majesty's forces may be conferred by His Majesty;[3] it also includes, in the case of a

PART IV

ss. 122, 123.

body of His Majesty's military forces when serving out of the United Kingdom, the officer not below the rank of field officer or corresponding rank commanding that body of the command within which they are serving, whether such officer is an officer of the navy, army, or air force.

NOTE

1. See Ch. V, paras. 3-9 and 87-93.

For forms of court-martial warrants, see pp. 788-793.

When a warrant has been issued and its contents communicated to the addressee, he can act upon it before it actually reaches him.

3. Under this sub-section a governor of a colony can by warrant be authorised to convene, and confirm the findings and sentences of, general courts-martial, if he has had conferred upon him the command of any of His Majesty's forces. For the present the issue of general court-martial warrants has been restricted to governors of colonies in which there are no regular troops.

A governor to whom a general court-martial warrant is issued may convene and confirm general courts-martial within the territorial limits of the colony for the trial of offences committed against the Army Act by persons subject to that Act. For instance, if a force is raised in the colony under the Army Act, any offence committed against that Act by a member of such force while within the territorial limits of the colony may be tried by a court-martial—the court being convened and the proceedings confirmed under authority of the warrant issued to the governor. Or, again, when a force raised in the colony under a colonial enactment is serving for the time being solely under the Army Act, and *not* under the colonial enactment, offences against the Army Act may be dealt with by court-martial within the colony under the general court-martial warrant issued to the governor.

The governor cannot convene or confirm a court-martial held outside the territorial limits of the colony; but where troops who are subject to the Army Act are embarked in ships (not being ships commissioned by His Majesty) at ports in a colony where there are no regular troops for convenyance to a seat of war, the governor of that colony, if in possession of a general court-martial warrant, may issue a warrant, on A.F., A.5, to the officer commanding troops on board any such ship, if not below the rank of captain, empowering him to convene and confirm district courts-martial held for the trial of a person under his command who is subject to the Army Act. The warrant thus given (A.F., A.5) should be granted for the period of the voyage only, and will become inoperative as soon as the troops reach the port of disembarkation when they come under the command of an officer of the regular forces having power to convene and confirm general courts-martial.

When the force is returning to the colony an officer of the regular forces having power to convene general courts-martial (usually the general officer commanding at the port of embarkation) will give to the officer commanding troops on board a ship (not being a ship commissioned by His Majesty), if he is not below the rank of captain, a warrant on A.F., A.5 for use during the voyage to the colony. This latter warrant will lapse as soon as the troops disembark in the colony.

Authority of officer empowered to convene general courts-martial required for convening ing district and confirm- courts-martial.

123.—(1) Any officer or person authorised to convene general courts-martial may—

(*a*) Convene a district court-martial for the trial under this Act of any person under his command who is subject to military law; and

(*b*) Empower any person under his command not below the rank of captain[1] to convene a district court-martial[2] for the trial under this Act of any person under the command of such last-mentioned officer who is subject to military law;[3] and

PART IV

ss. 123, 124.

(c) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district court-martial to confirm[4] the finding and sentence of any district court-martial.[3]

(2) The same officer may or may not be appointed convening and confirming officer under this section.

(3) The power of convening, and of confirming the findings and sentences of, district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.[1]

(4) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may, or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.[2]

NOTE

1. General officers commanding-in-chief may delegate the power of convening and confirming district courts-martial to the following officers:—

General officers commanding divisions, including Territorial Army divisional commanders;

General or other officers not below the rank of lieutenant-colonel, commanding brigades of the regular forces, and coast defence commanders.

The power may also be delegated, in case of necessity, to other officers not below the rank of lieutenant-colonel, provided that they hold an executive command. (K.R. 614A.)

For forms of warrants, see pp. 788-793.

2. In granting a delegated warrant on A.F. A.5, it should be clearly shown that during the absence of the officer to whom such warrant is issued, the powers therein conferred may be exercised by the officer on whom the command devolves, if he is not under the rank of lieutenant-colonel. But if such officer is the commanding officer of the person to be tried, or an officer who has investigated the case, he cannot (except) on board ship or in such special cases as may be determined by the Army Council) afterwards act as convening officer in the same case, but must refer it to a superior authority; K.R. 617.

3. A warrant to convene and confirm district courts-martial is given to every O.C. the troops on board a transport or troop freight ship, not below the rank of captain. The warrant is operative for the period of the voyage only; K.R. 1091.

4. A commanding officer who has investigated a case in his capacity as commanding officer cannot subsequently act as confirming officer in any court-martial proceedings arising out of the same matter, except where he has authority to convene a court-martial under K.R. 617 *(b)*. See K.R. 660, and note 2 above.

Right of person tried to copy of proceedings of court-martial.

124. Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years,[1] and in the case of any other court-martial within three years,[1] after the confirmation of the finding and sentence of the court or after his acquittal, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate,[2] not exceeding two-pence for every folio of seventy-two words, and for the purposes of

this section the proceedings of courts-martial shall be preserved in the prescribed manner:[3]

Provided that, when any person tried by court-martial dies within the above-mentioned periods of seven or three years, his next of kin shall, within a period of twelve months after his death, have the same right to obtain a copy of the proceedings.

NOTE

1. Courts-martial proceedings will be kept for the period of time mentioned in this section and in R.P. 98, and the officer or person having the custody of them will give copies in accordance with this section and R.P. 99; see K.R. 670.

2. *Prescribed rate.* See R.P. 99. If an application is made for a copy of part only of the proceedings, it should be complied with.

3. *Prescribed manner.* See R.P. 98.

Summoning and privilege of witnesses at courts-martial.

125.—(1) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.[1]

(2) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest[2] as he would have if he were a witness before a superior court of civil jurisdiction.

(3) For the purposes of this and the next succeeding section, the expression "a court-martial" shall be deemed to include an officer taking a written summary of evidence[3] in accordance with rules of procedure made under this Act; and references to the president or members of a court-martial shall be construed as including references to such officer.

NOTE

1. *Prescribed manner.* See R.P. 4 (H), 78. For form of summons, see R.P. App. II p. 761.

2. *Privilege from arrest.* This privilege is from arrest on civil process while going to the place of trial, attending there, and returning home. There is no privilege from arrest on any criminal process. The remedy for an improper arrest is to apply to the court on whose process the arrest took place, or to apply for a *habeas corpus*.

3. Civilian witnesses can be required to attend at the taking of a summary of evidence; but see R.P. 4 (G).

Misconduct of civilian at court-martial.

126.—(1) Where any person who is not subject to military law commits any of the following offences; that is to say,

(*a*) On being duly summoned as a witness before a court-martial[1] and after payment or tender of the reasonable expenses of his attendance, makes default in attending;[2] or

(*b*) Being in attendance as a witness[1]—

(i) Refuses to take an oath legally required by a court-martial to be taken; or

(ii) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or

PART IV

—

s. 126.

(iii) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify[3] the offence of such person under his hand to any court of law[4] in the part of His Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(2) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial[1] wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury,[5] or the offence by whatever name called in the part of His Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3) Where a person not subject to military law is guilty of any contempt towards a court-martial,[1] by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify[3] the offence of such person, under his hand, to any court of law[4] in the part of His Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court.

(4) If in the case of a court-martial held in a Dominion[6] a person not subject to military law is guilty of any such conduct as is mentioned in this section, the steps, if any, to be taken to secure his punishment shall be such steps as may be competent for the purpose under the law of the Dominion.

NOTE

1. Subs. (3) of s. 125 makes the provisions of s. 126 applicable as regards civilian witnesses at the taking of a written summary of evidence.

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

3. The certificate of the president need not be in any particular form, but should be addressed to the court to which the certificate is to be sent, and should state the name, address, and description of the person who has committed the offence, and the offence which he has committed. It will usually be desirable to make a formal application to the court to act upon the certificate.

4. The object of this subsection is to enable courts-martial to obtain the punishment of civilians guilty of contempt of court. Usually exclusion from the court will be the best mode of dealing with the case, care being taken not to use any unnecessary force. If it is requisite to apply to a court, the application should be made in England or Northern Ireland to the High Court of Justice or the County Court, and in Scotland to the Court of Session or the Sheriff Court.

5. *The offence of perjury.* See the Perjury Act, 1911 (1 & 2 Geo. V. c. 6).

6. For definition of *Dominion*, see s. 190 (23).

Court-martial governed by English law only.

127. A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to any Act[1], law, or ordinance of any legislature[2] or authority whatsoever other than the Parliament of the United Kingdom.

NOTE

1. A soldier, wherever he goes, carries with him the military law of his country, that is to say, the Army Act.

2. This section, however, applies only to courts-martial held directly under this Act. A colonial legislature, when applying the Act to its colonial military force, could modify the provisions of the section.

Rules of evidence to be the same as in civil courts.

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England, and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

NOTE

As to evidence generally, see Ch. VI, and R.P. 73-86.

Position of counsel at courts-martial.

129. The following provisions shall have effect with respect to the conduct of counsel[1] when appearing on behalf of the prosecution or defence at courts-martial in pursuance of rules under this Act:—

(1) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before His Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

(2) Where a counsel is guilty of conduct liable to censure or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3) A court-martial may, by order under the hand of the president cause a counsel to be removed[2] from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the abovementioned section.

If in the case of a court-martial held in a Dominion[3] a counsel contravenes any rule made under this Act with respect to the conduct of counsel at courts-martial, the steps, if any, to be taken to secure his punishment shall be such steps as may be competent for the purpose under the law of the Dominion.

PART IV

ss 129, 130.

NOTE

1. See as to counsel, R.P. 88 to 93.

2. The removal of a counsel from the court could only be justified under very grave circumstances.

3. For definition of *Dominion*, see s. 190 (23).

Provision in case of insane persons.

130.—(1) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity[1] unfit to take his trial, the court shall find specially that fact; and such person shall be kept in custody in the prescribed manner[2] until the directions of His Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

(2) Where, on the trial by court-martial of a person charged with an offence, it appears that such person did the act or made the omission with which he is charged, but that he was insane at the time when he did or made the same, the court shall find specially that the accused was guilty of the act or omission charged but was insane at the time he did the act or made the omission,[3] and such person shall be kept in custody in the prescribed manner[2] until the directions of His Majesty thereon are known.

(3) In either of the above cases His Majesty may give orders for the safe custody of such person during his pleasure, in such place and in such manner at His Majesty thinks fit.

(4) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5) If a person imprisoned or undergoing detention by virtue of this Act[4] becomes insane, then, without prejudice to any other provision for dealing with such insane person, a Secretary of State in any case, and in the case of a person confined in India, the Governor-General of India, or the Governor of any Province in which the person is confined and, in the case of a person confined in Burma, the Governor of Burma, and in the case of a person confined in a colony the Governor of that colony, may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such person to a mental hospital or other proper place for the reception of insane persons in the United Kingdom, India, Burma, or the colony, according as the person is confined in the United Kingdom,[5] India, Burma, or the colony, there to remain for the unexpired term of his imprisonment or detention, and, upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison or detention barrack in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.

NOTE

1. As to insanity in connection with responsibility for crime; see Ch. VII, para. 8.

2. *Prescribed manner*. See R.P. 57 (C) and note.

3. Where a court-martial find that an accused person did the act (or made the omission) which forms the subject of the charge or charges but was insane at the time when he did or made the same, such finding does not amount to a conviction, but means that on the facts proved the court would have found him guilty of the offence (offences) had it not been established to their satisfaction that the accused at the time was not responsible for his actions, and could not, therefore, have acted with a

felonious or malicious mind (*Felstead* v. *Rex.* L.R. [1914] A.C. 534). If such a finding is recorded in a case where a soldier is charged with desertion—

(i) no prior service is forfeited under ss. 79 or 84; and

(ii) no pay is forfeited in respect of the period during which the soldier is in custody awaiting trial, or for the actual period of absence.

4. *Imprisonment or undergoing detention by virtue of this Act.* This refers only to persons under sentence, and not to persons in custody awaiting trial.

5. This sub-section does not apply to persons undergoing imprisonment or detention in England. The removal of such persons to criminal lunatic asylums is the province of the Home Secretary; see the Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64).

General Provisions as to Prisons and Detention Barracks

Duty of governor of prison to receive prisoners, deserters and absentees without leave.

131.—(1) The governor of every prison in the United Kingdom shall receive and confine, until discharged or delivered over in due course of law—

(*a*) all prisoners[1] sent to such prison in pursuance of this Act, and

(*b*) every person delivered into his custody as a deserter or absentee without leave[1] by any person conveying him under legal authority on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

(2) Every such governor shall also receive into his custody for a period not exceeding seven days any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.[2]

(3) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

NOTE

1. See ss. 58-68 as to execution of sentences of penal servitude and imprisonment, and as to deserters or absentees without leave, see s. 154.

2. The object of this is to provide for the safe keeping during a halt on the line of march of soldiers in military custody. For form of order, see R.P., App. III, Form Q. A soldier in a military capacity cannot, whether under one or more warrants, be legally confined in a prison, police station, etc., for any period in excess of seven days under the provisions of this subsection.

Establishment and regulation of military prisons and detention barracks.

132.—(1) It shall be lawful for a Secretary of State, and in India for the Governor-General, and in Burma for the Governor to set apart any building or part of a building under the control of the Secretary of State or Governor-General or Governor as a military prison or detention barrack.[1]

(2) It shall be lawful for a Secretary of State, and in India for the Governor-General, and in Burma for the Governor from time to time make, alter and repeal rules[2]—

(*a*) for the government, management, and regulation of military prisons and detention barracks; and

(*b*) for the appointment and removal and powers of inspectors, visitors, governor, and officers thereof; and

PART IV — ss. 132, 133.

(c) for the labour of military or other prisoners and soldiers undergoing detention therein, and for enabling such prisoners or soldiers to earn, by special industry and good conduct, a remission of portion of their sentence; and

(d) for the safe custody of such prisoners or soldiers and the maintenance of discipline among them, and the punishment by personal correction, restraint or otherwise of offences committed by such prisoners or soldiers;

Provided that—

(i) such rules shall not authorize corporal punishment to be inflicted for any offence, nor render the imprisonment or detention more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877; and

(ii) all the regulations made under the Prison Act, 1898,[3] as to the duties of gaolers and medical officers and all regulations contained in the Coroners Act, 1887, as to the duties of coroners with respect to inquests in prisons and detention barracks, shall be contained in such rules, so far as the same can be made applicable.

The Secretary of State, the Governor-General and the Governor of Burma shall by rules under this subsection make special provision as to the treatment of military convicts under sentence for an offence committed on active service who, in pursuance of the provisions of this Act, are required to serve part of their sentences in a military prison.

(3) Rules under this section may apply to military prisons and detention barracks any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

(4) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made.

NOTE

1. For definitions of *military prison* and *detention barracks*, see s. 68 (2) *(d)* and *(e)*.

2. The orders for the interior management of military prisons and detention barracks are laid down in K.R. 715, *et seq.*, and Rules for Military Detention Barracks and Military Prisons.

3. *Regulations made under the Prison Act*, 1898, &c. See Local Prison Rules, 87-113; Rules for Convict Prisons, 1899, 157-175; and s. 3 of the Coroners Act, 1887.

Provisions as to military prisons and detention barracks on active service.

133.—(1) In any country in which operations against the enemy are being conducted,[1] the powers of a Secretary of State under the last foregoing section with respect to military prisons and detention barracks shall be exercisable by the officer commanding-in-chief in the field, and shall include a power of declaring any place to be a military prison or a detention barrack, and the limitations contained in that section on the power of making rules as to the punishment of prisoners and soldiers undergoing detention and as to the severity of imprisonment and detention shall not apply: Provided that nothing in this section,

or in any rules made thereunder, shall authorize flogging or other corporal punishment to be inflicted for any offence.[2]

"(2) The powers conferred by this section shall continue to be exercisable after the cessation of operations so long as the forces in the country in question are on active service."

NOTE

2. This prohibition will apply to native personnel if subject *only* to the Army Act; but the local law under which they are recruited may make native formations liable to corporal punishment.

Inquests on deaths in military prisons and detention barracks in India.

134.—(1) On all occasions of death by violence or attended with suspicious circumstances, in any military prison or detention barrack in India or Burma, an inquest shall be held to make inquiry into the cause of death.

(2) The commanding officer shall cause notice to be given to the nearest magistrate duly authorized to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India or Burma for regulating criminal procedure.

(3) Where there is no such magistrate available, the commanding officer convene a court of inquest which shall be convened and shall hold the inquest in such manner as may be prescribed.[1]

NOTE

1. *As may be prescribed.* See R.P. 127.

Arrangements as to civil prisons in India, Burma or colony.

135. A Secretary of State may from time to time make arrangements with the Governor-General of India, the Governor of any Province in India, the Governor of Burma or the Governor of a colony for the reception in any prison in India, Burma or that colony of prisoners under this Act and of deserters or absentees without leave from His Majesty's service, on payment of such sums as may be provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation[1] as the governor of a prison in the United Kingdom to receive and detain such prisoners deserters and absentees without leave, and the provisions of section one hundred and thirty-one of this Act shall apply accordingly with this modification, that the reference to orders from a Secretary of State shall be construed as including orders from the Governor-General of India, the Governor of the Province, the Governor of Burma, or the Governor of the colony as the case may be.

NOTE

1. *Same obligation.* See s. 131.

Authorized deductions only to be made from pay.

136.—(1) The pay of an officer or soldier of the regular forces shall be paid without any deduction other that the deductions authorized by this or any other Act or by any Royal Warrant for the time being, or by any law for the time being in force in India or Burma, being in the case of India a law of the Indian legislature.

PART IV — s. 136.

(2)[1] Notwithstanding anything in any law in force as aforesaid in India or Burma[1] no part of the pay of an officer or soldier of the regular forces shall be attached by direction of a court in satisfaction of any decree or order enforceable against him:

Provided that nothing in this sub-section affects any attachment order made by a court in India or Burma in respect of any liability incurred before the end of the year nineteen hundred and thirty-eight.

NOTE

1. This sub-section, which was added by the A. & A.F. (A) Act, 1938, prevents the attachment, under the Code of Civil Procedure, of any part of the pay of officers serving in India or Burma in satisfaction of civil debts incurred by them.

PART IV

s. 137.

Penal stoppages from ordinary pay of officers.

137. The following penal deductions[1] may be made from the ordinary pay[2] due to an officer of the regular forces:—

(1) All ordinary pay[2] due to an officer who absents himself without leave[3] or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been approved by the Army Council;

(2) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by[4] the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence;

(3) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay;

(4) The sum required to make good any loss, damage, or destruction of public, regimental or garrison property[5], or property belonging to the Navy, Army and Air Force Institutes which, after due investigation, appears to the Army Council, or in the case of officers serving in India[6] the Governor-General, or, in the case of officers serving in Burma[6], the Governor, to have been occasioned by[4] any wrongful act or negligence on the part of the officer: Provided that where deductions have been so made from the pay of an officer serving in India or Burma the case shall, if he so require, be reported to the Secretary of State for India, or, as the case may be, for Burma, who may make such order thereon as he thinks fit.[6]

NOTE

1. This section states the penal deductions that may be made from the ordinary pay of an officer, and by implication excludes other penal deductions, but it does not prohibit deductions not penal, as for instance, in respect to rations. As to stoppages from pay, &c., to meet public claims, or regimental debts or claims, see P.W. 9 and 23.

2. *Ordinary pay.*—The term "ordinary pay" means the rate of pay with increases, if any, for length of service, to which an officer in receipt of full pay is entitled by reason of his rank or appointment. (It includes the 25 per cent addition granted in certain circumstances under Article 505 *(b)*, Pay Warrant, 1926, to retired officers recalled to service, and in the case of such an officer who elects to draw a rate of pay equivalent to service retired pay plus 25 per cent under Article 505 *(g)*, the whole rate including the 25 per cent addition is ordinary pay).

Additional remuneration such as command pay, corps pay, engineer pay, and the various forms of additional pay, though covered by the term "pay" in s. 136, does not fall within the meaning of the term "ordinary pay."

3. *All ordinary pay due to an officer who absents himself without leave.* This means all ordinary pay for the period of absence without leave. If pay has not been drawn during a period of absence without leave, such pay is forfeitable under para. (1); if pay has been drawn during a period of absence without leave, the issue constitutes an overissue due to an error as to facts, and the amount is recoverable as a public claim under the terms of the Pay Warrant.

4. *Occasioned by.* In order to put an officer under stoppages by way of penal deduction, under either para. (2) or para. (4), it is not sufficient to show merely that the loss, etc., was facilitated or made possible by his act or neglect. It is necessary to show that the loss was "occasioned by" in the sense of being the natural result of the conduct of the officer.

5. The words "of public, regimental or garrison property" qualify "loss" and "damage" as well as "destruction."

Furniture, etc., hired by the military authorities for military use may be treated as "public" or "regimental" property *pro tem*.

6. The effect of the words "or in the case of officers serving in India," etc., and the proviso to this paragraph, is that in India the Governor General will decide whether or not any particular loss or damage was occasioned by an officer's wrongful act or negligence, but the officer will have a right of appeal to the Secretary of State for India. Similarly, in the case of officers serving in Burma, the Governor will decide, but the officer will have a right of appeal to the Secretary of State for Burma.

Penal stoppages from ordinary pay of soldiers.

138. The following penal deductions[1] may be made from the ordinary pay[2] due to a soldier of the regular forces:—

(1)[3] All ordinary pay[2] for every day of absence[4] either on desertion[5] or without leave,[6] or as a prisoner of war[7], and for every day of penal servitude or imprisonment[8] awarded by a civil court or court-martial, or, if he is on board one of His Majesty's ships, by the commanding officer of that ship, for every day of detention[8] or field punishment[9] awarded by a court-martial or by his commanding officer, and for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a civil court or court-martial, or on a charge of absence without leave for which he is afterwards awarded detention or field punishment by his commanding officer;

(2) All ordinary pay[2] for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence[10] under this Act committed by him;

(3) The sum required to make good such compensation[11] for any expenses, loss,[12] damage, or destruction occasioned by [13] the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence or by the authority dealing summarily with a charge under section forty-seven of this Act, or if he is on board of that ship, or where he has confessed the offence and his trial is dispensed with by order[14] under section seventy-three of this Act as may be awarded by that order or by any other order of a competent military authority under that section;[15]

(4) The sum required to make good such compensation[16] for any expenses caused by[17] him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries or military decoration, or to any building or property[18], as may be awarded by his commanding officer,[19] or by the authority dealing summarily with a charge under section forty-seven of this Act, or, in case he requires to be tried by a court-martial,[20] by that court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship[15];

(4A) The share he is required to contribute as belonging to a unit towards compensation for barrack damage which after due investigation, to be held in the manner provided in the King's Regulations, appears to have been occasioned by the wilful act or negligence of a person or persons who cannot be identified, belonging to the unit, during the period while such unit was in occupation.

For the purposes of this paragraph, the expression "barrack damage" means damage to or loss or destruction of any premises in which soldiers are quartered or billeted, or any

PART IV — s. 138.

appurtences, fixtures, furniture or effects therein or appertaining thereto, and the expression "unit" includes any part of a unit;

(5) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment;

(6) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by His Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days;

(7) The sum required to pay any fine awarded by a court-martial or his commanding officer, or any fine, penalty, damages, compensation, or costs which a civil court before which he has been charged with an offence has ordered him to pay;[21] and

(8) The sum required to pay any sum ordered by the Army Council, or any officer deputed by them for the purpose, to be paid as mentioned in this Act[22] for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child;

Provided that—

(a) the total amount of deductions from the ordinary pay due to soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid shall not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day;[23] and

(b) a person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum;[24] and

(c) where a soldier who is sentenced or ordered in respect of an offence on active service to forfeit all ordinary pay is liable to any other penal deductions from pay, the sentence or order shall apply only to so much of his ordinary pay as remains after those other deductions have been made.[25]

NOTE

1. Note 1 to s. 137 applies to this section also.

2. *Ordinary pay.*—The term "ordinary pay" means the rate of pay with increases, if any, after specified periods, to which a soldier during his colour service is entitled by reason of his rank, appointment, trade group or trade classification.

Additional remuneration such as proficiency pay, long service and good conduct pay, and the various forms of additional pay, though covered by the term "pay" in s. 136, does not fall within the meaning of the term "ordinary pay."

3. The Pay Warrant makes provision as to the cases in which pay is to be forfeited under this para. (P.W. 879-885; see also Ch. IV, para. 34), and no discretion is given to the commanding officer whether or not to enforce wholly or partially the forfeiture.

4. Section 140 (2) lays down six hours as the minimum period of absence that will count as a day of absence unless two conditions are fulfilled, first, that the absentee was prevented from fulfilling a military duty, and second, that the duty was thrown upon some other person.

Six clear hours must therefore elapse, and they must be reckoned consecutively.
The period of absence must be reckoned as from the time the absence commenced.
If the period does not amount to six hours or upwards no pay is forfeited, except when the absence prevents the absentee from fulfilling some military duty which was thereby thrown on some other person, in which case the absentee would forfeit a day's pay no matter how short his absence might be.

If the absence amounts to six hours but not to twenty-four, one day's pay is forfeited whether the absence falls wholly on one natural day (reckoned from midnight to midnight) or partly on one natural day and partly on another.

If the period of absence exceeds twenty-four hours the number of days' pay forfeited will be the period in hours divided by twenty-four, and fraction over being counted as an additional day.

For instance, if a soldier absented himself from 9 p.m. on the 2nd October and returned at 2.45 a.m. on the 3rd October he would forfeit no pay as his absence did not amount to six hours or upwards, but if he was bound to go on guard or perform some other military duty and in consequence of his absence some other soldier had to go on guard or perform that duty then he would forfeit one day's pay.

Again, if a soldier absents himself at 10 p.m. on the 2nd October and remains absent until 4 a.m. on the 3rd October, he would forfeit one day's pay, and if he remained absent until 2 a.m. on the 10th October he would forfeit eight days' pay, for in the latter case he would be 172 hours absent, or seven full days of twenty-four hours each, and an additional period of fours hours for which one day's pay would be forfeited, making eight days' pay in all.

In all cases the soldier must be found guilty of the absence, either by a court-martial or by his commanding officer (see R.P. 129), before forfeiture of pay for such absence can be enforced.

5. Under s. 73 (1) the competent military authority can order that the soldier shall forfeit his pay for every day in custody on a charge of desertion or fraudulent enlistment when he confesses his guilt and his trial is dispensed with.

6. Upon a charge of desertion or absence without leave, a finding that the accused did the act charged but was insane at the time when he did the same, does not amount to a conviction (as it negatives "intention") and no forfeiture of pay results. See also note 4 to s. 79 and note 3 to s. 130.

7. Absence as a prisoner of war, however, does not cause a forfeiture of pay, unless a court of inquiry decide that the soldier was taken prisoner through neglect or misconduct on his own part; and at most only the balance of pay unissued at the date of rejoining is forfeited; P.W. 885.

8. As to the reckoning of a day's imprisonment or detention, see s. 140 (2).

9. Under art. 879 (*b*) of the Pay Warrant a soldier does not forfeit pay while under sentence of field punishment except for days upon which he is *in custody*, unless he has been ordered to forfeit pay under s. 44 (6) or 46 (2) (*d*) *in addition* to the sentence of field punishment.

10. This deduction is only authorized where the sickness is caused by an offence of which a soldier has been found guilty and therefore does not extend to sickness caused by immortality or intemperance, when there is no conviction (either by a court-martial or under the award of a commanding officer) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence, whether before the court-martial or the commanding officer, and give evidence in substantiation of the facts contained in his certificate. The certificate alone is not sufficient. See K.R. 570, 571. The Pay Warrant provides that where the deduction is authorized under this paragraph the pay is in every case to be forfeited; (P.W. 879 (*d*)).

11. As to the statement of the ground for compensation in the charge, see R.P. 13 (F) and note, and App. I, note as to the use of forms of charges (23), p. 701.

12. The words "loss" and "expenses" would cover loss of wages and doctor's expenses incurred by a civilian. But military tribunals should not, as a rule, be used as a means for enforcing civil claims. It must be remembered, where there is any doubt as to the merits, that the soldier is bound by the court's decision if adverse to him, whilst the civilian is not bound if it is in the soldier's favour.

13. As to the meaning of "occasioned by" see note 4 to s. 137.

14. *Dispensed with by order.* As this is limited to an order under s. 73, a commanding officer who of his own authority abstains from sending an accused soldier for trial must dismiss the charge (see s. 46 (1), R.P. 4 (A) and note), and therefore cannot in

PART IV

s. 138.

the technical sense exercise any power under this paragraph of ordering any deduction from the soldier's pay.

15. Under paras. (3) and (4) a soldier is not liable for the ordinary expenses of his prosecution, capture, or conveyance, or indirect losses of a similar kind. Nor would a soldier be liable under them for damage to a military policeman's clothes because the policeman fell down and damaged them while in pursuit of the soldier when endeavouring to escape. But where a soldier refused to march, being able to do so, and a cab had to be hired for his conveyance, he was held liable for the expense thus incurred by his contumacy.

16. For the purposes of trial, the amount of compensation will be estimated as follows:—

Where an article which has an official value has been lost or rendered unserviceable, a witness is required who would prove the present value of the article upon a basis of its age and by reference to the regulations for fixing the value of the article at that age. This value would be included in the particulars of the charge.

When the article has no official value expert evidence is required to prove the approximate value, which will be included in the particulars.

When an article has been damaged but not rendered unserviceable, expert evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused if it cannot be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

Similar principles will be observed if the case is disposed of summarily.

17. *Caused by.* This has the same meaning as the expression "occasioned by." See note 4 to s. 137.

18. *Buildings or property.* The buildings or property need not be public buildings or property; the words include the buildings or property of officers, soldiers or civilians, whether there is any claim against the public or not. Thus a commanding officer may order a man to pay damages for careless damage to dentures supplied to him at the public expense, for a broken window, or other slight damage done by him; a case of serious damage is, of course, not one which a commanding officer should dispose of.

19. Where a soldier has been convicted by court-martial for an offence, his commanding officer cannot subsequently award compensation for damage caused through that offence.

20. *Requires to be tried by a court-martial* See s. 46 (8

21. This paragraph will enable an officer to pay a fine imposed on a soldier by a civil court, and deduct it from his pay, and thus prevent the soldier from being imprisoned for non-payment of the fine. A court-martial or a commanding officer cannot award a fine for any military offence except drunkenness. See s. 44 (*n*), and note 16 thereto. As to recovery of damages, compensation or costs awarded against a soldier by a civil court, see K.R. 572 (*c*)

22. See s. 145, under which the Army Council of the officer deputed by them for the purpose can order this deduction, either in accordance with the order of court or otherwise.

23. Compulsory allotments, compulsory stoppages under s. 145 (2) and voluntary allotments in favour of a parent (or grandparent if no parent is alive) or of a wife or children for whom marriage allowance is not in issue, take precedence of all other deductions, but the amount thereof may be reduced, if the soldier's account shows a debtor balance, to a sum not exceeding 50 per cent of the rates laid down in Article 886, Pay Warrant, 1926 (*see* Appendix V, Pay Warrant). Subject to the foregoing, if a soldier is subjected to a deduction in respect of one matter up to the full amount allowed by this proviso, any deduction subsequently imposed cannot begin to be enforced till the whole sum in respect of which the first deduction was imposed is satisfied. If a soldier under deductions not up to the full amount allowed by this proviso is subjected to a further deduction or deductions, which taken altogether would exceed that amount, the latter deductions must abate in order of priority, so that in no case may the soldier have less than the penny a day. See, however, Army Council's instructions to art. 890 of the Pay Warrant laying down that, except in special cases, the issue of cash may be a sum not exceeding sixpence a day in the case of British soldiers, or fourpence a day (or the equivalent in local currency) in the case of Maltese and non-European soldiers. In the case of a married man to whom marriage allowance is in issue direct to himself and not to his family this minimum cash payment may be increased by an amount equal to 50 per cent of the appropriate compulsory allotment.

PART I — s. 138.

24. The court will necessarily take care to find as accurately as possible the amount for which deductions are to be made from a soldier's pay, but as in some cases they will be unable to ascertain the amount accurately, and in others may be mistaken, care will have to be taken in enforcing their sentence not to contravene this proviso. The sentence of the court will not justify any deduction which exceeds the actual loss.

If a soldier is sentenced to stoppages for losing by neglect articles of his clothing or equipment, and these articles are afterwards found and in serviceable condition, he has "made good" the loss. Where two soldiers were convicted of having jointly injured public property, each was held to be rightly sentenced to make good the whole amount of the injury sustained; and in the event of one soldier dying, or otherwise ceasing to be amenable to the award, the whole amount might legally be levied upon the other. Where, however, both remained amenable, the stoppages would be properly divided between them in equal proportions.

The principle is that stoppages are intended not for punishment, but to compensate for loss sustained.

25. As to the power to order forfeiture of pay for offences committed on active service, see ss. 44 (6) and 46 (2) *(d)*. The effect of the proviso is that any forfeiture ordered under those provisions will only take effect on the balance of the soldier's pay which remains after providing for any other penal deductions to which he may be liable at the time. See also K.R. 560 *(a)* (v) and 561.

How deduction of pay may be remitted.

139. Any deduction of pay authorized by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Army Council.

Supplemental provisions as to deductions from ordinary pay.

140.—(1) Any sum authorized by this Act to be deducted from the ordinary pay[1] of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due[1A] to such officer or soldier, in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Army Council.

(2) Any such regulation or order may from time to time declare what shall be deemed for the purposes of the provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment or detention,[2] so, however, that—

(a) no person shall be treated as absent, imprisoned or detained, for the purposes aforesaid, unless the absence, imprisonment or detention has lasted six hours or upwards, except where the absence prevented the absentee from fulfilling any military duty which was thereby thrown on some other person;

(b) a period of absence, imprisonment or detention which commences before and ends after midnight may be reckoned as a day;

(c) the number of days shall be reckoned as from the time when the absence, imprisonment, or detention commences; and

(d) no period of less than twenty-four hours shall be reckoned as more than one day.

(3) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until His Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

PART IV

ss. 140-142.

NOTE

1. *Ordinary pay.*—For definition *see* notes 2 to ss. 137 and 138.

1A. *Sums due.* This will allow the amount to be deducted from a gratuity, prize-money, or other sums *earned by* but not paid to an officer or soldier. It would not include money lodged in a fund of whatever description.

2. *Day of absence, imprisonment or detention.* See P.W. and note 4 to s. 138.

Prohibition of assignment of military pay, pensions, etc.

141. Every assignment[1] of, and every charge on, and every agreement to assign or charge, any deferred pay, or military reward payable to any officer or soldier of any of His Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his wife, widow, child, or other dependant, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant[2] for the benefit of the family of the person entitled thereto, or as may be authorized by any Act[3] for the time being in force, be void.

NOTE

1. At common law an assignment of "pay" is void, independently of express statutory provision. The common law also regarded as inalienable any allowances, such as half-pay, in which part of the consideration was the recipient's liability to serve the Crown again. On the other hand, pensions awarded entirely as consideration for past services were alienable: *Crowe* v. *Price* (1889), L.R., 22 Q.B.D. 429. The present section removed this distinction, and made pensions also inalienable except as therein mentioned.

2. *In pursuance of a Royal Warrant.* See P.W. 1098, 1099, under which part of a pension may in some cases be paid to the Poor Law authorities.

Reserve pay cannot be stopped for the maintenance of a reservist's wife or family or for settlement of a civil debt, as no provision exists in the Pay Warrant for such a stoppage to be made.

3. *Authorized by any Act.* By the Bankruptcy Act, 1914, s. 51 (1), if an officer becomes bankrupt, the trustee is to receive for distribution amongst the creditors so much of the officer's pay as the court, with the consent of the chief officer of the department concerned, may direct.

Before making an order the court will communicate with the chief officer as to the amount, time and manner of payment to the trustee, and will obtain his written consent to the terms of such payment.

By s. 51 (2) (3) of the same Act, the court can, without the consent of the chief officer, deal with half-pay, retired pay, pensions, etc.; see *In re Ward* L.R. [1897], 1 Q.B. 266.

Punishment of false oath and personation.

142.—(1) Where any regulations made by the Army Council or the Commissioners of His Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, or with respect to the grant of any relief, benefit, or advantage in connection with military service, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connection with such payment, delivery or grant, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2) Any person who falsely represents himself to any military, naval, air force, or civil authority to belong to, or to be a particular man in, or who has been in, the regular reserve of auxiliary forces shall be deemed to be guilty of personation.

(3) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or to any relief, benefit, or advantage granted in connection with military service, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

(4) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

NOTE

If a man personates another with intent to obtain any money or property he is guilty of an offence under the False Personation Act, 1874, and, if convicted on indictment, is liable to penal servitude for life. In a very serious case a man might be indicted under that Act; in less serious cases it will be better to prosecute under this section.

Persons guilty of obtaining pay or pensions by fraudulent means can also be proceeded against, either by indictment or summarily, under the Pension and Yeomanry Pay Act, 1884, s. 3.

Personation of the holder of a certificate of service or discharge may also be punished under the Seamen's and Soldiers' False Characters Act, 1906.

Under this section a man who falsely represents himself to any authority to belong to part of His Majesty's forces, or to be a particular man in, or who has been in, any of His Majesty's forces, may be punished, although he does not do it with intent to obtain any money. But it will not be desirable to institute a prosecution in such cases, unless the man has, in fact, obtained some advantage, or has put the authorities to expense and inconvenience. Care must be taken not to prosecute a man for what may be mere idle talk or bravado, without any guilty intention.

In this, as in every other case of an offence punishable by a court of summary jurisdiction, a person who aids and abets the offence is, in England, equally punishable with the principal offender. Consequently, if A personates B, a reserve man, and thereby obtains B's pay, and hands the pay over to B or B's wife, B or B's wife is punishable as aiding and abetting the offence of personation by A.

A reservist who commits any offence under subs. (2) or (3) in the presence of an officer may, at the discretion of the officer, be ordered into either military jurisdiction: Reserve Forces Act, 1882, s. 6 (3).

Exemptions of Officers and Soldiers

Exemptions of officers and soldiers from tolls.

143.—(1) All officers and soldiers of the regular forces[1] on duty or on the march; and

Their horses and baggage; and

All prisoners under military escort; and

All carriages and horses belonging to His Majesty or employed in his military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same,

shall be exempted[2] from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parliament already

PART IV — ss. 143, 144.

passed or hereafter to be passed, or by virtue of any Act, Ordinance, order, or direction of any legislature or other authority in India, Burma or a colony.[3]

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges and vessels.

(2) When any officer and soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his officers and soldiers as passengers, and shall pay for each officer including himself and each soldier one half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time and shall in all such cases pay only half the ordinary rate for such boat.

(3) Any person who demands and receives any duty, toll, or rate in contravention of this section shall, on summary conviction,[4] be liable to a fine not exceeding five pounds nor less than ten shillings.

NOTE

1. *Regular forces.* This expression in this section includes the Marines and His Majesty's India and Burma forces; also the reserve forces when subject to military law: see s. 178. See also s. 190 (8) and Reserve Forces Act, 1882, ss. 14 (2), 23 (1). As to the application of this section to the Territorial Army, see T.R.F. Act, s. 28 (2).

2. The exemption is not a personal one, but is confined to officers and soldiers when on duty or on the march; thus an officer driving from his private house to barracks would not be entitled to the exemption.

3. For definition of *India, Burma* and *colony*, see s. 190 (21A), (23A).

4. *On summary conviction;* see note to s. 98.

Exemption of soldiers in respect of civil process.

144.—(1) A soldier[1] of the regular forces shall not be liable to be taken out of His Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them; that is to say,

(*a*) On account of a charge of or conviction for crime; or

(*b*) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.

(2) For the purposes of this section a crime shall mean a felony, misdemeanor, or other crime or offence punishable, according to the law in force in that part of His Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract.

(3) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate.

(4) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be sworn, without

payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be indorsed upon any process or order issued against a soldier.

(5) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void; and where complaint is made[2] by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court or some judge thereof shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

(1) Any person having cause of action or suit against a soldier of the regular forces may notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, regimental necessaries, or clothing of such soldier; and

(2) This section shall not prevent such proceedings with respect to apprentices and indentured labourers as is authorized by this Act.

NOTE

1. The history of this section is given in Clode, Mil. Forces, i. 208. It exempts a soldier from appearing in person, though not from being sued, in case of a debt under £30. The exemption does not apply to a soldier required to attend as a witness before a court of law. This section does not apply to an officer.

2. A commanding officer should complain direct to the court. He need not send the complaint through a superior military authority.

Liability of soldier to maintain wife and children.

145.—(1) A soldier of the regular forces shall be able to contribute[1] to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person,[2] pay, arms, ammunition, equipments, instruments, regimental necessaries, or clothing; nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any area or place.

(2) When any order or decree[3] is made under any Act or at common law for payment by a man who is or subsequently becomes a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of

PART IV — s. 145.

such order or decree shall be sent to the Army Council, or any officer deputed by them for the purpose,[4] and in the case—

(a) Of such order or decree being so sent; or

(b) Of it appearing to the satisfaction of the Army Council or any officer deputed by them for the purpose[4] that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under sixteen years of age, the Army Council or officer shall order to be deducted from the pay of the soldier and to be appropriated in liquidation of the sum adjudged to be paid by such order or decree (including any sum paid on account thereof in accordance with the provisions of subsection (3) of this section), or towards the maintenance of the wife or children of the soldier, as the case may be, in manner directed by the order, such portion of the soldier's pay as the Army Council or officer in their or his discretion from time to time think or thinks fit, but so that there shall be left to the soldier (subject, however, to the making of any other deduction authorized by or under this Act) not less than one-fourth or, if he is a warrant officer or a non-commissioned officer not below the rank of sergeant, not less than one-third, of his pay.

(3) Where a proceeding is instituted[5] against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, then—

(a) if at the date of service of the process the soldier is quartered out of the jurisdiction of the court, or (where the proceeding is before a court of summary jurisdiction), out of the petty sessional division in which the proceeding is instituted, the process shall be served on his commanding officer, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if any order or decree is made against the soldier) of a sufficient amount to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose;

(b) in any other case the process may be served either on the commanding officer or on the soldier, provided that where the process is served on the soldier, a copy thereof shall be sent by the court by which it is issued to the commanding officer by registered post as soon as possible after the process is served, and in any case at least four days before the day fixed for the hearing of the case;

Provided that no proceedings in this section mentioned shall be valid against a soldier of the regular forces if his commanding officer certifies that the soldier is under orders for service out of the United Kingdom,[6] and that in his opinion it will not be possible for the soldier to attend the hearing and return to his quarters in sufficient time to enable him

to embark for such service. Every such certificate shall be sent to the court and shall be final and conclusive.

Where, by an order or decree sent to the Army Council or officer in accordance with subsection (2) of this section, the soldier is adjudged to pay as costs incurred in obtaining the order or degree any sum left in the hands of the commanding officer[7] under this subsection, the Army Council may cause a sum equal to the sum so left to be paid in liquidation of the sum so adjudged to be paid as costs, and the amount so paid by the Army Council shall be a public debt from the soldier against whom the order or decree was made, and, without prejudice to any other method of recovery, "the recovery thereof shall be a purpose of which deductions from pay ordered to be made under subsection (2) of this section may be directed by the order to be appropriated."

(4) Where any arrears have accumulated in respect of sums adjudged to be paid by any such order or decree as aforesaid whilst the person against whom the order or decree was made was serving as a soldier of the regular forces, whether or not deductions in respect thereof have been made from his pay under this section, then after he has ceased so to serve an order of committal shall not be made in respect of those arrears unless the court is satisfied that he is able, or has since he ceased so to serve been able, to pay the arrears or any part thereof, and has failed to do so.

NOTE

1. See generally Part IV, Appendix V, Pay Warrant.

2. K.R. 370 (xiv) provides for handing over to the parish authority in certain cases a married soldier who on attestation falsely represented himself to be single.

3. A judgment upon a covenant for payment of alimony contained in a separation deed is an order or decree within the meaning of this subsection. A voluntary agreement to contribute to the support of a bastard child will not justify an order for stoppages under subs. (2) (a); a judgment must first be obtained on it.

4. A list of officers to whom the Army Council have deputed their powers for the purpose of this subsection is published from time to time in Army Orders. (*See* Army Order 95 of 1939.)

5. This subsection deals with the method of procuring the attendance of a soldier to answer process, which may, of course, lead to the making of such an "order or decree" as is referred to in subs. (2).

6. The words "under orders for service out of the United Kingdom" protect a man who is in England on short leave from overseas, and also a man who is one of a draft or unit already warned for service abroad. (In the case of soldiers on leave from overseas, the officer i/c records is for the purpose the O.C.).

7. *Any sum left in the hands of the commanding officer.* This does not mean "any sum remaining, &c." It means the total sum handed to the commanding officer under subs. (3) (a).

Officers are be sheriffs.

146. An officer of the regular forces on the active list within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place.

NOTE

It is generally understood that officers on full pay and soldiers are exempt from serving all offices which require the personal discharge of duty, and do not admit of the appointment of a deputy. See Ch. XII, para. 9.

Exemption from jury service.

147. Every soldier in the regular forces shall be exempt from serving on any jury.

NOTE

See Ch. XII, para. 9, as to the exemption of soldiers and officers from liability to serve on juries.

Court of Requests in India

148-151. (These sections, relating to the above subject, were repealed in 1888 and 1895.)

Legal Penalties in Matters respecting Forces

Punishment for pretending to be a deserter.

152. Any person who falsely represents himself to any military, naval, air-force or civil authority to be a deserter from the regular forces[1] shall on summary conviction[2] be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months.

NOTE

1. The regular forces. See definitions in s. 190 (8).
2. *On summary conviction.* See note to s. 98.

Punishment for inducing or assisting officers or soldiers to desert or absent themselves without leave.

153. Any person[1] who in the United Kingdom or elsewhere by any means whatever—

(1) Procures or persuades any officer or soldier to desert or absent himself without leave, or attempts to procure or persuade any officer or soldier to desert or absent himself without leave; or

(2) Knowing that an officer or soldier is about to desert or absent himself without leave, aids or assists him in deserting or absenting himself without leave, or

(3) Knowing any officer or soldier to be a deserter or absentee without leave, conceals such officer or soldier, or aids or assist him in concealing himself, or aids or assists in his rescue,

shall be liable, on summary conviction,[2] to be imprisoned, with or without hard labour, for a term not exceeding six months.

NOTE

1. An offence of procuring, etc., desertion under para. (1) if committed by a person subject to military law can be dealt with under s. 12 (1) (*b*). That section does not, however, apply to absence without leave.
2. *On summary conviction.* See note to s. 98.

Penalty for interference with military duties, &c.

153A. Any person who in the United Kingdom or elsewhere,

(*a*) wilfully obstructs, impedes, or otherwise interferes with any officer or soldier in the execution of his duties; or

(*b*) wilfully produces any disease or infirmity in, or maims or injures, any man whom he knows to be a soldier with a view to enabling such man to avoid military service; or

(*c*) with the intent of enabling a soldier to render himself, or induce the belief that he is, permanently or temporarily unfit for service, supplies to or for such soldier any drug or preparation

calculated or likely to render him or lead to the belief that he is permanently or temporarily unfit for service;

shall be liable, on summary conviction, to a term of imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

Apprehension of deserters or absentees without leave.

154. With respect to deserters and absentees without leave[1] the following provisions shall have effect:—

(1) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction;

(2) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter or absentee without leave is or is reasonably suspected to be within his jurisdiction, issue a warrant authorizing such deserter or absentee without leave to be apprehended and brought forwith before a court of summary jurisdiction;

(3) Where a person is brought before a court of summary jurisdiction charged with being a deserter or absentee without leave under this Act, such court may deal with the case[2] in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence;

(4) The court, if satisfied either by evidence on oath or by the confession[3] of such person that he is a deserter or absentee without leave, shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody;

(5) Where the person confessed[3] himself to be a deserter or absentee without leave, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom, to the Army Council, or as they may direct, and if in India[4] or Burma to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony[4] to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars

PART IV

s. 154.

and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by the Army Council;

(6) The court may from time to time remand the said person for a period not exceeding eight days in each instance and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information;

(7) Where the court cause a person either to be delivered into military custody or to be committed as a deserter or absentee without leave, the court shall send, if in the United Kingdom, to the Army Council, or as they may direct, and if in India, Burma, or a colony[4], to the general or other officer commanding as aforesaid, a descriptive return in relation to such deserter or absentee without leave, for which the clerk of the court shall be entitled to a fee of two shillings;

(8) The Army Council shall direct payment of the said fee;

(9) Where a person surrenders himself to a constable in the United Kingdom as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that that person is a deserter or absentee without leave, he may cause him to be delivered into military custody without bringing him before a court of summary jurisdiction under this section, and in such case shall send to the Army Council or as they may direct a certificate[5] signed by himself as to the fact, date, and place of such surrender.

NOTE

1. This section prescribes the proceedings to be taken for apprehending suspected deserters and absentees, and for dealing with persons arrested as, or surrendering themselves as, deserters or absentees. Briefly stated its provisions are as follows:—

By para. (1) upon *reasonable* suspicion any person may without a warrant arrest the suspect, but, of course, he must be prepared to justify the reasonableness of his suspicion, if in fact he is wrong. As to escape from custody, see s. 22. Para. (2) provides for the issue of a search warrant.

If a man surrenders to the police and states that he is a deserter or absentee, then, if the officer in charge of the station is reasonably satisfied of the truth of the confession—as he may be in many cases without corroborative evidence—it is not necessary to take him before a court. The officer himself hands him over to military custody under para. (9), and has, of course, implied authority to detain him for a reasonable time—pending arrival of an escort or conducting N.C.O.

If a man is apprehended on suspicion, or if he has surrendered but the police officer is not satisfied, he must be brought before a court. The court deal with him under para. (4) if they are reasonably satisfied—as they may be without corroboration; if not satisfied, they deal with him under paras. (5) and (6). In either case they send a "descriptive return"; (for form, see Schedule 4, p. 609). As to admissibility in evidence of a "descriptive return" see s. 163 (1) (*i*).

As to the duties of a commanding officer on receiving information of an arrest, see K.R. 581-597, especially 590, *et seq.*

2. Para. (3) does not make the man's desertion or absence a civil offence punishable by the court of summary jurisdiction. In England the court for the purposes of this section may consist of one justice only; *Walder* v. *Turner* L.R. [1917] 1 K.B. 39.

3. As to the penalty for false confessions see s. 152.
4. For definition of *India, Burma* and *colony*, see s. 190 (21), (21A), (23), (23A).
5. The form of certificate referred to is A.F. O.1617.

Penalty on trafficking in commissions.

155. Every person who negotiates, acts as agents for, or otherwise aids or connives at—

(1) The sale or purchase of any commission in the regular forces; or

(2) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein; or

(3) Any exchange which is made in manner not authorized by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

Penalty on purchasing from soldiers regimental necessaries, equipments, stores, &c., and for unlawful possession of military certificates, &c.

156.—(1) Every person[1] who—

(*a*) Buys, exchanges, takes in pawn, detains, or receives from any person, on any pretence whatsoever; or

(*b*) Solicits or entices any person to sell, exchange, pawn, or give away; or

(*c*) Assists or acts for any person in selling, exchanging, pawning, or making away with

any of the property following; namely, any arms, ammunition, equipments, instruments, regimental necessaries, or clothing issued for the use of officers or soldiers, or any military or air force decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions of forage issued for the use of an officer or soldier, or his horse,[2] or of any horse employed in His Majesty's service, shall unless he proves either that he acted in ignorance of the same being such property as aforesaid, or that the same was sold by order or with the consent of the Army Council, or some competent military authority, or that the same was the personal property of an officer who had retired or ceased to be an officer, or of a soldier who had been discharged, or of the legal personal representative of an officer or soldier who had died, be liable on summary conviction to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both such fine and imprisonment.

(2) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction,[3] and if such court have reasonable ground to believe that the property so

PART IV — s. 156.

found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then if such person does not satisfy the court that he came by the property so found lawfully[3] and without any contravention of this Act, he shall be liable on summary conviction to the same penalties as are prescribed in the case of a contravention of the last preceding subsection.

(4) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction[2]; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him together with such property, before a court of summary jurisdiction.

(5) A court of summary jurisdiction,[2] if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods; and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law.

(6) For the purposes of this section, property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

(7) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores issued as regimental necessaries or otherwise within the meaning of section thirteen of that Act.

(8) If shall be lawful for the Governor-General of India, or the Governor of Burma or for the legislature of any colony,[2] on the recommendation of the Governor thereof, but not otherwise, to provide for reducing a minimum fine under this section to such amount as may to such Governor-General, Governor or legislature appear to be better adapted to the pecuniary means of the inhabitants.

(9) Every person who—

(*a*) receives, detains or has in his possession any identity certificate, life certificate, or other certificate, or official document

evidencing or issued in connection with the right of any person to a military pension, pay or reserve pay, or to any bounty, allowance, gratuity, relief, benefit or advantage granted in connection with military service, as a pledge or security for a debt, or with a view to obtain payment from the person entitled thereto of a debt due either to himself or to any other person; or

(b) without lawful authority or excuse (the proof whereof shall lie on the accused) has in his possession any such certificate or document, or any certificate of discharge or any other official document issued in connection with the mobilisation or demobilisation of any of His Majesty's forces or any member thereof,

shall be liable on summary conviction to the like penalty as for an offence under subsection (1) of this section, and any such certificate or other document shall be deemed to be property within the meaning of this section.

NOTE

1. This section applies also to natives of India and Burma and to the arms, etc., of Indian and Burma soldiers.

2. For definition of *India, Burma colony, court of summary jurisdiction*, and horse, see ss. 190 (21), (21A), (23), (23A), (35), (40).

3. It was held in *Laws* v. *Read* (63 L.J. (Q.B.) 683) that the arrest, without warrant, of a person found in possession of stores was lawful, even though the person was charged with and convicted of purchasing the stores from a soldier under subs. (1), and that an action for false imprisonment in such a case would not lie.

Unauthorized use of decorations, &c.

156A. If—

(1) any unauthorized person uses or wears any military decoration or medal, or medal ribbon, or any badge, wound stripe, or emblem supplied or authorised by the Army Council, or any decoration, medal, or medal ribbon, badge, wound stripe, or emblem so nearly resembling the same as to be calculated to deceive; or

(2) any person falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, medal, or medal ribbon, badge, wound stripe, or emblem as aforesaid; or

(3) any person without lawful authority or excuse supplies or offers to supply any such decoration or medal as aforesaid to any person not authorized to use or wear the same;

such person shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding three months:

Provided that nothing in this section shall be deemed to prohibit the wearing or supply of ordinary regimental badges or any brooch or ornament representing the same.

PART IV

Jurisdiction

ss. 157, 158.

Person not to be tried twice.

157. Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence.

NOTE

A conviction by court-martial, if not confirmed, is of no validity; in such case, therefore, the accused has not been convicted, and may legally be tried again. (Ch. V, para. 87, and s. 54 (6)).

In cases requiring confirmation by the King, and where such has been withheld, a re-trial is not to be ordered unless directions by His Majesty for such re-trial have been issued; in other cases where re-trial may legally take place, it should not be ordered until the Judge-Advocate-General has been consulted, if it is practicable to do so.

Where a court is not legally constituted and has no jurisdiction—as, for example, if the convening order is not signed, or is signed by or on behalf of an officer not authorized to convene such a court, or if the court is composed of too few members, or if unqualified officers sit—it is no court at all. The accused will not have been really tried, and may be tried again, even though the proceedings of such illegally constituted court have inadvertently been confirmed.

Where, however, a conviction is confirmed and then quashed, not for improper constitution of the court, but because the trial was unsatisfactory—*e.g.*, because evidence was improperly admitted—the accused has stood a trial and cannot be tried again.

It is a general principle of English law that it does not permit a man to be tried twice in respect of the same offence; but the application of the rule is not always easy. Where the same incident, or set of incidents, gives rise to two trials, the test for practical purposes, of whether the offence is "the same" offence would appear to be this:—Could the accused have been lawfully convicted at the first trial upon any charge then before the court of the offence charged at the second trial? If so, the second trial is illegal and void. Thus on a charge of desertion, a man could, by virtue of s. 56 (3), be convicted of absence without leave; if he is acquitted generally, the acquittal applies to both offences, and he cannot subsequently be charged with absence (upon the same facts); if, however, the court, while acquitting him of desertion, convict him of absence without leave, and this finding is not confirmed, he has not been acquitted of absence, and can be charged again with that offence.

Where a man is re-tried on the same charges, it is not usual to impose a more severe punishment that that awarded on the first trial, and a confirming officer should exercise his powers of mitigation, &c., when confirming the proceedings, if a greater punishment has been awarded on the second trial.

Where a new trial is ordered, no officer may serve on it who sat on the former court; (R.P. 19 (B) (iii)).

This section only prohibits a second trial *by court-martial* after acquittal or conviction by court-martial. As to the legality of a civil trial after trial by court-martial, see s. 162.

Liability to military law in respect of status.

158.—(1) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which be belongs, has ceased to be subject to military law,[1] in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject:

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment, unless his trial commences within three months[2] after he had ceased to be subject to military law: but this section shall not

affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial, and the limitation of time imposed by this proviso shall not apply in the case of a person who has been attached to or seconded for service with His Majesty's military forces and has ceased to be subject to military law by reason only of the termination of such attachment or seconding.

(2) Where a person subject to military law is sentenced by court-martial to penal servitude, imprisonment, or detention, this Act shall apply to him[3] during the term of his sentence, notwithstanding that he is discharged or dismissed from His Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, made to undergo detention, and punished accordingly as if he continued to be subject to military law.

NOTE

1. This section meets the case of a person who commits an offence against this Act whilst subject to it, and then ceases to be subject to it. It applies where a charge is made that an offence has been committed, even if it eventually proves that the accused was innocent; (*Marks* v. *Frogley* L.R. [1898] 1 Q.B. 888). Such cases will occur, for example, when an officer relinquishes his commission or is dismissed, when a soldier is discharged, or transferred to the reserve, or transferred from the Army to the Air Force, or when reservists return home after a period of training. Again, members of the Territorial Army are constantly changing their status, as they are subject to military law only in the circumstances stated in s. 176 (6A).

By subs. (1), such a person, though he has ceased to be subject to military law even before discovery of the offence, may nevertheless be arrested, tried and punished just as if he were still so subject, with the exceptions mentioned in the proviso. See specimen charge-sheet No. 108, p. 734.

A sentence of dismissal or cashiering is not operative until promulgated. Therefore an officer sentenced to be dismissed who commits another offence between trial and promulgation, can be tried for it under this section even after promulgation of the sentence of dismissal.

2. The proviso to subs. (1) enacts that a person who since the commission of the offence has ceased to be subject to military law can only be tried within three months after he has ceased to be so subject; the three months will not be deemed to have expired if the trial has commenced within that period (Ch. V, para. 12). An exception is made in the case of mutiny, desertion and fraudulent enlistment, for which he can be tried at any time, subject to the restrictions in s. 161, and in the case of attached, etc., personnel returning to the Air Force. Further exceptions are made by the Reserve Forces Act, 1882, s. 26 (2). See also as to the Territorial Army, T.R.F. Act, s. 25 (2).

When the three months have once expired, the offender is protected, and his liability is not revived by his again becoming subject to military law.

3. Subs. (2) deals with the case of a person who is tried and sentenced whilst still subject to military law. Under this enactment, the Act applies to the offender during the term of his sentence, notwithstanding that his discharge or dismissal from the service has been formally carried out, or that he has otherwise ceased to be subject to military law. Consequently he may be tried by Court-Martial for an offence committed by him at any time before his sentence is completed.

Liability to military law in respect of place of commission of offence.

159. Any person subject to military law who within or without His Majesty's dominions commits any offence for which he is liable to be tried by court-martial, may be tried and punished for such offence at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorized to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

ss. 160, 162.

Punishment not increased by trial elsewhere than offence committed.

160. No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

Liability to military law in respect of time for trial of offences.

161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years[1] before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment[2]; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner[3] for not less than three years as a soldier of the regular forces he shall not be tried for any such offence of desertion (other than desertion on active service)[4], or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment[5] all service prior to such enlistment shall be forfeited[6]: Provided that a soldier who has fraudulently enlisted during a period of re-engagement shall only forfeit the service rendered during such re-engagement, and that the Army Council may by general or special regulations provide for the restoration of all or any part of the service forfeited under this section to any soldier who may perform good and faithful service or may otherwise be deemed to merit such restoration of service.

NOTE

1. The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act either by court-martial, or by his commanding officer, for any offence except mutiny, desertion or fraudulent enlistment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under s. 56 (3) of absence without leave from that date, but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of the trial.

2. Mutiny may be tried at any time. With regard to desertion and fraudulent enlistment it is provided that except in the case of one of the greatest of all military offences—desertion on active service—an offender is not to be tried for the offence if he has served continuously in an exemplary manner for three years as a soldier of the regular forces.

3. *In an exemplary manner.* This means that the man has had no entry in the regimental conduct sheet for a continuous period of three years; K.R. 548.

4. *Active service.* For definition, see s. 189.

5. In the case of fraudulent enlistment, inasmuch as he has chosen to quit his old corps and enter into a new contract to serve for a further term of years, he will be held to serve according to that contract.

6. The service rendered prior to such fraudulent enlistment is forfeited, except that a soldier who fraudulently enlisted during a period of re-engagement will only forfeit the service rendered during such re-engagement. Under the power given by the proviso to the section, the Army Council may restore the service so forfeited, and K.R. 246 gives authority for its restoration. The restored service will count for the purpose of reckoning service towards discharge or transfer to the reserve.

Adjustment of military and civil law.

162.—(1) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence, that court shall, in awarding punishment,

have regard to the military punishment he may have already undergone.

(2) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law,[1] when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of His Majesty's service.

(3) If an officer—

(a) Neglects or refuses an application to deliver over to the civil magistrate any officer or soldier under his command, who is so accused or convicted as aforesaid; or

(b) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of His Majesty's superior courts in the United Kingdom, or in a High Court in India or Burma, be guilty of a misdemeanor.

(4) A certificate of a conviction of an officer under this section, with the judgment of the court thereon in such form as may be directed by the Army Council, shall be transmitted to the Army Council.

(5) Any offence committed by any such commanding officer out of the United Kingdom shall, for the purposes of the apprehension, trial and punishment of the offender, be deemed to have been committed within the jurisdiction of His Majesty's High Court of Justice in England; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.[2]

(6) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act.[3]

NOTE

1. This section, in effect, declares that the civil law remains supreme, and that a person subject to military law is not thereby exempted from the civil law. In the case of any civil offence serious enough to be called a "crime"—as to which see s. 144—he may be tried and punished by a civil court; and if such a court either convicts or acquits him he cannot be tried again under this Act for the same offence. On the other hand, a person acquitted or convicted of an offence by a court-martial may still be tried by a civil court for the same offence (if an offence against the civil law), but in such case the civil court in awarding punishment must have regard to any punishment which the accused may already have undergone.

2. See also s. 170 (3).

3. If a N.C.O. is convicted by a civil court, the case is to be reported to an officer not below the rank of brigadier so that he may consider whether it is desirable to recommend the reduction of the offender under s. 183 (2); K.R. 573.

Evidence

Regulations as to evidence.

163.—(1) The following enactments shall be made with respect to evidence[1] in proceedings under this Act, whether before a civil court or a court-martial; that is to say,

(a) The attestation paper purporting[2] to be signed by a person on his being attested as a soldier, or the declaration purporting[2]

PART IV
—
s. 163.

to be made by any person upon his re-engagement in any of His Majesty's regular forces, or upon any enrolment in any branch of His Majesty's service, shall be evidence of such person having given the answers[3] to questions which he is therein represented as having given:

The enlistment[3] of a person in His Majesty's service may be proved by the production of a copy of his attestation paper purporting[2] to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper;

(b) A letter, return, or other document with respect to a person—

(i) having, or not having, at any time or times served in, or been discharged from, any part of His Majesty's forces (including any Dominion force); or

(ii) having, or not having, held any rank or appointment in, or been posted or transferred to, any part of such forces, or having, or not having, served in any particular country or place; or

(iii) being, or not being, authorized to use or wear any military decoration, medal, medal ribbon, badge, wound strip or emblem, the use or wearing of which by an unauthorized person is under this Act an offence,

if purporting[2] to be signed by or on behalf of a Secretary of State or on behalf of the Army Council, the Admiralty, or the Air Council, or by the commanding officer or the officer having the custody of the records of any portion of those forces, or of any of His Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document[4]:

(c) Copies purporting to be printed by a Government printer of King's regulations, or regulations referred to in section one hundred and forty-two of this Act of royal warrants, of army circulars or orders, and of rules made by His Majesty, or a Secretary of State or the Army Council, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars or orders, and rules:

(d) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer or to be issued, if in the United Kingdom, by His Majesty's Stationery Office, and if in India, by some office under the Governor-General of India and, if in Burma, by some office under the Governor of Burma shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong:

(e) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or

orders purporting[2] to be certified to be true copies by the officer therein alleged to be authorized by a Secretary of State or the Army Council to certify the same shall be admissible in evidence:

* * * * *

[Paragraph *(f)* is repealed by the Reserve Forces Act, 1882, but see s. 24 (2) of that Act.]

* * * * *

(g) Where a record is made in one of the regimental books[5] in pursuance of any Act or of the King's regulations,

or otherwise in pursuance of military duty, and purports[2] to be signed[6] by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence[7] of the facts thereby stated:

(*h*) A copy of any record in one of the said regimental books purporting[2] to be certified to be a true copy by the officer having the custody[8] of such book shall be evidence of such record:

(*i*) A descriptive return within the meaning of this Act, purporting[2] to be signed[9] by a justice of the peace, shall be evidence of the matters therein stated[10]:

(*j*) Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has surrendered himself into the custody of a provost marshal, assistant provost marshal or other officer, or any portion of His Majesty's forces, a certificate [11]purporting[2] to have been signed by such provost marshal, assistant provost marshal or other officer, or by the commanding officer of the portion of His Majesty's forces to whom the surrender was made, and stating the fact, date, and place of such surrender shall be evidence of the matters so stated[12]:

(*k*) Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has been delivered into military custody by a police officer in charge of a police station in the United Kingdom, a certificate [13] purporting[2] to be signed[14] by such police officer, and stating the fact, date, and place of the surrender of the officer or soldier shall be evidence of the matters so stated:

(*l*) Any document which would have been admissible in any proceeding under the Air Force Act by virtue of section one hundred and sixty-three of that Act shall in like manner and for the same purpose be admissible in evidence under this Act:

(*m*) Where an officer or soldier has been apprehended and on arrest taken to a police station in any place in any part of His Majesty's dominions, or has on surrender been taken into custody at any such police station, then, for the purpose of any proceedings against that officer or soldier, a certificate[15] purporting[2] to be signed[16] by the police officer in charge of that police station, stating the fact, date, and place of arrest or surrender, shall be evidence of the matters so stated.

(2) For the purposes of this Act the expression "Government printer" means any printer to His Majesty, and in India or Burma any Government press.

NOTE

1. See generally as to evidence of documents, Ch. VI, paras. 31-46; and as to the application of this section to proceedings under the T.R.F. Act and the Reserve Forces Act, 1882, see s. 26 (2) of the former and s. 27 (2) of the latter Act.

This section provides for the admissibility in evidence of a variety of documents or copies of documents used in connection with military administration, but does not make them conclusive evidence; therefore evidence may be given to contradict them.

PART IV
—
s. 163.

A document purporting to be such a document as is specified in the various paras. of subs. (1) is upon mere production to the court *prima facie* evidence of the facts therein stated; but, of course, it is not admissible evidence that the accused is the person to whom it relates; and evidence must be given on oath by a witness to prove that the accused is in fact the person referred to in the documeet. If the accused disputes the identification, great caution is required as to the sufficiency of the evidence. And if he disputes the accuracy or completeness of the books, further evidence on the disputed points must be adduced.

Documents made admissible in evidence by this section except those mentioned in subs. (1) *(c)* and *(d)* can only be received as such when produced by a witness on oath.

2. *Purporting.* This expression means that if the paper appears to be certified or to be signed as mentioned in the paragraph, it can be accepted without calling a witness to prove that it has been so certified, signed, &c., unless indeed some evidence is given to the contrary. If any evidence is produced casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, &c., to be given by a witness.

3. In cases of fraudulent enlistment the enlistment may be proved by a copy of the attestation paper; but such copy must be signed by the officer having the custody of it, and not by a subordinate officer "for" him; and if any question arises as to the signature or handwriting the original or duplicate must be produced. In cases of false answer on attestation a copy is not admissible in evidence, and the original or duplicate must be produced.

4. Para. *(b)* was amended by the A. and A.F.(A) Act, 1935, to enable documentary evidence to be given with respect not only to the fact or length of service but also in relation to certain specified incidents in a person's service, as well as to his right or otherwise to wear medals, medal ribbons, etc.

5. As to what books are recognized as "regimental books" see K.R. 1598 and App. XXV.

6. For the purpose of this paragraph it is important that the records in the regimental books shall be signed by the proper officer, namely, the officer required by this Act, by the King's Regulations, or by his military duty, to make the record. A record in books not being "regimental books" is not made evidence.

7. The fact that a statement is recorded in a regimental book does not make it admissible in evidence if it is otherwise legally objectionable, *e.g.*, if a court of inquiry under s. 72 be held before 21 clear days have expired, a record of its finding is inadmissible.

8. Such a copy cannot be certified by another officer "for" the officer having the custody of the book.

9. A descriptive return (A.F. O.1618) is admissible in evidence, though not signed by the deserter or absentee; if not signed by the justice it is inadmissible.

10. When it is necessary to produce A.F. O.1618 (descriptive return) in evidence before a court-martial, the "particulars in the evidence on which the prisoner is committed" given on page 2 of the form should be previously examined. If these particulars are found to contain any statement regarding the accused which, on the grounds of irrelevancy, would not be admissible as *viva voce* evidence before a court-martial (*e.g.*, that accused had been previously convicted; or that he was arrested on suspicion of having committed some other offence), or if containing any alleged admission by the accused which might prejudice him on his trial, a copy of the whole entry should be made and retained by the O.C. unit to which the man belongs. The entry on page 2 of the form, or such part of it as may be irrelevant or prejudicial as above, should then be pasted over, so that it may not come under the notice of the court prior to the finding.

11. For form of certificate, see K.R. 586 *(c)*.

12. A statement in the certificate of surrender to the effect that the man was wearing civilian clothes is admissible as part of the fact of the surrender.

13. The form of certificate is A.F. O.1617.

14. The certificate must be signed by the officer indicated, and not by another officer "for" him. This paragraph is applicable only to cases of "surrender".

15. The following form of certificate will invariably be obtained from the police official concerned, care being taken that no irrelevant facts are recorded thereon:—

Certificate in accordance with section 163 (1) *(m) of the Army Act*

I certify that the person whose description is given below was arrested (or surrendered) at *(place)*, at *(hour)*, on the day of , 19 .

Regimental particulars of officer or soldier referred to above.	No................................. Rank............................... Name............................... Unit...............................
Description.	Age................................ Height............................. Complexion......................... Hair............................... Eyes............................... Marks..............................
Signature of officer of police in charge of police station where the above-named person was taken, or placed in custody, on arrest or surrender.	.... (In charge of...................... Police Station.)

16. Where it is necessary to produce evidence in the form of the certificate of apprehension or surrender under this paragraph, such certificate can only be admitted as evidence when it embraces the essential particulars laid down. In particular, it is essential that it should be actually signed by the police officer *in charge* of the station where the accused person was taken into custody, and that the police officer should show on the certificate that he is, in fact, *in charge* of the station.

Evidence of civil conviction or acquittal.

164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court of his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment or order of the court thereon, or if he was acquitted, the acquittal, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the order of the court or of the acquittal of the prisoner, as the case may be

NOTE

The object of this section is to facilitate the proof of a conviction or acquittal by a civil court.

In England and Wales, under Rule 13 of the Criminal Appeal Rules, 1908, a certificate of conviction cannot issue under this section in the case of any person convicted on indictment at assizes or quarter sessions until ten days after the date of conviction, and where the person convicted appeals against the conviction or applies for leave to appeal, not until the appeal or application has been determined. A person applying for a certificate of conviction is therefore required to satisfy the clerk of the court to whom the application is made that no appeal is pending, and this may be done by forwarding to the clerk a certificate to that effect, which can be obtained by applying to the Registrar of the Court of Criminal Appeal, Royal Courts of Justice, London, W.C., at the expiration of ten days from the date of conviction. This does not apply in the case of convictions at petty sessions.

Evidence of conviction by court-martial.

165. The original proceedings of a court-martial, purporting[1] to be signed by the president[2] thereof and being in the custody of the Judge Advocate General, or of the officer having the lawful custody[3] thereof, shall be deemed to be of such a public nature[4] as to be admissible in evidence[5] on their mere production from such custody;

PART IV — ss. 165, 166.

and any copy purporting to be vertified by such Judge Advocate General or his deputy authorized in that behalf, or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence without proof of the signature of such Judge Advocate General, deputy, or officer; and a Secretary of State upon production of any such proceedings or certified copy, may, by warrant under his hand,[6] authorize the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

NOTE

1. *Purporting.* See note 2 to s. 163.

2. To be admissible in evidence under this section the proceedings must be signed by the president; see R.P. 50.

3. As to the custody of courts-martial proceedings, see R.P. 96-98.

4. *Shall be deemed to be of such a public nature, &c.* See the Evidence Act, 1851, s. 14, which makes a certificate of the document by the officer having the custody of it admissible in evidence, and requires the officer to furnish certified copies upon payment of not more than 4*d*. for every folio of 90 words, and enacts a punishment for false copies, and for the forgery of the officer's signature or seal.

5. This section facilitates the proof of transactions of courts-martial, by declaring that the proceedings or certified copies thereof shall be admissible in evidence. It is to be observed, however, that for the purposes of proving a previous conviction, in addition to the production of the proceedings, evidence must be available to show the identity of the person mentioned in the proceedings with the person charged.

6. *A Secretary of State, by warrant under his hand.* The object of this is to avoid such difficulties as arose in Lieutenant Allen's case (see Ch. VIII., para. 21, note 7), where there is no doubt that an officer or soldier convicted abroad has been properly convicted, but no proper warrant has been sent home authorizing his retention in custody; see s. 172 (4) and note.

Summary and other Legal Proceedings

Prosecution of offences, and recovery and application of fines.

166.—(1) A court of summary jurisdiction having jurisdiction in the place where the offence was committed or in the place where the offender may for the time being be shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts.

(2) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one half to be paid to the informer.

(4) Where the maximum fine or imprisonment[1] which a court of summary jurisdiction in England, when sitting in an occasional courthouse, is authorized by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may impose

the maximum fine or imprisonment which such court is authorized by law to impose, but if required by either party, shall adjourn the case to the practical petty sessional court.

(5) The court of summary jurisdiction in Northern Ireland,[2] when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

(6) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act if recovered in England, be paid into the Exchequer, and if recovered in Northern Ireland,[2] shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same.

NOTE

1. Under the Summary Jurisdiction Acts, two justices, if not sitting in a petty sessional courthouse, have only limited powers of fine and imprisonment; and in some cases such powers do not extend to imposing the minimum fine or imprisonment fixed by this Act. In such a case they may, under this subsection, impose the maximum fine or imprisonment which they can impose in ordinary cases, *i.e.*, 20s. or 14 days (Summary Jurisdiction Act, 1879, s. 20 (7)).

Summary proceedings in Scotland.

167.—(1) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorized by the Army Council, or of any person authorized by this Act to complain.

(2) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months.

(3) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the King's and Lord Treasurer's Remembrancer, and behalf of His Majesty.

(4) It shall be no objection to the competency of a person to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

(5) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

(6) All jurisdiction, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

(7) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form.

Summary proceedings in Isle of Man, Channel Islands, India, Burma and the colonies.

168. All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jursidiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, Burma, and any colony[1] in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law or as near thereto as circumstances admit.

NOTE

1. For definitions of *India, Burma* and *colony* see s. 190 (21), (21A), (23), (23A).

Power of Governor-General of India, Governor of Burma and legislature of colony as to fines.

169. It shall be lawful for the Governor-General of India and the Governor of Burma, and for the legislature of any colony, to provide for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General, Governor or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

Protection of persons acting under Act.

170.—(1) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after ceasing thereof.

(2) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(3) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sen-

tence, shall be brought in one of His Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a High Court in India or Burma or in any Colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian, Burma or Colonial court respectively, and in no other court whatsoever.

NOTE

With respect to actions for damages and other proceedings against officers acting without jurisdiction or in excess of their jurisdiction, see Ch. VIII, para. 30. This section prevents any such action or other proceeding being instituted after the expiration of six months from the date of the act or default complained of. See Ch. VIII, para. 62.

Actions can be brought in courts at home in respect of acts done abroad. See Ch. VIII, paras. 32, 33.

Miscellaenous

Exercise of powers vested in holder of military office.

171. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service, or according to rules made under section seventy of this Act.

NOTE

The object of this section is to prevent any legal difficulties arising from the usage of the army relating to the delegation of authority by one officer to another. For instance, a report which is directed by this Act to be made to a general officer or to an officer having power to convene or confirm courts-martial may be addressed to the staff officer, adjutant, or other person to whom such reports are usually addressed. See also R.P. 131, and note 1 to s. 172.

Provisions as to warrants and orders of military authorities.

172.—(1) Where any order is authorised by this Act to be made by the Army Council, or by the Commander-in-Chief of the forces in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders[1] on behalf of the Army Council or such Commander-in-Chief, or general or other officer commanding and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorised.

(2) The foregoing enactment of this section shall extend to any order or direction issued in pursuance of this Act in relation to a military convict or military prisoner or soldier undergoing detention, and any such order or direction shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict or prisoner or soldier has been convicted, and there is a good and valid conviction to sustain the order or directions.[2]

(3) An order in any case if issued in the prescribed form[3] shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.[2]

PART IV — ss. 172, 173.

(4) Where any military convict or military prisoner or soldier undergoing detention is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict or prisoner or soldier shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict or prisoner or soldier was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.[4]

(5) Where a military convict, or a military prisoner, or a soldier undergoing detention, or a person who is subject to military law and charged with an offence, is a prisoner or soldier in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner or soldier to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner or soldier in custody and convey him in accordance with the order, and the prisoner or soldier while so kept shall be deemed to be kept in military custody.

NOTE

1. The object of this subsection is similar to that of s. 171. It will allow orders of a general or other officer to be signed by the staff officer or adjutant as authorised by the custom of the service, but the confirmation of courts-martial, and warrants or other documents relating to imprisonment or detention or the infliction of any other punishment must be signed by the officer himself. So, too, must an order convening a field general court-martial.

2. Subs. (2) and (3) are introduced with a view to prevent military proceedings from being rendered void by merely technical objections.

3. *Prescribed form.* See R.P. 133.

4. This subsection is introduced for the same object as subs. (2) and (3). These subsections would probably not meet a case where the order, warrant, or document is issued by a person having no authority to issue it. In such a case it will be advisable to procure a warrant from a Secretary of State under s. 165.

Extension of furlough in case of sickness.

173. If any soldier on furlough is detained by sickness or other casualty[1] rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month[2]; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier, if known, and it not, then to the Army Council. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall; but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough, be liable to be treated as a deserter, or as absent without leave.

NOTE

1. A soldier who makes a false statement to an officer or justice in respect of extension of his furlough may be tried and punished by court-martial: s. 27 (4).

2. See K.R. 1518-9.

PART IV

ss. 174, 174A

Licences of canteens in Northern Ireland.

"(1) In Northern Ireland when a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant any certificate for the time being required to enable such person to obtain the grant, transfer or renewal of and to hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, or otherwise, of any Acts for the time being in force affecting such certificates; and excise licences may upon production of such certificates be granted to such persons accordingly.

(*Subsection* (2) *repealed by A. and A.F. (A.) Act*, 1932.)"

NOTE

This section now applies only as regards Northern Ireland, having been repealed as regards England in 1902, and as regards Scotland in 1903.

Under the provisions of s. 111 (2) (*l*) of the Licensing (Consolidation) Act, 1910, and s. 50 of the Licensing (Scotland) Act, 1903, excise licences for military canteens may be granted in England and Scotland without a justice's licence or certificate to any persons holding canteens under the authority of a Secretary of State.

Entertainments under Service direction.

174A.—(1) So much of any Act as operates to prohibit as respects particular days, or otherwise to restrict or regulate, the keeping, opening or using of premises for purposes of public entertainment or amusement shall not apply to the use, by authority of a Secretary of State or the Admiralty, of any building at a camp, station, or naval establishment, or of any ship, for entertainments or amusements under the direction and control of an officer or committee having official responsibility for such matters.

(2) For the purposes of this section, the expression "public entertainment or amusement" includes public dancing, singing or music, the public performance of stage plays and the giving of cinematograph exhibitions; and in the case of a building or ship which is used for the giving of cinematograph exhibitions, the keeping or storing of films shall be deemed to be part of the use thereof for the giving of the exhibitions.

PART V.

PART V

APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS.

Introductory Note as to Application of Military Law

Application of military law.

1. Persons subject to military law are divided by this part of the Act into (1) persons so subject as officers and (2) persons so subject as soldiers.

Persons subject to military law as officers.

2. The expression "officer" is defined in s. 190 (4) as meaning an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof, and as also including—

(*a*) A person who, by virtue of his commission, is appointed to any department or corps of His Majesty's forces, or of any arm, branch, or part thereof;

(*b*) A person whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's forces, or of any arm, branch, of part thereof; and

(*c*) Any officer of His Majesty's naval or air forces who is for the time being subject to military law; and

(*d*) Any officer of a Dominion force who is for the time being subject to military law.

PART V

Officers holding honorary commissions are included in the definition of officer.

Every officer, as so defined, is not necessarily subject to military law. The persons subject to military law as officers are:—

(1) Officers of the regular forces on the active list, and officers not on the active list if employed on military service under an officer of the regular forces (s. 175 (1)); also officers of His Majesty's Air Force attached to, or seconded for service with, the regular forces, subject to certain modifications contained in this Act; (ss. 175 (1A) and 179A);

The meaning of the "active list" must be ascertained by reference to the Pay Warrant. Under the Warrant now in force the active list is comprised of officers of the regular forces, whether on full pay, half-pay, or otherwise, prior to their retirement, and does not include officers who have retired and are subsequently recalled to service under article 521, or re-employed under article 504, P.W. (P.W. 21.)

The expression "regular forces" means the British, Indian and Burma forces, the Royal Marines, soldiers of the reserves when called out on permanent service, and forces raised in a colony by direct order of His Majesty, such as the Royal Malta Artillery. Certain modifications of the Act, in its application to the Royal Marines and Indian and Burma forces, are contained in ss. 179 and 180.

(2) Officers of the Territorial Army and the Territorial Army Reserve in the circumstances mentioned in s. 175 (2) and (3A);

(3) Officers of forces raised out of the United Kingdom, India and Burma and serving under an officer of the regular forces (see s. 175 (4));

(4) Persons who under the orders of the Army Council or of the Governor-General in India or of the Governor of Burma accompany in an official capacity any of His Majesty's troops on active service in any place, with the qualification that such a person if a native of India or Burma will be subject to Indian military law or Burma military law as the case may be (see s. 175 (7) and note);

(5) Persons accompanying a force on active service and holding from the commanding officer of the force passes entitling them to be treated as officers (see s. 175 (8) and note);

(6) Officers belonging to the Reserve of Officers, and the Indian Army Reserve of Officers, or the Army in India Reserve of Officers, or the Army in Burma Reserve of Officers, in the circumstances mentioned in paragraphs (10) and (9) respectively of s. 175 (see also the Pay Warrant);

(7) Officers of the Militia (see s. 175 (10));

(7A) Officers not otherwise subject to military law who are employed on military service or in a military capacity in the circumstances mentioned in s. 175 (10A);

(8) Officers of forces raised in India, Burma or a colony when attached to or doing duty with troops in the United Kingdom in the circumstances mentioned in s. 175 (11);

(9) Officers of a force raised in India, Burma or a colony to which the Army Act is applied by the law of India, Burma or the colony, etc. (s. 175 (12)).

(10) Members of a Dominion force who, by virtue of any enactment relating to the attachment of such persons, are subject to military law as officers; (s. 175 (13)).

The Act further makes provision with respect to officers of the Volunteers; but as this force is not now raised it is unnecessary to summarize those provisions of the Act.

Persons subject to military law as soldiers.

3. The persons subject to military law as soldiers are set out in s. 176 (*q.v.*). The provisions, however, respecting the men of the Volunteers, are not at present important, as this force is not now raised in the United Kingdom.

It is to be observed that the expression "soldier" includes warrant officers and non-commissioned officers (s. 190 (5) and (6)), subject, however, to the special provisions with respect to them in ss. 182 and 183.

It is further to be noted that in spite of the limitations contained in s. 176 (5) a man of the Army Reserve (including the Militia) is, in a modified way, at all times subject to military law, inasmuch as he is liable to be tried by a court-martial under s. 6 of the Reserve Forces Act, 1882, for the offences mentioned in that section, which are: failure to attend at any place when required, insubordinate behaviour to superior officers, and non-compliance with the regulations for the payment or government of the force.

Persons not belonging to His Majesty's forces subject to military law as soldiers.

4. It will be observed that the above summary includes amongst the persons subject to military law certain civilians. When troops are on active service it is absolutely necessary for the sake of military operations and discipline that civilians who accompany them should be under the control of military officers and tribunals.

The only modification in the application of the Act to persons who do not belong to His Majesty's forces which requires notice here is that such persons cannot be punished by a C.O. (s. 182 (2)).

5. As to the trial and punishment of a person who, or whose corps, has ceased to be subject to military law since the commission of the offence, see s. 158 and note.

Trial of persons who have ceased to be subject to military law.

Persons subject to Military Law

s. 175. Persons subject to military law as officers.

175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified; that is to say.

(1) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces, who is subject to military law;

(1A) Any officer of His Majesty's air force who is attached to, or seconded for service with, the regular forces, subject, however, to the modifications[1] contained in this Act;

(2) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law:

(*Paragraph* (3) *repealed by T. A. & M. Act,* 1921.)

(3A) Officers of the territorial army, other than members of the permanent staff, if on the active list at all times, and if on the territorial army reserve, at any time when they are doing duty with any body of troops for the time being subject to military law or are ordered on any duty or service for which as such reserve officers they are liable:

(4) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order of His Majesty beyond the limits of the United Kingdom, India and Burma[2] and serving under the command of an officer of the regular forces:

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony;

(5) Officers of the volunteers, whenever in actual command of men who are in pursuance of this Act subject to military law, or when their corps is on actual military service:

(6) Any officer of the volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject to military law, whether of the regular or auxiliary forces, or with his own consent, is ordered on duty by the military authorities:

(7) Every person not otherwise subject to military law who, under the general or special orders of the Army Council or of the Governor-General of India, or of the Governor of Burma, accompanies in an official capacity equivalent to that of officer any of His Majesty's troops on active service in any

PART V
—
ss. 175, 176.

place,[3] subject to this qualification, that where such person is a native of India or Burma, he shall be subject to Indian military law or, as the case may be, to Burma Military law, but in either case as an officer:[4]

(8) Any person, not otherwise subject to military law, accompanying a force on active service, who shall hold from the commanding officer of such force, a pass, revocable at the pleasure of such commanding officer, entitling such person to be treated on the footing of an officer:[4]

(9) The persons holding commissions as officers in the Indian army reserve of officers or the Army of India reserve of officers or the Army in Burma reserve of officers when such officers are called out in any military capacity:

(10) Any reserve officer within the meaning of the Royal Warrant regulating the composition of the reserve of officers, if an officer holding a commission as officer in the militia at all times, and if not holding such a commission when he is ordered on any duty or service for which, as such reserve officer, he is liable:[5]

(10A) Any officer not otherwise subject to military law who under the authority, or with the approval, of the Army Council is employed with his consent outside the United Kingdom either on military service with an armed force or in any other military capacity:

(11) All officers belonging to a force raised in India, Burma or a colony, when attached to or doing duty with any portion of the regular, reserve, or auxiliary forces in the United Kingdom:

(12) All officers of a force raised in India, Burma, or a colony to which this Act is, in whole or in part, applied by the law of India, Burma or the colony, at such times and subject to such adaptations, modifications, and exceptions as may be specified in such law:

(13) Any member of a Dominion force who, by virtue of any enactment relating to the attachment of such persons, is subject to military law as an officer, subject, however, to any adaptations and modifications for which provision is made by, or under, that enactment.

NOTE

1. *Modifications.* See s. 179A.

2. This is not meant to include strictly colonial forces, but only forces raised at the Imperial expense: see Ch. XI, para. 83. See also s. 176 (3) and note. As to strictly colonial forces, see s. 177.

3. See s. 184 for special provisions applicable to persons made subject to military law by this paragraph.

4. Paras. (7) and (8). These paragraphs make certain persons subject to military law as officers who would otherwise be subject under s. 176 (10) to trial and punishment as soldiers. The first extends to persons attached to a military expedition by order of the Army Council or the Governor-General of India in a diplomatic, scientific, or other official capacity. The second would apply to persons like contractors or newspaper correspondents, who obtain passes from the commanding officer of the force directing them to be treated as officers. It will be observed that an official who is a nativo of India or Burma, will be subject to Indian or Burma military law. See s. 180 (2).

5. Under this paragraph an officer of the Militia is at all times subject to military law. Other officers of the Reserve of Officers (which includes the Supplementary Reserve) are so subject when ordered on any duty or service for which, as reserve officers, they are liable; and in addition they become subject to military law in the circumstances stated in the concluding part of s. 175 (1), that is to say, when employed on military service under the orders of an officer of the regular forces who is himself so subject.

Persons subject to military law as soldiers.

176. The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified; that is to say,

(1) All soldiers of the regular forces:

(1A) All airmen of the air force who are attached to the regular forces, subject, however, to the modifications[1] contained in this Act:

(2) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces[2] who are not otherwise subject[3] to military law:

(3) All non-commissioned officers and men serving in a force raised by order of His Majesty beyond the limits of the United Kingdom, India,[4] and Burma, and serving under the command of an officer of the regular forces:

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony:

(4)[5] All pensioners not otherwise subject to military law who are employed in military service[6] under the orders of an officer of the regular forces:

(5)[5] All non-commissioned officers and men belonging to the army reserve force[7]

(a) When called out for training and exercise; and

(b) When called out for duty in aid of the civil power; and

(c) When called out on permanent service; and

(d) When employed in military service[6] under the orders of an officer of the regular forces:

[*Paragraph* (6) *repealed by T.A. & M. Act,* 1921.]

(6A) All non-commissioned officers and men belonging to the territorial army—

(a) When they are being trained or exercised either alone or with any portion of the regular forces or otherwise; and

(b) When attached to or otherwise acting as part of or with any regular forces; and

(c) When embodied; and

(d) When called out for actual military service, for purposes of defence in pursuance of any agreement:

[*Paragraph* (7) *repealed by T.A. & M. Act,* 1921.]

(8) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom—

(a) When they are being trained or exercised with any portion of the regular forces; and

(b) When they are attached to or otherwise acting as part of or with any regular forces; and

(c) When their corps is on actual military service:

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service:

(8A) All non-commissioned officers and men belonging to a force raised in India, Burma or a colony when attached to or otherwise acting as part of or with any portion of the regular, reserve, or auxiliary forces in the United Kingdom:

(9)[8] All persons who are employed by or are in the service of any of His Majesty's troops when employed on active service, and who are not under the former provisions of this Act subject to military law:

(10)[8] All persons not otherwise subject to military law[9] who are followers of or accompany[10] His Majesty's troops, or any portion thereof, when employed on active service; subject to this qualification that, where any such persons are employed by or are followers of, or accompany any portion of, His Majesty's forces, consisting partly of His Majesty's Indian forces subject to Indian military law, or consisting partly of His Majesty's Burma forces subject to Burma military law, and such persons are natives of India, or, as the case may be, natives of Burma, they shall be subject to Indian military law or, as the case may be, to Burma military law.

(11) All non-commissioned officers and men belonging to a force raised in India, Burma or a colony to which this Act is, in whole or in part, applied by the law of India, Burma or the colony, at such time and subject to such adaptations, modifications, and exceptions as may be specified in such law.

(12) Any member of a Dominion force who, by virtue of any enactment relating to the attachment of such persons, is subject to military law as a soldier, subject, however, to any adaptations and modifications for which provision is made by, or under, that enactment.

NOTE

1. *Modifications.* See s. 179A.

2. See s. 181 (2).

3. *Otherwise subject, etc.* Soldiers of the regular forces posted to the permanent staff of the auxiliary forces would be "otherwise" (*i.e.*, as being in the regular forces) subject to military law.

4. This is not intended to include strictly colonial forces, but only forces raised at the Imperial expense, whose maintenance is voted annually by Parliament. It might, however, no doubt extend to a force raised under a colonial Act, but under Imperial control. But strictly colonial forces are dealt with by s. 177. See further Ch. XI, para. 83.

5. See s. 178.

6. *Military service.* The term "military service" as here used cannot be satisfactorily defined without relation to the special circumstances of each particular case. In no circumstances, therefore, should a pensioner or reservist be considered as subject to military law under the provisions of paras. (4) and (5) *(d)* unless a definite decision to that effect has been obtained from the Army Council.

It has been decided that paid pensioner recruiters are in "military service" within the meaning of para. (4).

7. As to the power to try by court-martial a man of the Army Reserve who on two consecutive occasions fails to comply with the regulations respecting pay, or fails to attend at an appointed place, or is insubordinate to a superior officer, or obtains pay by any fraudulent means, or fails to comply with the regulations for the government of the forces, see s. 6 of the Reserve Forces Act, 1882.

8. Paras. (9) and (10). See s. 184 for special provisions applicable to persons made subject to military law by these paragraphs.

9. See note 4 to s. 175, under which some of the persons indicated here might be subject to military law "as officers."

10. Members of the crew of a transport hired by the Government would not be persons "accompanying, etc."

Persons belonging to Indian, Burma or colonial forces, and subject to military law as officers or soldiers.

177. Where any force of volunteers, or of militia, or any other force, is raised in India, Burma or in a colony,[1] any law of India, Burma or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without[2] the limits of India, Burma or the colony; and any such law may apply, in relation to such force and to any officers, non-commissioned officers, and men thereof, all or any of the provisions of this Act, subject to such adaptations, modifications, and exceptions as may be specified in such law, and where so applied this Act shall have effect in relation to such force subject to such adaptations, modifications, and exceptions as aforesaid; and where any such force is serving with part of the regular forces,[3] then so far as the law of India, Burma or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the officer, whether military or air force, not below the rank of colonel or group captain, commanding His Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers, and men of the regular forces.

This section shall not apply to any officer belonging to any such force when attached to or doing duty with, or to any non-commissioned officer or man belonging to any such force when attached to or otherwise acting as part of or with, any portion of the regular, reserve, or auxiliary forces in the United Kingdom.[4]

NOTE

1. For definitions of *India*, *Burma* and *colony* see s. 190 (21), (21A), (23), (23A).

This section applies to what may be termed strictly colonial forces, that is to say, forces raised on the responsibility of the government of the colony. Colonial legislatures can apply the whole of the Army Act, or any part of it, to the forces of the colony, subject to such adaptations as may be necessary to make them applicable.

2. So long as such forces are within the colony their discipline can be provided for by the law of the colony. This section removes any doubts as to whether that law would apply to such forces when outside the limits of the colony.

3. In order to prevent difficulties arising from deficiencies of the colonial law in cases where the colonial forces are serving with the regular forces, the section provides that such deficiencies may be remedied by the application of the Army Act, subject to any modification made by general orders of the officer, whether military or air force, not below the rank of colonel or group captain, commanding the regular forces in question.

4. *This section shall not apply, etc.* The effect of this provision is that where the Army Act applies to colonial forces serving with the regulars (see, for instance, s. 175 (11) and s. 176 (8A)), it will apply to them as if they were regulars.

Mutual relations of regular forces and auxiliary forces.

178. When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any reserve officers, or retired officers, or any pensioners,[1] are subject to military law in pursuance of this Act, and when non-commissioned officers and men belonging to the reserve forces[2] are subject to military law in pursuance of this Act, otherwise than when called out on permanent service, such officers, non-commissioned officers, men and pensioners shall be subject to this Act[3] as if they were part of the regular forces, and the provisions of this

PART V — ss. 178, 179.

Act shall be construed as if such officers, non-commissioned officers, men and pensioners were included in the expression "regular forces": Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man, or of any pensioner.

NOTE

1. Officers of the auxiliary forces, if on the active list, are subject to military law at all times (s. 175 (2) (3A)); N.C.Os., and men of the auxiliary forces and pensioners are so subject in cases specified in s. 176 (4), (6A), (8). As to reserve officers, see s. 175 (10); and as to retired officers see the latter part of s. 175 (1).

2. N.C.Os., and men of the Army Reserve are subject to military law in cases specified in s. 176 (5); when called out on permanent service they actually "form part of" the regular forces (s. 190 (8); Reserve Forces Act, 1882, s. 14 (2)). Consequently this contingency is omitted from the provision that they shall be subject to the Act "as if they were" part of such force.

3. As to command, rank and precedence of the officers mentioned in this section, see s. 71, and K.R. 170, *et seq.*

4. Under s. 158 a member of the Territorial Army who has ceased to be subject to military law can, within three months afterwards, be tried by court-martial for an offence committed whilst he was so subject. See also T.R.F. Act, s. 25 (2).

Modification of act with respect to Royal Marines.

179. In the application of this Act to His Majesty's Royal Marines the following modifications shall be made:—

(1) Nothing in this Act shall prejudice any power of the Admiralty[1] to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command the Royal Marines than they have heretofore used; and a general court-martial[2] for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorized by a warrant from the Admiralty in pursuance of this section, and except that where such officer or man while subject to this Act is serving out of the United Kingdom with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive), there is not present any officer authorized by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorized to convene general courts-martial, may try such officer or man:

(2) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces:

(3)[3] Any power in relation to the convening of courts-martial, or of authorizing an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act His Majesty may exercise by any warrant

or warrants, may be exercised in His Majesty's name by a warrant or warrants from the Admiralty; and any such warrant may be addressed to any officer to whom any warrant of His Majesty can be addressed:

(4)[3] Any power vested by this Act in His Majesty in relation to the confirmation of the findings and sentences of courts-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty:

(5)[3] Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial or an officer or man of the Royal Marines may be confirmed by an officer authorized under this section to convene the same, or by any officer otherwise authorized[4] under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces:

(6) Any power vested in His Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for His Majesty, as well as for the Secretary of State and the Army Council:

(7) Anything required or authorized by this Act to be done by, to, or before a Secretary of State, the Army Council, or Judge Advocate General, may, as regards the Royal Marines, be done by, to, or before the Admiralty; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Army Council," and "Judge Advocate General", wherever those words occur:

(8) Anything required or authorized by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere, may as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and, if no such appointment is made, by such Commander-in-Chief or general or other officer:

(9) Anything authorized by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by Warrant of the Admiralty, and the provisions of this Act with respect to Royal Warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act:

(10) Anything authorized to be done by the deputy of the Judge Advocate General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty:

PART V
—
s. 179.

(11) In the provisions of this Act with respect to evidence, the expression "King's Regulations" shall be deemed to include Admiralty Regulations:

(12) Nothing in the provisions of this Act relating to the term of enlistment,[5] to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service, or to forfeiture of service of a soldier of the regular forces, or to the rules for reckoning service for discharge or transfer to the reserve, shall apply to the Royal Marines:

Save that if regulations made by the Army Council and the Admiralty provide for the transfer of men of the Royal Marines to any other part of the regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations shall become a soldier of the said part of the regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act:

And save that if any regulations so made provide for the transfer to the Royal Marines of men belonging to any other part of the regular forces, a man belonging to such part may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations, shall become a man of the Royal Marines in like manner, so nearly as circumstances admit, as if he has been enlisted in pursuance of the Acts relating to the Royal Marines:

(13) A marine on his re-engagement shall make a declaration, either before a justice of the peace or person having under this Act the same authority as a justice of the peace, for the purposes of enlistment, or before a naval officer commanding any ship commissioned by His Majesty, or before the commanding officer of any battalion or detachment of Royal Marines, in the form from time to time directed by the Admiralty:

(14) A man in the Royal Marines shall for absence without leave, on conviction of that offence by court-martial, and for fraudulent enlistment, forfeit his service in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines:

(15) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by His Majesty (unless made subject to military law as hereinafter provided),[6] shall be subject to the Naval Discipline Act, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried and punished for any offence in the same manner as officers and seamen in the Royal Navy:

Provided that—

(a) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having

any relations with any such officer or man of the Royal Marines or to any such officer or man if found on shore as a deserter or absentee without leave[7]; and

(*b*) If any such officers or men of the Royal Marines are employed on land,[8] the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment, be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly:

(16) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by His Majesty commits an offence for which he is not amenable to a naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act:

(17) The Admiralty may direct that an officer of man of the Royal Marines may be tried under this Act for any offence[9] committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by His Majesty:

(18) Where any officer or man of the Royal Marines is on board any ship commissioned by His Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act to such extent and under such regulations as His Majesty by Order in Council from time to time directs, and, so far as he does not so direct, as is for the time being directed by Order in Council with respect to the other regular forces:

(19) Any naval prison within the meaning of the Naval Discipline Act shall be deemed to be included in the definition of a military prison for the purposes of this Act relating to imprisonment, and the Admiralty shall not have any authority to establish any military prison under this Act:

(19A) For the purposes of the attestation of men of the Royal Marines the expression "officer" in section ninety-four of this Act includes an officer of the Royal Navy.[10]

(21) The expression "man of the Royal Marines" includes a non-commissioned officer of the Royal Marines; and also a Marine raised or enrolled under the Naval Reserve Act, 1900, or the Naval Forces Act, 1903, when called into actual service and when being trained or exercised.

NOTE

1. As the Admiralty by commission from the Crown exercise the powers of the Crown in relation to the Navy, the powers which by this Act are vested in His Majesty in relation to the Army are by this section given to the Admiralty.

2. This paragraph prevents an officer of the Army from convening a general court-martial for the trial of an officer or man in the Marines except in the circumstances

PART V
—
ss. 179, 179A.

here mentioned. The confirmation is provided for by paras. (4) and (5). See K.R. 673 as to the procedure to be followed when it is decided to try an officer or man of the Marines serving at home by general court-martial under the Army Act.

3. Paras. (3)-(5). These confer on the Admiralty the power of convening and of confirming the findings and sentences of general courts-martial, and of conferring by warrant on officers the power to convene, and to confirm the findings and sentences of, both general and district courts-martial.

4. Para. (5) provides that, in the absence of any such confirmation by the Admiralty or by an officer holding a warrant from the Admiralty, the finding and sentence of a general or district court-martial on a marine may be confirmed by an officer holding a warrant which enables him to confirm the findings and sentences of general or district courts-martial, as the case may be, on soldiers of other portions of the regular forces.

5. The formalities in the enlistment of the Marines will be those contained in Part II of this Act (see ss. 80, 81), but the term of enlistment, the conditions of service, transfer, and forfeiture of service, will remain under the Acts relating to the Marines; 10 & 11 Vict. c. 63; 20 Vict. c. 1.

6. *(Unless made subject to military law as hereinafter provided.)* See proviso *(b)*.

7. This proviso refers to ss. 154 and 156. See also note 3 to s. 13.

8. *Employed on land.* This refers to employment for a length of time amounting to an expedition, and does not refer to the mere landing of marines for a temporary purpose.

9. *Offence.* This means an offence punishable under this Act.

10. This paragraph permits officers of the Navy who are appointed by the Admiralty as recruiting officers to attest recruits for the Marines.

Attaching of officers and soldiers to the air force, and provisions as to officers and airmen attached to the regular forces.

179A.—(1) The Army Council may direct from time to time that any offences or soldiers of the regular forces shall, under such conditions as may be prescribed by regulations made by the Army Council and the Air Council, be temporarily attached to the air force.

(2) Where an officer or airman of the air force is attached to, or seconded for service with, the regular forces, this Act shall apply to him, subject to the following modifications:—

* * * * *

(c) The finding and sentence of any general court-martial for the trial of any such officer or airman may be confirmed by His Majesty, or by an officer authorized to confirm the findings and sentences of general courts-martial under the Air Force Act, and not otherwise, except that when such officer or airmen while subject to this Act is serving out of the United Kingdom with a military force, and in the opinion of the general or other officer commanding that force (such opinion to be stated in the confirmation and to be conclusive) there is not present any officer authorized to confirm the findings and sentences of general courts-martial under the Air Force Act, the findings and sentences may be confirmed by a general or other officer authorized to confirm findings and sentences of general courts-martial under this Act;

(d) Anything required or authorized by this Act to be done by, to, or before the Army Council or Judge Advocate General may as regards any such officer or airman be done by, to, or before the Air Council; and the provisions of this Act shall be construed, so far as respects any such officer or airman, as if "the Air Council" were substituted for "the Army Council" and "Judge Advocate General" wherever those words occur;

(*e*) Anything required or authorized by this Act, to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere, may as regards any such officer or airman be done, by to, or before such officer as the Air Council may appoint in that behalf, and, if no such appointment is made, by such Commander-in-Chief or general or other officer;

(*f*) If any such officer or airman commits an offence for which he is not amendable under this Act, but for which he can be punished under the Air Force Act, he may be tried and punished for such offence under that Act;

(*g*) The power of a court-martial to inflict on an officer the punishment of forfeiture of seniority of rank shall include power to inflict a punishment or forfeiture of seniority of rank in the air force or any corps or unit thereof or both;

(*h*) Nothing in this Act shall affect the application to any such airman of section one hundred and forty-five of the Air Force Act;

(*i*) Sections one hundred and thirty-six to one hundred and forty-four of this Act shall apply to any such officer or airman as if he were an officer or soldier of the regular forces, and for the purposes of their application to any such airman the references in paragraph (8) of section one hundred and thirty-eight of this Act to the Army Council and to this Act shall be construed as references to the Air Council, and to section one hundred and forty-five of the Air Force Act, and paragraph (*d*) of this subsection shall not apply in relation to the said sections one hundred and thirty-six to one hundred and forty-four.

NOTE

This section was added by the Air Force (Constitution) Act, 1917.

Under this section members of the regular forces may be temporarily attached to, or seconded for service with, the Air Force, and when so attached or seconded air force law applies to them, subject to the modifications contained in s. 179A of the Air Force Act.

Conversely, by the last-named section, members of the regular Air Force may be temporarily attached to the military forces, and when so attached or seconded the Army Act applies to them (ss. 175 (1A) and 176 (1A)), subject to the modifications contained in s. 179A of the Army Act.

"Attachment" is a personal attachment. Units, as such, cannot be attached, but a unit could in effect be made subject to military law (or air force law) by attachment of the individual officers and men of the unit under s. 179A of either Act. Under s. 184A (1A) personnel of a body of the Air Force serving with a body of the military forces on active service may be made subject to military law as if they were officers and airmen *attached* to the Army, and conversely under the Air Force Act.

The regulations relating to attachments, referred to in subs. (1), are set out at pp. 810-813.

The modifications above referred to consist of stipulations in regard to *general* courts-martial. A general court-martial held under the Army Act for the trial of a member of the Air Force attached to the military forces, though convened by an officer of the Army, will be confirmed by His Majesty (being referred by the military authorities to the air force authorities for that purpose) or by an officer authorized to confirm the findings and sentences of general courts-martial under

the Air Force Act, except that overseas, in stated circumstances, confirmation may be effected by a general or other officer authorized to confirm findings and sentences of general courts-martial under the Army Act. In the case of military personnel attached to the Air Force the converse procedure applies.

The following examples are given by way of illustration:—

(a) An air force officer while attached to the Army commits an offence against the Army Act; the army commanding officer investigates the charge and signs the charge-sheet; an army officer convenes a general court-martial under the Army Act; an air force officer (or His Majesty) confirms.

(b) Conversely, an army officer while attached to the Air Force commits an offence against the Air Force Act; the air force commanding officer investigates the charges and signs the charge-sheet; an air force officer convenes a general court-martial under the Air Force Act; an army officer (or His Majesty) confirms.

As the modifications above mentioned apply only to *general* courts-martial, it follows that they do not apply to field general or district courts-martial, and consequently such courts for the trial of air force personnel attached to the Army may not only be convened by army officers but may also be confirmed by a military authority empowered to confirm findings and sentences under the Army Act.

PART V
—
ss. 179A–180.

As regards members of the Air Forces attached to the Army, all powers of remission, mitigation and commutation of sentences under s. 57 (2) of the Army Act are exercisable by the Air Council in lieu of the Army Council by virtue of s. 179A (2) *(d)* of the Army Act. The converse applies in the case of military personnel attached to the Air Force.

If a sentence is invalid it may, in the case of a general court-martial held on a member of the Air Force attached to the Army, be quashed by a competent air force authority, or by the Air Council; and in the case of a field general or district court-martial by a competent military authority (see K.R. 665), or by the Army Council. The converse applies in the case of military personnel attached to the Air Force.

If a member of the Air Force attached to the military forces commits an offence for which he is not amenable under the Army Act, but for which he can be punished under the Air Force Act, he may be tried and punished under the last-mentioned Act; he will be handed over to an air force authority for investigation of the case and disposal.

If attachment of a member of the Air Force to the military forces has ceased, and subjection to military law consequently terminated, such member will still remain amenable to military law in respect of any offence against the Army Act committed whilst so subject; see s. 158 (1) proviso. In such case the offender will be handed back to the military authorities for investigation of the case and disposal.

Under subs. (2), para. *(i)*, the power to enforce compulsory stoppages from the pay of an airman attached to the Army towards the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child, remains vested solely in the Air Council. The converse applies in the case of a soldier attached to the Air Force.

Attaching of officers and soldiers to Dominion forces.

179B.—(1) The Army Council may from time to time place any officers or soldiers of the regular forces at the disposal of the military authorities of a Dominion[1] for the purpose of being attached temporarily by those authorities to a Dominion force, and while a person is so attached, he shall, to such extent as the law of the Dominion may provide, be subject to the military law of the Dominion:

Provided that, except while a state of war exists between His Majesty and any foreign power, the Army Council shall not so deal with an officer or soldier without his consent.

(2) While any reserve officer or retired officer, or any warrant officer, non-commissioned officer or man belonging to the army reserve force, is subject to military law, the foregoing provisions of this section shall apply in relation to him as they apply in relation to an officer or soldier of the regular forces.

NOTE

1. For definition of *Dominion*, see s. 190 (23).

Provision as to naval officers subject to military law.

179C. In the application of this Act to officers of His Majesty's naval forces who are subject to military law, the power of a court-martial to inflict the punishment of forfeiture of seniority of rank shal include power to inflict the punishment of forfeiture of seniority o rank in the navy.

PART V

s. 180.

180.—(1) In the application of this Act to His Majesty's forces when serving in India or Burma, the following modification shall be made:—

Modification of Act with respect to His Majesty's forces when serving in India or Burma and His Majesty's Indian and Burma forces.

A court-martial may take the same proceedings for the punishment of a person not subject to military law, who in any part of India or Burma, commits any offence as a witness before a court-martial, or is guilty of a contempt[1] of a court-martial, as might be taken by any civil court in that part of India or Burma in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

(2) In the application of this Act to His Majesty's Indian forces and His Majesty's Burma forces (hereafter in this section referred to as the Indian forces and the Burma forces respectively) the following modifications shall be made—

(a) Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers belonging to or followers in the Indian forces, being natives of India,[2] or the Burma military law respecting officers or soldiers belonging to or followers in the Burma forces, being natives of Burma,[2] and on the trial of all offences committed by any such officer, soldier or follower reference shall be had to the Indian military law or, as the case may be, the Burma military law for such officers, soldiers or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act;

(b) Indian military law, or, as the case may be, Burma military law shall extend to such officers, soldiers and followers as aforesaid wherever they are serving;

(c) the Governor-General of India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to the India forces or to the Burma forces, and the Governor of Burma may suspend the proceedings of any court-martial held in Burma on any such officer or soldier;

(d) an officer belonging to the Indian forces who thinks himself wronged by his commanding officer and on due application made to him does not receive the redress to which he considers himself entitled may complain[3] to the Governor-General of India, who shall cause his complaint to be inquired into and if so desired by the officer shall make a report through the Secretary of State to His Majesty, in order to receive the directions of His Majesty thereon;

[Para. *(e)* repealed by A. & A.F. (A) Act, 1939].

(f) the Governor-General of India in the case of the Indian forces, and the Governor of Burma in the case of the Burma forces, may reduce any warrant officer to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately before his appointment to be a warrant officer;

[Para. *(g)* repealed by A. & A.F. (A) Act, 1938].

(h) Part II of this Act shall not apply to the Indian forces or the Burma forces, but persons may be enlisted and attested in India or Burma[4] for medical service or for other special service in the Indian forces or the Burma forces for such periods, by such persons and in such manner as may be from time to time authorized by the Governor-General or the Governor of Burma.

(3) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

NOTE

1. For the power of an Indian court to institute proceedings in respect of offences committed or in relation to proceedings in the court, see the Indian Code of Criminal Procedure, 1908, Ch. XXXV, which code, as adapted by the Government of Burma (Adaptation of Laws) Order, 1937, also applies in regard to courts in Burma.

2. *Natives of India....natives of Burma.* See definition in s. 190 (22).

A court-martial on a person subject to Indian military law or Burma military law must accord with the provisions of that law, but under this sub-section may be convened by an officer authorized to convene a court-martial under the Army Act. It will be observed that Indian military law or Biurma military law is by this sub-section made applicable to persons subject to such law wherever they are serving.

3. See s. 42 and note. European officers of the Indian Army upon attaining substantive rank higher than that of lieutenant-colonel cease to belong to the Indian Army, and their right of complaint then lies under s. 42.

4. For definitions of *India* and *Burma*, see s. 190 (21) (21A).

Europeans cannot be enlisted for service in India or Burma only, except under the provisions of this sub-section which permits Europeans to be enlisted for medical or other special service in manner from time to time provided by the Governor-General of India or the Governor of Burma.

It will be noted that under s. 190 (21), "India" includes the territories in India under the dominion of any native prince or princes as well as the territories the government of which is vested in His Majesty.

PART V

—

s. 181.
Modification of Act with respect to auxiliary forces.

181.—(1) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of His Majesty's auxiliary forces, except so far as such person enlists[1] or enrols himself, or attempts to enlist or enrol himself in the regular forces or in a force raised in India, Burma or a colony, and except so far as the said provisions[2] may be applied by any other Act.

(2) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3) The provisions of this Act with respect to billeting and impressment of carriages[3] shall apply to His Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification.

(4) An order issued and signed as a route or an order signed by the officer commanding the unit of the territorial army, or the battalion or corps of volunteers, shall be substituted for a route,—

(a) In the case of any man of the territorial army attending for his preliminary training; and

(b) In the case of any officer, non-commissioned officer, or man of the territorial army assembled for training and exercise at the place in the United Kingdom appointed by His Majesty in that behalf, or when called out for actual military service for purposes of defence in the United Kingdom; and

(c) In the case of any officer, non-commissioned officer, or man of the territorial army embodied under an order of His Majesty, who has joined his corps at the place appointed for his assembling; and

(d) In the case of any officer, non-commissioned officer, or man of the volunteers attending at the place at which his corps is required to assemble;

and an order to billet such officer, non-commissioned officer, or man purporting to be signed in manner required by this Act in the case of a route, or by the officer commanding a unit of the territorial army, or a battalion or corps of volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man of the territorial army or volunteers shall be a sufficient authority to such officer, non-commissioned officer, or man to demand billets; and when produced by an officer, non-commissioned officer, or man to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man producing the same to demand billets in accordance with the order.

(5) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold, the office of sheriff,[4] mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being

assembled for annual training at the time of such nomination or election, or during the time of his tenure of office.[5]

(6) When a member of the volunteers or the territorial army, being a non-commissioned officer or private, is subject to military law, a dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act.

NOTE

1. *Except so far as such person enlists.* For the offence of fraudulent enlistment, see s. 13; for that of unauthorized enlistment, see ss. 32, 33, and 99.

2. *Except so far as the said provisions.* This refers, *e.g.*, to the application of the procedure for enlistment to enlistment into the Territorial Army; T.R.F. Act, s. 10.

3. *Billeting and impressment of carriages.* See Part III of the Act.

4. If a sheriff is an officer of the Territorial Army at the time when his corps is embodied, he is discharged from performing personally the office of sheriff, and the under-sheriff is to perform the duty (T.R.F. Act, s. 23 (3)).

5. The seat of a member of Parliament is not vacated by the acceptance of a commission in the Territorial Army; and a person in the Territorial Army is not liable to any punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time he is returning from such election. A person in the Territorial Army cannot be compelled to serve as a peace officer, or as a parish officer (T.R.F. Act, s. 23 (4)). As to an officer or man of the Territorial Army being exempt from serving on any jury, see Ch. XII, para. 9, and T.A. Regs. 480-488.

Special provisions as to warrant officers.

182. The provisions of this Act shall apply to a warrant officer[1] in like manner as if he were a non-commissioned officer,[2] subject nevertheless (in addition to the modifications for a non-commissioned officer) to the following modifications:—

(1) He shall not be punished[3] by his commanding officer[4] nor sentenced by a district court-martial to any punishment not in this section mentioned; and

(2) He may be sentenced—

(a) by a district court-martial[5] to be severely reprimanded or reprimanded, or to such forfeitures, fines and stoppages as are allowed by this Act, and, either in addition to or in substitution for any such punishment, to be dismissed from the service, or, if he was originally enlisted as a soldier but not otherwise, to be reduced to the ranks, or in any case, to be reduced to a lower grade, or to an inferior class of warrant officer (if any), or to the bottom or any other place in the list of the rank which he holds; or

(b) by any court-martial having power to try him, other than a district court-martial, to any punishment which under this section, a district court-martial has power to award, either in addition to or in substitution for any other punishment; or

(c) to the punishments prescribed in that behalf under section forty-seven of this Act by the authorities referred to in that section.

(3) A warrant officer reduced to the ranks or remanded to regimental duty in the rank of private shall not be required to serve in the ranks as a soldier;

PART V — ss. 182, 183.

(4) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

NOTE

1. This section makes the Act apply, subject to certain modifications, to warrant officers as if they were N.C.Os. Warrant officers cannot be summarily punished by a C.O. See, however, s. 47, with regard to summary disposal of offences committed by warrant officers.

2. The Army Council and certain other specified authorities can reduce a warrant officer under s. 193 (2) as applied by this section. If, however, the ground is some misconduct which is an offence against the Act, he should, as a rule, be put on trial before a court-martial.

3. A private soldier or N.C.O. who holds the "acting" rank of warrant officer is an acting non-commissioned officer within the meaning of s. 183, proviso (c), and may be ordered by his C.O. for an offence or otherwise to revert to his permanent grade.

As regards temporary rank, *see* notes 3 and 6 to s. 183.

A warrant officer, class II, who holds the acting rank of warrant officer, class I, may, with the sanction of an officer not below the rank of brigadier, be reverted to his permanent rank by his C.O. but not by way of punishment for an offence. See K.R. 273.

4. In this and the next section, the commanding officer is the commanding officer as defined by R.P. 129. See K.R. 526.

5. A district court-martial can only sentence a warrant officer to the punishments mentioned in para. (a); but a general or field general court-martial can award any of the punishments so mentioned, either in addition to, or in substitution for, any punishment which they can award under their ordinary powers. See note 9 to s. 44.

Special provisions as to non-commissioned officer.

183. In the application of this Act to a non-commissioned officer[1] the following modifications shall apply:—

(1) The obligation[2] on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkeness;

"(2) The Army Council, and

(a) in India the Commander-in-Chief of the forces in India, or such officer as he, with the approval of the Governor-General, may appoint;

(b) elsewhere outside the United Kingdom, the officer commanding the forces, if not below the rank of major-general and if appointed for that purpose by the Army Council[2A], and

(c) on active service the officer commanding-in-chief in the field, and any general officer or brigadier he or the Army Council may appoint, may reduce[3] any non-commissioned officer to the ranks or to any lower grade:[4]"

(3) A non-commissioned officer may, by the sentence of a court-martial, be ordered, to be reduced[3] to the ranks[6], or to any lower grade, or to forfeit seniority of rank,[5] either in addition to or without any other punishment, in respect of an offence:

(4) A non-commissioned officer sentenced by court-martial to penal servitude, field punishment, imprisonment or detention shall be deemed[7] to be reduced to the ranks:

Provided that—

PART V

s. 183.

(a) An instructor, Army Educational Corps shall not be liable to be reduced to the ranks (unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer), but may nevertheless be sentenced by a court-martial to penal servitude, imprisonment or detention[3] or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment shall be deemed to be dismissed; but

(b) The Army Council, and in India the Commander-in-Chief of the forces in India, or such officer as he, with the approval of the Governor-General may appoint, may dismiss an instructor, Army Educational Corps;

(c) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert[3], to his permanent grade as a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks.[6]

NOTE

1. *Non-commissioned officer.* See definition in s. 190 (5).

2. *Obligations.* See s. 46 (3).

2A. The Army Council have appointed the under-mentioned competent authorities for the purposes of this sub-paragraph:—

The Commander-in-Chief, Bermuda;

The General Officer Commanding, the British Troops in China;

The General Officer Commanding, the British Troops in Egypt;

The Commander-in-Chief, Gibraltar;

The Commander-in-Chief, Malta;

The General Officer Commanding, Malaya.

The General Officer Commanding, British Forces in Palestine and Trans-Jordan.

The General Officer Commanding, Burma.

3. Paras. (2), (3), and proviso (c). Except as provided in para. (2) a N.C.O. can only be reduced by sentence of a court-martial; but inasmuch as the term "non-commissioned officer" includes acting N.C.O. (see s. 190 (5)), it is provided by proviso (c) that a soldier having acting rank only may be ordered by his C.O., for an offence or for any other cause, to revert to his permanent grade, or, if he has no permanent grade as N.C.O. to the ranks. As to reduction of N.C.Os. convicted by the civil power, see K.R. 573. As to reduction of a N.C.O. removed from an appointment, see K.R., 274. So long as the conditions obtain under which temporary rank is held (K.R. 255 (a)), such rank must be dealt with as though it were substantive. Consequently a N.C.O. holding temporary rank cannot be ordered by his C.O. to revert to any lower rank on grounds of inefficiency or unsuitability, or by way of punishment for an offence (K.R. 273 (d)).

4. A warrant officer or N.C.O. reduced under para. (2) cannot claim a trial by court-martial.

When a N.C.O. is reduced to the ranks under para. (2), the date from which the reduction is to take effect should be specified in the order. See K.R. 276.

5. *Ordered to forfeit seniority of rank.* See note 12 to s. 44.

6. Para. (3) must be read in conjunction with K.R. 255, defining what are ranks. Lance and acting rank is a matter to be dealt with entirely by the C.O. and not being legally a rank under the K.R. is not cognizable in the sentence of a court-martial. Therefore a sentence of reduction from or to lance rank, *e.g.* from or to the rank of lance-sergeant or lance-corporal, is inoperative. But a lance-corporal, being a N.C.O., loses his lance rank under para. (4) upon being sentenced to any of the punishment therein mentioned.

Though a sentence of reduction from or to acting or lance rank is inoperative, nevertheless certain other punishments peculiar to a N.C.O. may be awarded to a soldier holding such appointments, *i.e.*, reprimand or severe reprimand. See s. 44 (mm). As regards temporary rank, *see* note 3 above.

A N.C.O. holding temporary rank may legally be sentenced by court-martial to be reduced to a lower temporary or permanent rank, or to the ranks. For example, a temporary sergeant whose permanent rank is corporal may be sentenced to be reduced to the rank of corporal, or to the ranks. If, however, he holds no permanent rank above that of private he can only properly be sentenced to be reduced to the temporary rank of corporal, or to the ranks; a sentence of reduction to the rank of corporal in such circumstances would be deemed to be reduction to the temporary rank of corporal.

PART V
—
ss. 183, 184.

7. Although under this paragraph a N.C.O. holding permanent or temporary rank, when sentenced to penal servitude, imprisonment, detention, or field punishment, is, *ipso facto*, reduced to the ranks, it is desirable to specify the reduction in the sentence. See R.P., App. II, p. 758.

8. This proviso allows an instructor, Army Educational Corps, to be sentenced to penal servitude, imprisonment, or detention, although he cannot be reduced to the ranks unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer. It does not of course prevent the infliction of any less punishment than detention.

9. When an acting N.C.O. has been punished by court-martial for an offence, and such punishment does not involve reduction or reversion, his C.O. can nevertheless revert him to his permanent grade, not as a further punishment, but because the proceedings show him to be unfit to hold his appointment.

Special provisions as to application of Act to persons belonging to His Majesty's forces.

184. In the application of this Act to persons who do not belong to His Majesty's forces,[1] the following modifications shall be made:—

(1) Where an offence has been committed by any person subject to military law who does not belong to His Majesty's forces, such persons may be tried by any description of court-martial

PART V

—

ss. 184, 184A

convened by an officer authorized to convene such description of court-martial within the limits of whose command the offender may for the time being be, and may be tried, and on conviction dealt with and punished accordingly;

(2) Any person subject to military law who does not belong to His Majesty's forces shall, for the purposes of this Act relating to offences,[2] be deemed to be under the command of the commanding officer of the corps or portion of a corps (if any) to which he is attached, and if he is not attached to any corps or a portion of a corps under the command of any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer:

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

NOTE

1. This section provides for the trial by court-martial of a person who does not belong to either the regular or the auxiliary forces, but who is subject to military law under either s. 175 (7) and (8) or s. 176 (9) and (10).

2. This paragraph has reference to certain offences, see ss. 7 (4), 14 (2), 15 (3), and also to the investigation by the commanding officer, see ss. 45 and 46; see also s. 49 (field general court-martial), and R.P. 129.

Relations between military and naval and air forces acting together.

184A.[1]—(1) Where an officer or petty officer in the navy is a member of a body of His Majesty's naval forces acting with or is attached to any body of His Majesty's military forces under such conditions as may be prescribed[2] by regulations made by the Admiralty and Army Council, then, for the purposes of command and discipline, and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's military forces as aforesaid, be treated and have all such powers (other than powers of punishment) as if he were a military officer or non-commissioned officer as the case may be.

(1A). Where an officer or non-commissioned officer of the air force is a member of a body of His Majesty's air force acting with any body of His Majesty's military forces under such conditions as may be prescribed[2] by regulations made by the Army Council and the Air Council, then, for the purposes of command and discipline, and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's military forces as aforesaid, be treated, and have all such powers (other than powers of punishment), as if he were a military officer or non-commissioned officer, as the case may be:

Provided[3] that under regulations made by the Army Council and Air Council the officers and airmen of a body of the air force acting

with any body of His Majesty's military forces on active service, or any such officers or airmen, may, in such manner and in such circumstances, and subject to such conditions as may be provided by or under those regulations, be made subject to military law, and in such case they shall be subject thereto in like manner as if they were officers and airmen attached to the Army.

(2) Where any officer or soldier is a member of a body of His Majesty's military forces acting with or is attached to any body of His Majesty's naval forces under such conditions as may be prescribed by regulations made by the Army Council and the Admiralty, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and petty officers of such naval body shall, in relation to him, be treated and have all such powers (other than powers of punishment) as if they were military officers or non-commissioned officers.

(2A) Where any officer or soldier is a member of His Majesty's military forces acting with any body of His Majesty's air force under such conditions as may be prescribed by regulations made by the Army Council and the Air Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and non-commissioned officers of such body of the air force shall, in relation to him, be treated, and have all such powers (other than powers of punishment), as if they were military officers or non-commissioned officers.

(3) The relative rank[4] of naval and military and air force officers, petty officers, and non-commissioned officers shall, for the purposes of this section, be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force.

NOTE

1. This section was introduced by the Army (Amendment) Act, 1915, and additions have since been made.

The section, and those below mentioned, provide for the powers of command and discipline mutually exercisable by and over officers and other ranks of the various services where bodies of the Army and Navy or of the Army and Air Force are acting together.

The section must be read in conjunction with s. 90A of the Naval Discipline Act or s. 184A of the Air Force Act, as the case may be, which will be found on pp. 809, 813-4.

The effect of the combined sections is that where personnel of the Army and of the Navy, or Air Force, are acting together and the "prescribed conditions" are fulfilled, then (in brief):—

(a) The officers and petty officers of the naval contingent, or the officers and N.C.Os. of the Air Force, as the case may be, have the same powers of command and discipline (but not of punishment) over military officers and men as they would have if they were themselves military officers and N.C.Os. of ranks corresponding to their own; conversely—

(b) Military officers and N.C.Os. have similar powers over air force personnel, and military officers and N.C.Os. not below the rank of sergeant have similar powers over naval personnel.

2. The "prescribed conditions" at present in force are set out on pp. 809-810 and 813-817.

3. The proviso to subs. (1A) applies only as between the military and air forces. Under the proviso, personnel of a body of the Air Force serving with a body of the military forces on active service may be made subject to military law as if they were officers and airmen *attached* to the Army; and conversely under the Air Force Act.

4. A table of relative ranks will be found in K.R. 878.

PART V
—
s. 184B.
Relations between military forces and Indian Air Force.

184B. When a body of the regular, reserve or auxiliary forces and a body of an air force raised in India are serving together under such conditions as may be prescribed by regulations made by the Army Council and the Governor General of India, then, if it is so provided by the regulations, but subject to any exceptions or limitations specified therein, a member of either body shall, in relation to the other body—

(a) be treated for the purposes of command and discipline, and for the purposes of the provisions of this Act relating to superior officers; and

(b) have for those purposes all such powers (other than powers of punishment),

as if he were a member of that other body holding relative rank.

For the purposes of this section, the relative rank of members of different forces shall be such as may be provided by regulations made as aforesaid.

NOTE

See regulation made under this section by the Army Council and the Governor General of India on p. 817.

PART V
ss. 185-187.

Saving Provisions

Special provisions as to prisoners and prisons in Northern Ireland.

"**185.** The jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Northern Ireland be exercisable only subject to the approval of the Ministry of Home Affairs for Northern Ireland."

Saving of Naval Discipline Act as to forces when on board His Majesty's ships.

186. Nothing in this Act shall affect the application of the Naval Discipline Act or any Order in Council made thereunder, to any of His Majesty's forces when embarked on board any ship commissioned by His Majesty, and the auxiliary forces shall be deemed to be part of His Majesty's forces within the meaning of that Act.

NOTE

By s. 88 of the Naval Discipline Act, His Majesty's land and air forces when embarked on board any of His Majesty's ships shall be subject to the provisions of that Act to such extent and under such regulations as His Majesty shall by Order in Council direct. The Order in Council now in force will be found at p. 818 *et seq.*

See also notes to s. 188.

Definitions

Application of Act to Channel Islands and Isle of Man.

187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom,[1] subject to the following modifications:—

(1) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man;

(2) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude, imprisonment or detention, and to prisons and detention barracks, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude, imprisonment or detention, passed in any of those islands shall be deemed to have been passed in colony[2];

(3) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies;

(4) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony.

NOTE

1. Ordinarily, the term "United Kingdom" does not include either the Channel Islands or the Isle of Man, but for the purposes of this Act and subject to the provisions of this section, they are included in that expression. See s. 190 (20A).
The effect of para. (1) is to exclude those islands from the operation of Part III of the Act (ss. 102-121).

2. The effect of this is to require persons sentenced to penal servitude, imprisonment, or detention in the Channel Islands or Isle of Man to be brought to the United Kingdom under the same circumstances as when they are sentenced in a colony. See ss. 59 and 64.

Application of Act to mandated territories.

"187A. This Act shall apply—

(a) in relation to any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom, in like manner as it applies in relation to a British protectorate:

(b) in relation to any territory in respect of which such a mandate is being exercised by His Majesty's Government in a Dominion, in like manner as it applies in relation to that Dominion."

Application of Act to certain Dominions.

"187C.—(1) Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

(2) Until the date on which the Parliament of a Dominion to which this section applies adopts section four of the Statute of Westminster, 1931, and until such later date, if any, as may be fixed by the adopting Act for the adoption to take effect, the provisions of this Act shall apply in relation to, and in relation to forces raised in, that Dominion as they apply in relation to, and in relation to forces raised in, any other part of His Majesty's dominions which is situate outside the United Kingdom and British India and is not a Dominion."

Application of Act to ships.

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any finding and sentence, so far as not confirmed and executed on board ship may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

(2) Where the officer commanding the troops on board a ship holds an authority empowering him during the voyage to convene a court-martial for the trial of any person under his command who is subject to military law and to confirm the finding and sentence of a court-martial convened for the trial of any such person as aforesaid, or conferring on him either of those powers, that authority shall, in relation to any such person as aforesaid, have effect as if it had been issued at the place where that person embarked on board the said ship by an officer or person qualified under this Act to issue such an authority at that place.

PART V

ss. 188, 189.

NOTE

Army courts-martial are not held on board His Majesty's ships (s. 186); but by virtue of this section, when soldiers are embarked on a ship not commissioned by His Majesty, an officer holding a warrant to convene courts-martial at the place of such embarkation will be able to convene a court-martial on board the ship, and for this purpose a district court-martial warrant is given before sailing to the officer in command (K.R. 1091).

Subs. (2) enables a warrant issued at the commencement of a voyage to cover all troops who may come under the command of the O.C. troops during the voyage. If a soldier is tried on board the ship for an offence committed either before embarkation or on board, the sentence, if not confirmed on board, can be confirmed at the place of disembarkation by the officer who would have had authority to confirm it if the court-martial had been convened and the trial held at that place, and it can be executed there.

As to troops on board a ship being "on active service" even before actual departure for the area of operations, see note 1 to s. 189.

Where troops on board are on active service, their C.O. can also (without any warrant) convene a field general court-martial (s. 49).

Interpretation of term "on active service."

189.—(1) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of[1] a force which is engaged in operations against the enemy or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country.

(2) Where the governor of a colony[2] in which any of His Majesty's forces are serving, or if the forces are serving in a Dominion[3] or out of His Majesty's dominions, the general officer or brigadier commanding such forces, declares[3] at any time or times that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service

PART V — s. 189.

that the forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration does not exceed three months from the date thereof.

(3) If at any time during the said period the governor or general officer or brigadier for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer or brigadier making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

(5) The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

(6) Where any such forces so serving in a Dominion or out of His Majesty's dominions are under the command of an air officer the powers exercisable under this section by a general officer or brigadier shall be exercisable by such air officer, and this section shall apply accordingly.

NOTE

1. Troops may be on active service even before embarkation for the seat of war if the circumstances are such that they can reasonably be held to be attached to or to form part of a force such as is specified in this subsection. Under the provisions of section 188 such troops, if on active service at the port of embarkation, would continue to be on active service during the voyage.

2. For definitions of *Dominion* and *colony*, see s. 190 (23) (23A).

3. It will be observed that the power given by this section to anticipate, or prolong, as it were, the period of active service is given to the governor in a colony, and to the general officer or brigadier when in a dominion or out of the King's dominions (or to an air officer when in command of the forces). The declaration of the governor must be by proclamation in the official gazette, but it does not take effect as regards the forces until the declaration has been published in general orders. On such publication the troops will be deemed to be on active service, although active service, as defined by the Act, has not actually begun or has ended.

s. 190.

Interpretation of terms.

190. In this Act, if not inconsistent with the context, and subject to any express provision to the contrary, the following expressions have the meanings[1] hereinafter respectively assigned to them; that is to say,

(1) The expression "Secretary of State" means one of His Majesty's Principal Secretaries of State;

(3) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief His Majesty's forces for the time being;

(4) The expression "officer"[2] means an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof and includes also—

(*a*) a person who, by virtue of his commission, is appointed to any department, or corps of His Majesty's forces, or of any arm, branch, or part thereof;

(*b*) a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of officer of His Majesty's said forces, or of any arm, branch, or part thereof;

(*c*) any officer of His Majesty's naval or air forces who is for the time being subject to military law; and

(*d*) any officer of a Dominion force who is for the time being subject to military law;

Officers holding honorary commission are officers within the meaning of this Act, subject to the exceptions in this Act mentioned:

(5) The expression "non-commissioned officer" includes an acting non-commissioned officer, but save as is in this Act mentioned does not include a warrant officer;

(6) The expression "soldier"[3] does not include an officer as defined by this Act, but, with the modifications[4] in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer and a non-commissioned officer, and every person subject to military law during the time that he is so subject;

(7) The expression "superior officer" when used in relation to a soldier, includes a warrant officer, and also includes a non-commissioned officer as above defined;

"(7A) The expressions 'the forces' and 'His Majesty's forces' do not include 'His Majesty's Dominion forces';"

(8) The expression "regular forces"[5] means officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to His Majesty in every part of the world, or in any specified part of the world, including soldiers of the reserve forces when called out on permanent service, and including, subject to the modifications in this Act mentioned, the Royal Marines and His Majesty's Indian forces, and His Majesty's Burma forces;

(9) The expression "reserve forces" means the army reserve force including the militia;

(Paragraph (10) *and* (11) *were repealed by the Reserve Forces Act, 1882* (45 & 46 *Vict.* c. 48), *and that Act enacted* (*s.* 28) *that in the Army Act the expression "army reserve force" should mean the army reserve under the Reserve Forces Act,* 1882.)

PART V — s. 190.

(12) The expression "auxiliary forces" means the territorial army and the volunteers;

(*Paragraph* (13) *repealed by T.A. and M. Act*, 1921.)

(*Paragraph* (14) *repealed by A. and A.F.* (*A*) *Act*, 1927.)

(15) The expression "corps"[6] means any such body of His Majesty's military forces as may from time to time be declared by Royal Warrant to be a corps for the purposes of this Act; so, however, that the Royal Marine forces (in this Act referred to as the Royal Marines) shall be formed into a separate corps; and where a corps comprises units of the territorial army belonging to two or more counties, the corps shall, for the purposes of section nine of the Territorial and Reserve Forces Act, 1907, be deemed to be a corps for each such county;

(16) The expression "battalion" in the application of this Act to cavalry, artillery, or engineers shall be construed to mean regiment, brigade, or other body into which His Majesty may have been pleased to divide such cavalry, artillery, or engineers;

(17) The expression "regimental" means connected with a corps, or with any battalion or other subdivision of a corps;

(18) The expression "decoration" means any medal, clasp, good-conduct badge, or decoration;

(19) The expression "military reward" means any gratuity[7] or annuity for long service or good conduct; it also includes any good-conduct pay or pension and any other military pecuniary reward;

(20) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates;

"(20A) The expression 'United Kingdom' includes (subject, however, to the provisions of section one hundred and eighty-seven of this Act) the Channel Islands and the Isle of Man;"

(21) The expression "British India" means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, and the expression "India" means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of any such an Indian Ruler, the tribal areas and any other territories which His Majesty in Council may from time to time after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India;

(21A) The expression "Burma" includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the first day of April, nineteen hundred and thirty-seven, comprised in India, being territories lying to the east of Bengal, the State of Manipur,

Assam and any tribal areas connected with Assam, and the expression "British Burma" means so much of Burma as belongs to His Majesty;

PART V — s. 190.

(21B) The expressions "tribal areas" and "Ruler" have for the purposes of the foregoing definitions, the same meanings as they have in the Government of India Act, 1935;

(22) The expressions "native of India" and "native of Burma" mean respectively a person triable and punishable under Indian military law or Burma military law;

"(23) The expression 'Dominion'* means any of the following Dominions, that is to say,—the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, Eire, and Newfoundland;

(23A) The expression 'colony' means any part of His Majesty's dominions exclusive of the United Kingdom, of British India, of British Burma and of any Dominion, and includes any British protectorate;"

(24) The expression "foreign country"[11] means any place which is not situate in the United Kingdom, a Dominion, a colony, India or Burma, and is not on the high seas;

(26) The expression "governor general" in its application to India means the Governor General of India in Council;

(27) The expression "governor" in its application to a colony means the officer, however, styled, who is for the time being administering the government of the colony;

(28) The expressions "oath" and "swear", and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath;

(29) The expression "superior court," in the United Kingdom means His Majesty's High Court of Justice in England, the Court of Session in Scotland, and His Majesty's High Court of Justice in Northern Ireland;

(30) The expression "court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England;

(31) The expression "civil court" means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction;

(32) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act;

(33) The expression "misdemeanour" as far as regards Scotland, means a crime or offence, and so far as regards India, means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court;

(33A) The expression "steals" has the same meaning as it has for the purposes of the Larceny Act, 1916[12];

(34) The expression "Summary Jurisdiction Acts"—

(*a*) as regards England and Northern Ireland, has the meaning assigned to it by the Interpretation Act, 1889; and

(*b*) as regards Scotland, means the Summary Jurisdiction (Scotland) Act, 1908, and any enactment amending that Act;

PART V

s. 190.

"Court of summary jurisdiction."

(35) The expression "court of summary jurisdiction"[1]—

(a) As regards England and Northern Ireland, has the meaning assigned to it by the Interpretation Act, 1889;

(b) As regards Scotland, means a court within the meaning of the Summary Jurisdiction (Scotland) Act, 1908; and

(d) As regards India, Burma, a colony, the Channel Islands and Isle of Man, means the court, justices or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable:

(36) The expression "court of law" includes a court of summary jurisdiction;

(37) The expression "county court judge" includes—

(a) In the case of Scotland, the sheriff or sheriff substitute; and

(b) In the case of Northern Ireland, the judge of the Civil Bill Court;

(38) The expression "constable" includes a high constable and a commissioner, inspector or other officer of police;

(39) The expression "police authority" means the commissioner, commissioners, justices, watch committee or other authority having the control of a police force;

(40) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description, used for burden or draught or for carrying persons in like manner as if such beast were included in the expression "horse";

(40A) The expression "carriage" means a vehicle for carriage or haulage other than one specially constructed for use on rails, and the expression "trailer" means a carriage constructed or adapted for being drawn by a mechanically propelled carriage;

(41) "Airman" has the same meaning as in the Air Force Act.

NOTE

1. It may be observed that under the Interpretation Act, 1889, in the construction of every Act of Parliament, unless the contrary intention appears, masculine words include the feminine, the plural includes the singular, and the singular includes the plural; the word "month" means a calendar month, and "oath," "affidavit," and "swear," include affirmation, declaration, and affirm or declare. This enactment, however, does not apply to documents not Acts of Parliament, and therefore in any such document, *e.g.*, a warrant, "oath" will not include affirmation, etc., but under R.P. 134 (C) "month" in a sentence of imprisonment, detention, or field punishment, means, unless the contrary is expressed, a calendar month. Throughout the Act a year means twelve calendar months and may be held to commence on any day in any month.

2. *Officer*. This includes half-pay and every other description of officer, though not subject to military law under s. 175.

A woman cannot be an "officer" within the meaning of the Act. Any honorary rank conferred, even though accompanied by a commission, is a mere matter of honour and dignity. She might be "liable as" an officer.

2A. The provisions of the Act, however, are (with certain modifications) applied to a warrant officer as if he were a non-commissioned officer. (s. 182.)

3. *Soldier*. This expression practically includes all persons subject to military law other than officers.

A warrant officer is in general a "soldier" (para. (6)), but is not a "non-commissioned officer" (para. (5)). See, however, note 2A above.

4. *Modifications*. See ss. 182, 183.

5. *Regular Forces*. This definition includes the Marines. The distinction between the regular and other forces is that the regular forces are liable to serve *continuously* in every part of the world, or in any specified part of the world. Officers of the Regular Army Reserve of Officers do not, therefore, fall within this definition, whether called to army service or not. Reservists become soldiers of the regular forces when called out on permanent service. When called out for training and exercise, or for duty in aid of the civil power, they remain reservists but are subject to military law.

6. *Corps*. As the corps is the unit for the purposes of enlistment and some other purposes under the Act, a power is given to His Majesty by warrant to declare any portion of the forces to be a corps for the purposes of the Act. See the Warrant now in force (Army Order 49 of 1926 as amended by subsequent Army Orders), and Ch. XI, paras. 3-5.

7. A war gratuity is thus a "military reward."

8. *India*. It will be observed that "India," for the purposes of the Act, includes the dominions of Indian native princes as well as "British India"—that is to say, all territories and places in H.M.'s dominions governed through the Governor General of India.

9. See, however, s. 187C, as to applications of the Act to certain Dominions.

PART V
—
s. 190.

10. *Foreign country.* This includes the whole world, with the exception of the United Kingdom, India, Burma, the Dominions and the colonies. See also s. 187A as to mandated territories.

11. See Chap. VII, para. 50, *et seq.*